

Mohan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-05-1997

Reported in : 1997(2)WLC755; 1997(1)WLN284

Judge : M.A.A. Khan, J.

Appeal No. : S.B. Criminal Misc. Petition No. 841 of 1996

Appellant : Mohan Singh

Respondent : State of Rajasthan

Judgement :

M.A.A. Khan, J.

1. This is a petition Under Section 42 Cr. P.C. against the order dt. 23.11.92 passed by the learned Sub Divisional Magistrate, Ratangarh Under Section 136 making his conditional order passed Under Section 133 Cr. P.C. absolute as also against the order dt. 7.3.96 whereby the learned S.D.M. closed the opportunity to the petitioner to file a reply to the notice issued Under Section 141 Cr. P.C.

2. The sad story, which this petition tells, is like this.

3. On a complaint filed by S.H.O. Police Station, Sujangarh Under Section 133 Cr. P.C. before the S.D.M., Ratangarh alleging therein that the petitioner had mae unlawful obstruction or nuisance in the way of a water course as also the use by

the village cattle of public land around a well situate in Khasra plot No. 190 Toliyasar, the learned S.D.M., Ratangarh passed a conditional order on 19.3.90 requiring the petitioners to remove such obstructions or nuisance or in case they objected so to do, to appear before him to show cause as to why the order should not be made absolute. Despite several opportunities given to the petitioner he does not appear to have submitted his objections before the learned Magistrate. The conditional order passed on 19.3.90 was therefore, made absolute on 23.11.92.

4. It may be stated here that instead of filing his objections before the learned Magistrate, the petitioner chose to approach the revisional court against the justification of making the conditional order on 9.3.90 by the learned Magistrate. Such efforts of the petitioner are reported to have failed.

5. It is admitted case of the parties that the petitioner challenged the order of the learned S.D.M., made on 23.11.92 whereby the conditional order had been made absolute, before the concerned Session Judge and such petition was also dismissed. The said order of the Magistrate dated 23.11.92 is now being challenged before this Court in this composite petition without giving a challenge to the order of the learned Session Judge dt. 30.1.95 confirming the order made by the learned Magistrate. Anyway, since this is a petition Under Section 482 Cr. P.C. this Court, in order to prevent the abuse of the process of the court, if found committed in the present case, and to secure the ends of justice to the parties, if required, would consider the justification of the order passed by the learned Session Judge dt. 30.1.95 as well.

6. After the dismissal of his revision by the learned Session Judge on 30.1.95 the learned S.D.M. proceeded to take further proceedings in the case and since the order made by him Under Section 133 and made absolute Under Section 136 was not complied with by the petitioner, he issued a notice Under Section 141 Cr. P.C. to him. Even after availing of as many as six opportunities to file his reply, the petitioner does not appear to have submitted his reply before the learned S.D.M. The learned S.D.M. therefore, by his impugned order dt. 7.3.96, closed the right of the petitioner to show cause against the notice issued Under Section 141 Cr. P.C.

That is how this revision petition has come up before this Court,

7. The learned Counsel for the petitioner vehemently urged that neither before the learned S.D.M. nor before the Session Judge the petitioner got proper opportunity of being heard inasmuch as that he was unable to make his submissions, oral or written, due to non/cooperation of the lawyers engaged by him. It was further submitted that the property in respect to which proceedings Under Section 133/136 Cr. P.C. were initiated was not a public land but private property of the petitioner. It was submitted that the subject matter of dispute being the private property of petitioner, the very initiation of the proceedings Under Section 133/136 Cr. P.C. in this case was inherently bad and beyond the jurisdiction of the learned S.D.M.

8. The learned Counsel appearing for the respondent submitted that it was after consideration of the relevant facts that the learned S.D.M. as also the learned Session Judge had held that the subject matter of dispute between the parties was a public land and therefore, initiation of proceedings Under Section 133 was quite justified.

