

Shri Ram Vs. Emperor

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Court : Allahabad

Decided On : Jul-09-1935

Reported in : AIR1935All926; 159Ind.Cas.198; 1935 Cri LJ 1140

Appellant : Shri Ram

Respondent : Emperor

Judgement :

Harries, J.

1. This is a reference by the learned Additional Sessions Judge of the Agra District recommending that an order passed by a learned Magistrate under Section 133, Criminal P.C., ordering the applicant to demolish the whole of a latrine within three days from the receipt of notice be set aside on the ground that the order of the Court below was made without jurisdiction and is illegal. The facts of the case shortly are that at the time in question the applicant was building a latrine upon his own land and it appears that the authorities were afraid that such a latrine when completed and in use would amount to a nuisance. Consequently upon information received, the learned Magistrate commenced proceedings against the applicant under Section 133, Criminal P.C., and in due course an order was passed requiring the applicant to remove the nuisance by demolishing the whole of the latrine and closing the door within ten days.

2. In my judgment this order is clearly illegal and must be set aside. Section 133, Criminal P.C., provides that whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the 1st Class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public or from any public place, such Magistrate may make a conditional order requiring the person causing such nuisance within a time to be fixed in the order to remove such obstruction or nuisance, etc. When this conditional order has been made the person alleged to be guilty of creating the nuisance is entitled to be heard, but the order can be made absolute in certain circumstances under the provisions of Section 137, Criminal P.C. In the present case the learned Magistrate following the provisions of the Code made this conditional order, passed against the applicant, absolute.

3. It is to be observed in the first place that the nuisance contemplated in Section 133, Criminal P.C., is a nuisance in any way, river or channel which is or may be lawfully used by the public or which is in a public place. The latrine in question was being constructed upon the applicant's own land, that is, in a private place and that being so, the provisions of this section can have no application. This has been expressly held in a case decided by a single Judge of this Court, namely the case in *Gouri Shankar v. Sri Krishna* 1928 All. 128. Further, the latrine was in course, of construction and being so it might be regarded as a potential nuisance, but it could not at the date of these proceedings be an actual nuisance. In my judgment, Section 133, Criminal P.C., can have no application to something which may become a nuisance that is a potential nuisance, but applies only where the nuisance is in existence in a way, river or channel which is or may be lawfully used by the public and which is in existence in a public place. For this reason also the order of the learned Magistrate is clearly contrary to law....

4. Even if this latrine had been completed and that its mode by the user constituted a nuisance it would still be improper to order the demolition, of the building. In such a case the proper order would be to direct the owner to take such steps as would result in the user of the latrine ceasing to be a nuisance to the public. In short, where a latrine has been completed and is a nuisance the owner

should be directed to remove the nuisance and to prevent the user of the latrine amounting to a nuisance rather than to demolish the building which is being so used. This is the view taken by this Court in Gouri Shankar v. Sri Krishna 1928 All 128, cited above and with that view I agree. In the result, there force, I accept the reference of the : learned Additional Sessions Judge and direct that both the conditional and the final orders of the learned Magistrate in this case be set aside.

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