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Court : Kolkata

Decided On : May-16-1955

Reported in : AIR1955Cal554,1955CriLJ1355,59CWN870

Judge : Debabrata Mookerjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 133

Appeal No. : Criminal Revn. No. 126 of 1955

Appellant : Sumer Singh and anr.

Respondent : Sanitary Inspector of Bauria

Advocate for Def. : Arun Prokash Chatterjee, Adv.

Advocate for Pet/Ap. : Hiran Kumar Roy, Adv.

Judgement :

ORDER

Debabrata Mookerjee, J.

1. This Rule is directed against an order made under Section 137, Criminal P.G. by a Magistrate, 1st Class, Uluberia, by which a certain, conditional order under Section 133 of the Code was made absolute. The Sub-divisional Magistrate, Uluberia, made the conditional order in which the petitioner was alleged to have

caused nuisance by erecting khatala on either side of the Bauria Cotton Mills, Ferryghat Road, in the midst of an inhabited locality. The petitioner was required to remove the nuisance by a specified date or to move to have the order set aside or modified. The further allegation against the petitioner was that the filth which accumulated in the place resulted in inconvenience to members of the public and the health and the sanitation of the locality was adversely affected by the nuisance thus caused.

2. The petitioner appeared and showed cause against the aforesaid conditional order and his case seems to be that the allegations did not justify action under Section 133, Criminal P. C. His further case was that in any event the plot of land where the khatala were situate was private property and that being so, Section 133 of the Code did not in terms apply.

3. Evidence was recorded by the learned Magistrate in proof of the circumstances giving rise of the proceedings against the petitioner as respects the existence and extent of the nuisance caused by the khatala. A sub-deputy Magistrate who was at the material time the Circle Officer, Uluberia, was called to give evidence in the case and he deposed that there was no outlet or any sort of device for the clearance of the filth and foul water accumulating in the khatala.

This evidence was supported by that of the Sanitary Inspector who deposed that he had made enquiry on the spot and stated that there were houses and buildings in the vicinity including a temple which was not far off from the place. The evidence taken as a whole suggests that people in the neighbourhood -and users of the road suffered as a result of the nuisance.

4. The learned Magistrate on a consideration of the evidence came to the finding that there was a nuisance which required to be dealt with under the provisions of Section 133, Criminal P. C. and accordingly made the conditional order absolute against which the present Rule is directed.

5. Mr. Roy appearing in support of the Rule has argued that this order absolute under Section 137 of the Code is not maintainable in law. His contention seems to be well founded. The allegation that has been made and upon which the order has

finally been based comes to no more than this that there are khatalas close to a public road and the accumulated filth result in causing inconvenience to users of the road and in affecting the health and sanitation of the neighbourhood. I am afraid this evidence, even if fully beliqued, does not satisfy the requirements of Section 133 of the Code.

It has to be established that the nuisance or obstruction which is sought to be removed relates to one in any way, river or channel which is or may lawfully be used by the public or from any public place. Taking the facts of the present case it is quite clear that there is no allegation whatever that the khatalas stand in a public place. It may very well be that the khatalas abut on the road but that surely would not bring it within the purview of Section 133, Criminal P. C. There is on the record evidence to indicate that the land on which the . khatalas stand belongs to a Company. It is there-fore private property on which the petitioner has built the khatalas. It cannot consequently be said that the khatalas are on a public road or in a public place although the evidence makes it clear that they are just by the side of a road which is used by members of the public.

6. I have with the assistance of the learned Advocates on both sides gone through the evidence in the case and have not been able to discover anything which would justify me in holding that the plot on which the khatalas stand is a public place or one which may lawfully be used by the public.

7. The position might have been different if proof was offered that although the petitioner had built the khatalas on a piece of private land, never the less he was carrying on a trade presumably in milk business in such manner as to injuriously affect the health, sanitation and physical comfort of the community. But although that would imply a different frame of the proceedings it would be well within the terms, of Section 133 of the Code.

Besides the solitary statement of P. W. 5 to the effect that milk is sold by the petitioner there is nothing to indicate that the petitioner has been carrying on a trade in milk by maintaining the khatalas and which trade or occupation has been adversely affecting the health of the locality. The case does not appear to have been approached from that point of view. Presumably it was considered sufficient

when evidence was led to show that by reason of the existence of the khatala close to the road and in a thickly inhabited place the requirements of Section 133 of the Code were fulfilled.

I am afraid this was clearly a mis-conceived proposition. Unless it was proved without doubt that the unlawful obstruction or nuisance related to a public place or way which is or may lawfully be used by the public, no order could legally be made under Section 133 of the Code. The evidence, such as it is, repels it and falls far short of proving or supporting even an altered frame of the proceedings based on proof of the fact that by reason of the khatala being maintained the petitioner was carrying on a trade or business in milk which injuriously affected the health of the members of the public.

The allegations such as they are in no way fulfil the requirements of Section 133 of the Code and that being so, the order made by the learned Magistrate requiring the petitioner to remove the alleged nuisance within two months from the date of the order must accordingly be held bad.

8. The Rule is therefore made absolute and the order directing the petitioner to remove the huts is set aside.

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