

Narayan Sahu Vs. Sub-divisional Magistrate

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Court : Orissa

Decided On : Jun-24-1985

Reported in : 60(1985)CLT201; 1986CriLJ102

Judge : G.B. Patnaik, J.

Appellant : Narayan Sahu

Respondent : Sub-divisional Magistrate

Advocate for Pet/Ap. : Mr. Mohanty

Judgement :

ORDER

G.B. Patnaik, J.

1. Petitioner in this revision challenges the legality of the order dt. 10th of February, 1984, issued to him under Section 141 of the Criminal P.C. (hereinafter referred to as the 'Code') in Case No. 14/51 of 1984 requiring the petitioner to remove the obstruction caused on the public place by 18th of February, 1984. The notice in question was in respect of Ac. O. 03 decimals of land pertaining to plot No. 1762, Khata No. 433 of mouza Chandipur. The main ground of attack is that the notice under Section 131(1) of the Code was never served on the petitioner and. therefore, the direction under Section 141 of the Code is without jurisdiction. It is further contended that the alleged construction is at a distance of more than

one hundred feet from the national highway and, therefore, by no stretch of imagination it will impair the free flow of traffic.

2. The lower court records reveal that on 30th of January, 1984, the learned Magistrate perused the reports of the Sub-Divisional Officer dt. 2-11-1983 and 9-11-1983; the report of the Tahsildar, Darpan, dt. 19-11-1983 and the report of the Block Development Officer, Rasulpur, dt. 28-1-1984 and was satisfied that the petitioner was in unauthorised occupation of Government land on a public place which could have been lawfully used by the public and such construction had caused obstruction to smooth traffic as well as created nuisance and annoyance to the physical comfort of the community. On being so satisfied the Magistrate directed the petitioner to remove such unlawful obstruction within a period of one week from the proclamation of the order and alternatively required the petitioner to appear on 10th of February, 1984, in case he had objection to the same, and to show cause as to why the order should not be made absolute.

On 10th February, 1984, the learned Magistrate made the order absolute under Section 136 of the Code. On that date the petitioner had not appeared nor had he shown any cause, nor was there any evidence to show that the notice issued under Section 133(1) of the Code was sufficient. On 22nd of February, 1984, the learned Magistrate passed an order to the effect that the Block Development Officer, Rasulpur, be instructed to give effect to the order dt. 10-2-1984 and to remove the obstruction under Section 141(2) of the Code within twentyfour hours.

3. Mr. Mohanty appearing for the petitioner contends that the entire proceeding is vitiated, inasmuch as the requirements of law have not been complied with and, therefore, the proceedings should be struck down.

4. Section 133 of the Code authorises the Magistrate to make a conditional order requiring the person causing obstruction or nuisance, as enumerated in cls. (a) to (f) of Sub-section (1) of the said section, within a time to be fixed in the order to comply with the said order. The said section also provides that if the person alleged to have caused such obstruction objects to comply with the conditional order, then he may appear before the concerned Magistrate at a time and place to be fixed by the order and to show cause as to why the order should not be made

absolute. The satisfaction of the Magistrate before issuing a conditional order under Sub-section (1) of Section 133 as to the existence of the preconditions enumerated under cls. (a) to (f) of Sub-section (1) of Section 133, can be derived from the report of a police officer or other information and on taking such evidence, if any, as he thinks fit. From a bare reading of the provision in Section 133 of the Code, it is crystal clear that the said provision is intended to protect the public as a whole against inconvenience and the Magistrate, therefore, should bear in mind while exercising his power under that section that he is supposed to be acting purely in the interests of the public. Such a provision which confers drastic powers on the Magistrate should be sparingly used and should be so worked as not to become themselves a nuisance to the community at large. The proceedings under Section 133, therefore, must be strictly in conformity with the rules laid down in Chapter-X of the Code. Section 136 provides for the consequences of a person not performing the conditional order nor appearing to show cause. In such an event the conditional order shall be made absolute. Section 137 lays down the procedure where existence of a public right is denied and Section 138 provides the procedure to be followed when the person against whom an order under Section 133 is made appears and shows cause against the order. Section 141 lays down the procedure when after an order being made absolute under Section 136, the person against whom the order is made does not obey the same. A combined reading of all these provisions makes it abundantly clear that a person against whom a conditional order under Section 133(1) of the Code is passed has a right to appear and show cause against the said order. Any order made under Section 136 making the conditional order absolute without notice Under Section 133(1) being sufficient is bad in law and must be held to be void. As I find from the order dt. 10-2-1984, there is no indication that the notice issued under Section 133(1) of the Code in accordance with the order of the Magistrate dt. 30th of January, 1984, was in fact served on the petitioner, or that the petitioner had any opportunity to appear and show cause against the order. In that view of the matter, the order of the learned Magistrate dt. 10-2-1984 making the conditional order absolute under Section 136 of the Code is illegal and also the consequential order dt. 22-2-1984 passed under Section 141 of the Code is illegal and without jurisdiction. I would, therefore, set aside the orders of the learned Magistrate dt. 10-2-1984 and 22-2-

1984 and direct the Magistrate to proceed with the case in accordance with law from the stage of issuing notice under Section 133(1) of the Code. To avoid any future complication, the learned Magistrate may re-issue the notice under Section 133(1) of the Code and must be sure before proceeding with the case that the said notice is duly served on the petitioner. The Magistrate would thereafter proceed in accordance with law as contained in Chapter-X of the Code, as has been discussed by me earlier in this judgment.

5. In the result, therefore, this criminal revision is allowed. The orders of the learned Magistrate dt. 10-2-1984 and 22-2-1984 are quashed and the learned Magistrate is directed to act in accordance with the observations made in this judgment.

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