

Rakesh Kumar Alias Lal and ors. Vs. State of U.P. and anr.

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SooperKanoon Citation : sooperkanoon.com/466144

Court : Allahabad

Decided On : Feb-02-1993

Reported in : 1994CriLJ289

Judge : A.B. Srivastava, J.

Acts : Code of Criminal Procedure (CrPC) , 1947 - Sections 133, 145 and 482

Appeal No. : Criminal Misc. Appln. No. 2025 of 1993

Appellant : Rakesh Kumar Alias Lal and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Hare Krishna Mishra, Adv.

Disposition : Application rejected

Judgement :

ORDER

A.B. Srivastava, J.

1. Heard the learned Counsel for the parties and perused the materials placed on record.

2. The applicants against whom a conditional order has been passed and notice issued for proceedings under Section 133, Cr.P.C. have sought under Section 482 of the Cr.P.C. quashing thereof and also of the order passed by the Sessions Judge rejecting the applicants revision.

3. On report of the police about alleged nuisance in a public way by the applicants, conditioned order was passed by the Magistrate and the applicants directed to show cause. Instead of filing objections before the Magistrate the applicants filed a revision before the Sessions Judge who rejected the same on the ground that the applicants had alternative remedy of a seeking cancellation of the notice by filing objections.

4. Recourse to Section 482, Cr.P.C. is not permissible to a party who has already availed the remedy of revision before the Court of Session or the High Court, in view of the law laid down by the Supreme Court in *Rajan Kumar Manchanda v. State of Karnataka*, 1988 All Cri C 54.

5. The contention that on account of a Civil Suit being pending, the proceedings under Section 133, Cr.P.C. is not competent, is also not correct because the purpose of proceedings under Section 133, Cr.P.C. is to remove obstruction, or nuisance, in a public place. The plea of denial of public right is open to be taken by the applicants before the Magistrate and if so done, he will be bound to hold an enquiry. If he finds reliable evidence in support of denial, shall stay the proceedings till the existence of such right has been decided by a competent court.

6. AIR 1988 SC 1973 : (1989 Cri LJ 82) and AIR 1985 SC 472 : (1985 Cri LJ 752), relied on by the applicants do not help in the matter as they prohibit parallel proceedings under Section 145, Cr.P.C. while a Civil Suit about the same matter is pending. Nature of proceedings under Section 133, Cr.P.C. however is quite different than one under Section 145, Cr.P.C.

7. For these above reasons, therefore, the application under Section 482, Cr.P.C. is hereby rejected in limine.

