

Naorem Leikham Singh and ors. Vs. the State and anr.

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Court : Guwahati

Decided On : Sep-20-1971

Judge : R.S. Bindra, J.C.

Appellant : Naorem Leikham Singh and ors.

Respondent : The State and anr.

Prior history : R.S. Bindra, J.C. 1. At the instance of Kh. Ibobi Singh, the respondent No. 2 of this revision petition, the Police made an enquiry into his allegation of obstruction or nuisance caused to a path-way in Kakchine Bazar area by the petitioners herein, and then made a report on 6-3-1968 to the Sub Divisional Magistrate. Thoubal. recommending proceedings under Section 133. Criminal Procedure Code. It was on 21-6-1969 that the Magistrate pass-ed the conditional order under Section 133 (1). Crimina

Judgement :

R.S. Bindra, J.C.

1. At the instance of Kh. Ibobi Singh, the respondent No. 2 of this revision petition, the Police made an enquiry into his allegation of obstruction or nuisance caused to a path-way in Kakchine Bazar area by the petitioners herein, and then made a report on 6-3-1968 to the Sub Divisional Magistrate. Thoubal. recommending proceedings under Section 133. Criminal Procedure Code. It was on 21-6-1969 that the Magistrate pass-ed the conditional order under Section 133 (1). Criminal

Procedure Code. When the petitioners put in appearance on 7-11-1969 in obedience to the notice issued to them by the Magistrate they denied the existence of any public right in respect of the land over which obstruction was alleged to have been caused by setting up of stalls. The Magistrate then fixed the case for evidence on 13-11-1969 without making it clear whether evidence had to be led in respect of the denial of the public right made by the petitioners or whether on the merits of the alleged obstruction or nuisance. No evidence could however be recorded on 13-11-1969. nor on another four dates to which the proceedings were adjourned from time to time. It was on 6-2-1970 that the Magistrate took note of the provisions of Section 139-A, Criminal Procedure Code and examined the petitioners in, terms of Sub-section (1) of that section. The petitioners happened to deny the existence of public right in respect of the land in dispute. The Magistrate then adjourned the case to 12-2-1970 calling upon the petitioners to examine their witnesses. However, it was again not specifically stated in the order whether the petitioners were to lead evidence on the question of denial of public right concerning the land in dispute, or on the merits of the case. The Magistrate thereafter examined witnesses both on behalf of the petitioners and the State and decided the case on merits by his order dated 26-9-1970 holding 'mobile stalls have been constructed by the Ops. within the Kakching Bazar area which is a notified area and that their stalls have caused obstruction, nuisance and annoyance to the public and that they should be removed.' He allowed time until 26th of September 1970 to the petitioners for carrying out the directions given in the order.

2. The petitioners having felt aggrieved with that order filed a revision petition in the Court of Sessions Judge. who, by this order dated 4-2-1971, rejected the same. The Sessions Judge negatived the contention advanced on behalf of the present petitioners that the final order passed by the Sub-Divisional Magistrate is vitiated as the proceedings culminating in it bristle with procedural irregularities.

3. After weighing the arguments addressed at the bar and going through the record of the case. I feel satisfied that the order dated 29-6-1970 cannot be legally sustained, nor the one dated 4-2-1971 passed by the learned Sessions Judge. Sub-section (1) of Section 139-A provides that where an order is made under

Section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way. river. channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way river, channel or place, and if he does so, the Magistrate shall, before proceeding under Section 137 or Section 138, inquire into the matter. The expression inquire into the matter' used in Sub-section (1) has reference very clearly to the denial of the existence of the public right made by the person against whom the conditional order under Section 133 is passed. This interpretation of the expression is reinforced by the other expression used in the same sub-section, viz... 'before proceeding under Section 137 or Section 138'. Which clearly means that the inquiry respecting the merits of the alleged obstruction or nuisance is to be deferred until a decision has been recorded on the denial of public right. The matter is further clarified by Sub-section (2) which states that if in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and. if he finds that there is no such evidence, he shall proceed as laid down in Section 137 or Section 138, as the case may require. In substance what Sub-section (2) enjoins is that if the person proceeded against has been able to establish prima facie his denial of the public right respecting the way, river, channel or place concerned, the Magistrate will cease to proceed further with the case until 'the matter of the existence of such right has been decided by the competent Civil Court'. If, however. the evidence led by the person is altogether frivolous, the Magistrate has been given Jurisdiction to proceed with the case in the manner provided in Section 137 or Section 138. as the case may require. Sub-section (3) of Section 139-A also fields an identical conclusion. It enacts that a person who has. on being questioned by the Magistrate under Sub-section (1). failed to deny the existence of a public right of the nature therein referred to, or who. having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial, nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under Section 138. It is evident that the enquiry contemplated by

Section 139-A is confined only to the denial of the public right made by the person against whom the conditional order is issued, and that it has nothing to do with the inquiry made for determining whether or not the conditional order made under Section 133 (1) is reasonable or proper. This latter inquiry can be made after the inquiry contemplated by Section 139-A has resulted in a finding against the person to whom the conditional order was issued. No part of Chapter X bearing the heading 'Public Nuisances' and comprising Sections 133 to 143 contemplates a composite inquiry respecting the denial of public right and the merits of the alleged obstruction, nuisance or danger to the public in the use of any way, river, channel or place. The inquiry relevant to the alleged obstruction, nuisance or danger can be undertaken only after the preliminary question, raised by the person proceeded against, whether there is any public right in respect of the way river, channel or place has been settled in the affirmative.

4. The Sub-Divisional Magistrate, Thoubal, very evidently grievously erred when he proceeded to hold inquiry respecting both the matters after the petitioners had denied during their examination on 6-2-1970 that there was any public right over the land on which they were said to have set up the stalls. The proper course for the Magistrate to follow at the stage was to call upon the present petitioners to adduce evidence in support of their denial. If the petitioners had failed to adduce reliable evidence in proof of their denial of the public right then alone the Magistrate could have taken the next step of recording the parties' evidence in proof and rebuttal of the fact whether the conditional order is reasonable or proper. Hence, there is no escape from the conclusion that the final order passed by the learned sub-Divisional Magistrate cannot be legally sustained. As a matter of fact, no opportunity was given by the Magistrate to the petitioners to lead evidence that the conditional order was not proper or reasonable. Hence, a very serious prejudice has been occasioned to the petitioners and so the proceedings after 6-2-1970 stood vitiated with the consequence that the Magistrate's order dated 26-9-1970 has to be quashed.

5. In the result. I allow the revision petition, set aside the final order dated 26-9-1970 passed by the Sub-Divisional Magistrate, as also the order dated 4-2-1971 of the learned Sessions Judge. and remit the case to the Sub-Divisional Magistrate

with the direction that he should first hold inquiry in terms of Section 139-A respecting the denial of public right on behalf of the present petitioners. if the petitioners fail to lead any reliable evidence in support of that denial then alone the Magistrate would undertake the inquiry in terms of Section 137 of the Code. The provisions of Section 138 of the Code are not attracted because no prayer was made on behalf of the petitioners for appointing a jury.

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