

Gauri Shankar Vs. Shri Krishna

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Court : Allahabad

Decided On : Oct-17-1927

Reported in : AIR1928All128

Appellant : Gauri Shankar

Respondent : Shri Krishna

Judgement :

Dalal, J.

1. This reference must be accepted. The complaint was that one Gauri Shankar was building a latrine on his own land, and the smell thereof was likely to cause a nuisance. The latrine had not been finished, and the Magistrate ordered the building to be stopped and the materials removed. This order, passed under Section 133, Criminal P.C. was made absolute under Section 136. Gauri Shankar applied in revision to the learned Sessions Judge, who has rightly pointed out that there was no unlawful obstruction and nuisance, and that the Magistrate had no jurisdiction to interfere. An unlawful obstruction and nuisance may be removed from any way, river or channel or from any public place. Admittedly the latrine was not being built on any way, river or channel, or in any public place. It was being built on Gauri Shankar's own land. What might happen if the use of the latrine was made in such a way as to be objectionable to the public is not in question here. The ruling in *Indra Nath Banerjee v. Queen-Empress* [1898] 25 Cal. 425 is in point.

There a complaint was made as to a burning ghat and its removal was desired. The Bench held that a Magistrate had no power under Section 133, Criminal P.C. to order the removal of a burning ghat from its position but he can direct the proprietor to remove the nuisance, that is to take such steps as would result in the cremation of corpses ceasing to be a nuisance to the public. The construction of a latrine by Gauri Shankar on his own land cannot be considered a nuisance. There would be a nuisance if on its construction its use was made in such a way as to lead to a nuisance to the neighbours. In that case also Gauri Shankar may be directed to remove the nuisance of the misuse and not to remove the latrine itself.

2. I set aside both the conditional order and the final order of the Magistrate.

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