

Ramesh Chandra and Etc. Vs. Uttar Pradesh Pollution Control Board and anr. Etc.

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Court : Allahabad

Decided On : Feb-04-2000

Reported in : 2000CriLJ2771

Judge : U.S. Tripathi, J.

Acts : Air (Prevention and Control of Pollution) Act, 1981; Code of Criminal Procedure (CrPC) , 1974 - Sections 133 to 143 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 188

Appeal No. : Crl. Misc. Appln. Nos. 12207 to 12210, 12959 to 12961, 12964 to 12966 of 1992 and etc.

Appellant : Ramesh Chandra and Etc.

Respondent : Uttar Pradesh Pollution Control Board and anr. Etc.

Advocate for Def. : H.N. Tripathi, A.G.A.

Advocate for Pet/Ap. : Navin Sinha, Adv.

Judgement :

ORDER

U.S. Tripathi, J.

1. The petitioners by moving these petitions under Section 482, Cr. P.C. have prayed for quashing the proceedings pending before City Magistrate, Bareilly in Case No. 9 of 1992, 11 of 1992, 10 of 1992, 12 of 1992, 16 of 1992, 1 of 1992, 19 of 1992, 13 of 1992, 6 of 1992, 14 of 1992, 26 of 1992, 3 of 1992 and 18 of 1992.

2. The facts giving rise to these petitions, briefly stated, are that the applicants in above petitions are engaged in business of preparation of 'RAAB' which is a concentrated form of 'SHEERA' is done through open pan process and due to operation of Sheera Bhatti by the applicants and the use of husk of paddy and khoi of sugarcane as fuel in the said Bhatti it causes air pollution. Earlier Pollution Control Board had issued notice under Air (Prevention and Control of Pollution) Act, 1981 to show cause as to why directions contained in the Act may not be issued against them. They submitted reply to the above notice. In the meantime, the City Magistrate, Bareilly, being satisfied on the application of Regional Officer, U.P. Pollution Control Board initiated separate proceeding under Section 133, Cr. P.C. against the applicants and issued separate conditional order under Section 133(l)(a), Cr. P.C. requiring the applicant of each petition to stop Bhatti meant for preparation of 'RAAB' or to appear before him to show cause why the order should not be made absolute.

3. Aggrieved with the above conditional order, the applicants filed separate revisions before the Sessions Judge, Bareilly. It was contended in the revision that parallel proceedings under Air (Prevention and Control of Pollution) Act and Criminal Procedure Code cannot take place and therefore, the issuance of conditional order under Section 133, Cr. P.C. was illegal. The learned Sessions Judge held that there is no bar for initiating proceedings under Section 133, Cr. P.C. as well as proceeding under Air (Prevention and Control of Pollution) Act as causing air pollution is also a public nuisance. With these findings he dismissed the revision. Thereafter, the applicants preferred separate application under Section 482, Cr. P.C. as noted for quashing the proceeding under Section 133, Cr. P.C. pending before City Magistrate, Bareilly.

4. In all the petitions facts of the case are same and a common question of law is involved. Therefore, all the petitions are disposed of by common order.

5. I have heard the learned Counsel for the parties and have perused the record.

6. It was contended by the learned Counsel for the applicant that in similar petitions which came before Hon'ble I. M. Quddusi, J. for hearing the petitions were finally disposed of with certain observation and the facts of the present petitions are same and therefore these petitions be also disposed of with the same direction. The learned Counsel for the opposite parties had also perused the order passed in Criminal Misc. Application No. 12962 of 1992 decided on 18-11-1987 and did not raise any objection.

7. Record of Criminal Misc. Application No. 12962 of 1992 was perused by me. Hon'ble I. M. Quddusi, J. finally disposed of above application, which was of the nature of the present application and facts of both were same, with the following direction :-

However, since the petitioner was required to show cause, it would be proper that the first part of the order of the learned City Magistrate, whereby the petitioner was directed to close his Bhatti is liable to be set aside. However, it will be open for the learned City Magistrate to pass appropriate order after considering the reply to show cause. The petitioner shall submit his reply within two months if not already submitted. With the above directions the petition stands disposed of finally.

