

Chandra Shekhar Bhatt Vs. the State

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Court : Uttaranchal

Decided On : Apr-18-2006

Reported in : 2006CriLJ2712

Judge : Prafulla C. Pant, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 133, 133(1), 137, 397 and 401

Appeal No. : Cri. Revn. No. 69 of 2004

Appellant : Chandra Shekhar Bhatt

Respondent : The State

Advocate for Def. : Rajeev Mohan Birkhani, A.G.A.

Advocate for Pet/Ap. : Puja Banga, Adv. holding brief of; S. Dhulia, Sr. Counsel

Disposition : Petition dismissed

Judgement :

ORDER

Prafulla C. Pant, J.

1. This Revision, preferred under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, is directed against the order dated 20-1-1992, passed

by Sub-Divisional Magistrate, Pithoragarh, in Criminal Case No. 6/18/1988, whereby a preliminary order dated 9-2-1987 has been made absolute under Section 133 of the Code.

2. Brief facts of the case are that, the Station Officer of Police Station -- Jhulaghat made a report on 31-12-1986 alleging that the revisionist Chandra Shekhar Bhatt has obstructed the public road over an area of 2500 sq. ft. in the main market, which is causing nuisance to the public. The Station Officer has requested the concerned Executive Magistrate to initiate the proceedings under Section 133 of the Code of Criminal Procedure, 1973, against the revisionist. Pursuant to the report of the Station Officer, a preliminary order was issued under Section 133(1) of the Code directing the revisionist to remove the obstruction within 15 days, else to show cause why the order be not made absolute to enforce the same. The revisionist appears to have filed his objection on 27-2-1987 denying that the land in question is public path. It is alleged by the revisionist before the Magistrate that the land over which he has dumped the building material, in fact, belongs to him. From the perusal of record, it appears that thereafter, proceedings were drawn against him under Section 137 of the Code. It is also clear from the record that an inspection of the spot was made on 28-6-1988 by the Sub Divisional Magistrate, who found that by then the revisionist has already cleared the public road and the proceedings were got terminated. But another person Prayag Dutt appears to have filed a revision against said order before the Sessions Judge, which was decided on 7-12-1988, whereby the revision was allowed and case was remanded on the ground that memorandum of inspection was not prepared by the Magistrate concerned. Thereafter, after giving due notice to the parties, another inspection appears to have been made by the Sub-Divisional Magistrate and, after recording the evidence and hearing the parties, impugned order was passed making the preliminary order passed under Section 133(1) of the Code absolute. Aggrieved by the same, this revision has been filed.

3. I heard learned Counsel for the revisionist and learned A.G.A., for the respondent State.

4. Under Section 133 of the Code of Criminal Procedure, 1973, a Sub Divisional Magistrate, specially empowered, has a power to pass conditional order for removal of nuisance, on receiving report of unlawful obstruction or nuisance over public place. Needless to say, that a public place is a place where public has an access as of right to use the place for any purpose. In the present case, the revisionist has raised the plea before the Magistrate concerned, in his objections, that land in question belongs to him. He has also mentioned that his name is entered in the records in respect of the Khata -- Khatoni'Nos. 10190, 10191, 10192, 10193 and 10194. However, he has not made it clear that in which of these plots the disputed land situate. In para 7 of the objections, filed before the Magistrate, the revisionist has admitted that 141/2 Nali of land out of aforesaid land was transferred by him to the Public Works Department through negotiations and left the same for the public use. It is also admitted in para 11 of the objections, filed before the Executive Magistrate, by the revisionist that there is only 13 feet wide public road left, after the land over which he has kept the building material by encircling the same and fixing the poles over it.

5. In its exercise of the revisional jurisdiction, this Court, need not to examine the intricate question of title but to see if the land in question has a character of public place and, if so, whether the revisionist has by putting obstruction has created nuisance to the public. From the evidence on record, it appears that through a letter dated 22-7-1989 (paper No. 33-C in the trial Court's record), the Executive Engineer of Public Works Department has informed the Sub Divisional Magistrate that out of the land of plot Nos. 10191 to 10194, belonging to revisionist Chandra Shekhar Bhatt and others, measuring 3 Nali and 5 Muthi was transferred to the Public Works Department through negotiations. Evidence adduced by the parties read with para 7 in the objections of the revisionist and aforesaid letter, make it amply clear that there is a public road on the disputed plot, wherein the revisionist had put obstructions by keeping building material thereon.

6. In view of the above discussion, in the opinion of this Court, there is no illegality in the impugned order whereby after issuing notice under Section 133(1) of the Code of Criminal Procedure, 1973, and hearing the parties on objections, the preliminary order is made absolute. There is no error of law committed by the

learned Magistrate, which requires interference of this Court. Accordingly, the revision is liable to be dismissed. The revision is dismissed.

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