9. Khasra plot No. 190 admeasuring one Bigha and five Biswas situate at Toliyasar the disputed property, is recorded in the tenancy of one Banne Singh s/o. Gop Singh Rajput who, by his application submitted to the Tehsildar Sugangarh informed the Revenue Officer that the said land belonging to him was being used for public purposes that is for rests of the cattle of the villagers since long but the present petitioner was intending to encroach upon it and for that purpose he had collected stones also and thus obstructed the use of the land by cows and other cattle. Such report made by Banne Singh was got inquired into and in the course of the inquiry Rawat Singh, Bhagwanaram, Ramuram villagers confirmed that the disputed land was being used as a public land, for the benefit of the village cattle in general, since long. It was on the basis of such information that the learned S.D.M., Ratangarh had felt satisfied that obstruction in the use of public land had been made by the petitioner. He had, therefore, good reasons to have initiated the proceedings Under Section 133 Cr. P.C. and made conditional order accordingly. The proceedings taken by the learned S.D.M. inform this Court

that the petitioner had not put in appearance before the learned Magistrate and had preferred a revision petition against the conditional order. The revision petition so preferred by the petitioner had been dismissed and when the case file was received back in the court of the learned Magistrate, efforts were made to secure the presence of and reply from the petitioner. The petitioner despite availing repeated opportunities does not appear to have preferred objections before the learned S.D.M. Thereupon the learned Magistrate made his conditional order absolute Under Section 136 Cr. P.C. on 23.11.92 which was unsuccessfully challenged by the petitioner before the learned Sessions Judge. When the case file was against received back in the office of the learned S.D.M. and he issued notices Under Section 141 to the petitioner he sought adjournment to file his reply to the notice issued. Even after availing several opportunities the petitioner did not file his reply, instead he challenged the order made by the learned S.D.M. on 7.3.96, closing the opportunity to file reply upon the petitioner.

10. The checkered history of the proceedings taken in the court of the learned S.D.M. clearly tells that the petitioner had not deliberately participated in these proceedings and instead was disobeying the orders passed by the concerned courts. He had challenged not only the conditional order passed Under Section 133 but also that passed Under Section 136 Cr. P.C. before the learned Session Judge but remained unsuccessful. The effect of the order passed Under Section 136 Cr. P.C. was that in these summary proceedings the disputed land had been declared by the court to be a public land and therefore removal of obstructions placed thereupon by the petitioner ordered. The order passed by the learned Magistrate Under Section 133 was revised by the learned Session Judge and no further proceedings, save the present petition after a lapse of period of about one year, were taken by the petitioner. Despite issuing notices Under Section 141 repeatedly to him, the petitioner did not file his objection. There is no material on the record of the lower court to show that the petitioner had any right to the possession over the disputed land. Under such circumstances the petitioner, and not the respondents, is clearly found to have abused the process of not only the court of the learned S.D.M., Ratangarh but also that of the Session Judge and this Court. A party who is guilty of such conduct is not at all entitled to a relief Under Section 482 Cr. P.C.

11. Instances are not lacking on that the time of this Court is wasted by some parties in frivolous and vexatious litigation like the present one. It has been experienced that day in and day out almost each and every order passed by the inferior courts is challenged before this Court either Under Section 397 or 482. Most of the time of this Court is consumed by such avoidable litigation. Time is perhaps ripe that such efforts by litigants, who take interest in prolonging frivolous litigation, be discouraged. The present case is found by this Court as one of that nature.

12. In view of the above, present petition is dismissed with exemplary cost of Rs. 10,000/-. In this behalf this Court takes support from the views of the Supreme Court expressed in the case of the Tamil Nadu Electricity Board and Anr. v. N. Raju Reddiar and Anr. : AIR 1997 SC1005 wherein it was observed that abuse of the process of the court by filing repeated petitions should be deprecated with heavy hands for purity of administration of law and salutary and healthy practice and cost of Rs. 20,000/- was imposed.

13. Amount of cost of Rs. 10,000/- as imposed in the present case, shall be paid to the High Court Legal Aid Service Committee within four months from today. If the amount is not paid it should be recovered treating this direction as decree of the Court by the High Court Legal Aid Service Committee Jodhpur. The registry is directed to communicate this order to the High Court Legal Service Committee Jodhpur for information and necessary action.

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