8. Chapter X-B, Cr. P.C. which deals with Maintenance of Public Order and Tranquillity relating to public nuisance contains pro-visions of Sections 133 to 143. Section 133 reads as under :-

Conditional order for removal of nuisance :-

(1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a Police Officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation or owing or possessing such animal or tree, within a time to be fixed in the order-

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order,

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.- A 'public place' includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

9. Section 134 deals with service or notification of order and says that the order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of summons. Sub-section (2) of said Section says that if such order cannot be served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

10. Section 135 deals with the obligation of the person to whom order is addressed to obey or to show cause and says that the person against whom such order is made shall perform, within the time and in the manner specified in the order, the act directed thereby; or appear in accordance with such order and show cause against the same. Section 136 deals with consequences of his failing to do so and says that if such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code (45 of 1860) and the order shall be made absolute. Section 137 lays down the procedure where existence of public right is denied and says

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 138, inquire into the matter, Sub-section (2) of the Section 137 says that if in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial; he shall stay the proceeding until the matter of the existence of such right has been decided by a competent Court, and, if he finds that there is no such evidence, he shall proceed as laid down in Section 138. Sub-section (3) of Section 137 says 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 of thereof, shall not in the subsequent proceeding be permitted to make any such denial.

11. Section 138 lays down the procedure where a person appears to show cause and says that if the person against whom an order under Section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case. Sub-section (2) of Section 138 says that if the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification. Sub-section (3) of Section 138 says that if the Magistrate is not satisfied, no further proceedings shall be taken in the case.

12. Section 139 deals with the local investigation and examination of an expert and Section 141 deals with the procedure on order being made absolute and consequences of disobedience. Section 142 says that if a Magistrate making an order under Section 133 considers that immediate measure should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending in the determination of the matter and Section 143 deals with the procedure for prohibiting repetition or

continuance of public nuisance.

13. From reading the above scheme for removal of public nuisance it is clear that if the Magistrate is satisfied that any unlawful obstruction or nuisance should be removed or closed, he may make a conditional order requiring the person causing such nuisance to remove such nuisance or if he objects so to do to appear before him or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order and show cause in the manner hereinafter provided why the order should not be made absolute. Thus by passing a conditional order under Section 133(1), Cr. P.C. the person against whom such order is made has two options. First, to obey the conditional order and second, to show cause. It is upon the person against whom the conditional order is made to choose either recourse. Sub-section (2) of Section 137 clearly says that if the Magistrate finds that there is reliable evidence in support of such denial of the existence of public way or nuisance etc., he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court. It is further clear from the above scheme that if no injunction pending inquiry is made under Section 142, Cr. P.C, the liability of disobedience of the order arises only on making the order absolute as envisaged by Section 141, Cr. P.C. Thus, the liability of not obeying the conditional order depends on the making of the order absolute either under Section 136 (when no cause is shown by appearing on the date specified in the order) or under Section 138 (after considering the evidence in support of denial). The above scheme is clear enough to show that a person cannot be held liable for disobedience of the order simply on issuance of conditional order under Section 133(1), Cr. P.C. because that conditional order itself requires either to remove the nuisance or to show cause and it depends on the person against whom such order is made to choose either one. In the present proceeding neither any injunction has been issued under Section 142, Cr. P.C. nor the conditional order has yet not been made absolute either under Section 136 or under Section 138 of Cr. P.C.

14. In case, the first part of the order whereby the petitioner was directed to close his Bhatti is set aside, nothing will remain to be made absolute, as the subsequent part of the order is only to show cause. Meaning thereby if the first part of the order is set aside, then there may be an embarrassing situation before the

Magistrate as to which part of the order he will made absolute. Therefore, the first part of the conditional order under Section 133(1), Cr. P.C. is not liable to be set aside as that order is not going to be effective till it is made absolute either under Section 136 or under Section 138, as it is evident from the scheme referred to above. The question of closure of Bhatti will arise only if the conditional order is made absolute as above. Therefore, these applications are finally disposed of with a direction that the learned Magistrate shall dispose of the proceeding at an early date considering the cause shown by the applicants and in case the applicants have still not shown cause, they may do so within a period of one month from the date of production/receipt of this order.

15. Interim orders of the respective dates are hereby vacated'.

16. Let a copy of this order be sent to City Magistrata, Bareilly within a week.

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