

Moola Vs. State

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Court : Delhi

Decided On : Jan-08-1991

Reported in : 43(1991)DLT340

Judge : S.C. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 133

Appeal No. : Criminal Revision Appeal No. 202 of 1979

Appellant : Moola

Respondent : State

Judgement :

S.C. Jain, J.

(1) The facts giving rise to this revision petition are that on receipt of information from Sho Narela, that one Todar son of Kallu resident of Bawana had caused obstruction to persons using the public path which join Babadurgarh Road with pacca passage of village Bawana, Sdm Kingsway Camp issued notice under Section 133 Cr, P.C. and after examining the witnesses and hearing the parties, he ordered that Todar should remove the obstruction i.e. the wall which had blocked the passage and ten days time was given.

(2) Aggrieved by the said order, a revision petition was filed before the Addl. Sessions Judge, who by his order dated August 4, 1979 set aside the order passed by the S.D.M. and held that the proceedings under Section 133 Cr. B.C. were not maintainable.

(3) Aggrieved, this revision petition under Section 397 Cr. P.C. has been filed by Shri Moola son of Shri Mohlar. Though the case has been pending since 1979, and has been on the board of this court, none appeared. I have waited for the counsel for the petitioner and the State counsel but none appeared and therefore, I proceed to dispose of this revision petition on the basis of record available, as it is useless to keep such an old revision petition undecided any further.

(4) The entire case hinges upon the interpretation of Section 133 Cr.P.C. which provides that if the District Magistrate or the Sdm or any other executive magistrate especially empowered by the State Govt. in this behalf, on receiving the report of police officer and on taking such evidence, if any, as he thinks fit, considers that any unlawful obstruction should be removed from the public place, he can pass such orders as he deems fit and proper. Before invoking the provisions of Section 133 Cr. P.C. it is essential to prove that there is unlawful obstruction on the public place and that it should be removed. From the record I do not find any evidence to show and prove that any unlawful obstruction was required to be removed from the public place. In this case, the Addl. Sessions Judge relied upon Jamabandi (Ex R. 1) and Aks Sajra (Ex R. 2) demolishing the case of the prosecution. Both these documents stand un rebutted and there is no convincing evidence on record to prove that there is any unlawful obstruction on a public place which requires to be removed.

(5) Under these circumstances, the Addl. Sessions Judge correctly set aside the order of the Sdm concerned as the proceedings under Section 133 Cr. P.C. were not maintainable in the circumstances of this case.

(6) This revision petition is accordingly dismissed.