

The State of Mysore Vs. Venkatraman Manjanath Hegde

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Court : Karnataka

Decided On : Aug-26-1972

Reported in : 1973CriLJ359

Judge : C. Honnaiah, J.

Appellant : The State of Mysore

Respondent : Venkatraman Manjanath Hegde

Judgement :

ORDER

C. Honnaiah, J.

1. This reference arises out of proceedings under Section 133, Cr.P.C. The applicant one Rama Govind Achari lodged a complaint before the Police at Kumta against one Venkataraman Hegde alleging that he had built a compound wall across the footpath leading from his house to the public road obstructing him from using the foot-path. The Sub Inspector of Police, after investigation, submitted a report to the Sub-Divisional Magistrate, Kumta Division, for taking action under Section 133, Cr.P.C. The Sub-Divisional Magistrate passed a conditional order dated 16.7.1971 calling upon Venkataraman Hegde to remove the obstruction caused to Rama Govind Achari within 7 days and to show cause as to why the order should not be made absolute. Venkataraman Hegde appeared before the Sub-Divisional Magistrate and contended that there was no foot-path as claimed

by Rama Govind Achari and that in any case action under Section 133, Cr.P.C. could not be taken in view of the allegations made by Rama Govind Achari himself. Both Rama Govind Achari and Venkataraman Hegde adduced evidence in support of their respective contentions. The Sub-Divisional Magistrate passed a final order on 29.3.1972 directing Venkataraman Hegde to remove the compound wall.

2. From the allegations made by Rama Govind Achari in his complaint to the Police and also from his evidence it could be gathered that Rama Govind Achari claimed a private right to use the foot-path, if at all it existed. The interference with the said right of Rama Govind Achari was the basis of the Magistrate's conditional order under Section 133. Cr.P.C.

3. This is clearly a private dispute between Rama Govinda Achari and Venkataraman Hegde. Proceedings under Section 133. Cr.P.C. are not intended to settle private disputes between different members of the public, but on the other hand is intended to protect the public, as a whole against inconvenience. If the compound wall caused inconvenience only to the applicant and not to the public generally, the applicant cannot resort to proceedings under this section for redressing his personal troubles. The Sub-Divisional Magistrate should bear in mind that he is supposed to be acting purely in the interests of the public, and should be on his guard against any tendency to use Section 133 as a substitute for litigation in the Civil Courts in order to secure the settlement of a private dispute. Section 133 empowers a Magistrate to take action thereunder when he considers that any unlawful obstruction or nuisance should be removed from any way river, channel or place, which is or may be lawfully used by the public. It is clear that the obstruction must be against public use. Action under this section can only be taken where there has been an invasion of public rights. In the present case, the Sub-Divisional Magistrate took it upon himself to decide what Chapter X of the Code of Criminal Procedure did not authorise him to decide and what was really for a Civil Court to decide. If the applicant Rama Govind Achari has any private right, which he wishes to enforce, he should take his troubles to the Civil Court but not resort to a Criminal Court.

4. For the reasons stated above, I accept the reference and set aside the order of the Sub-Divisional Magistrate.

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