

Sohan Lal Etc. Vs. Mohan Lal

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Court : Himachal Pradesh

Decided On : Dec-04-1975

Reported in : 1976CriLJ1354

Judge : Chet Ram Thakur, J.

Appellant : Sohan Lal Etc.

Respondent : Mohan Lal

Advocate for Pet/Ap. : Shri. M. G. Chitkara

Judgement :

ORDER

Chet Ram Thakur, J.

1. This is a reference made by the learned Sessions Judge Simla recommending that the order passed by the Sub-Divisional Magistrate, Theog, on 5-1-1973, under the provisions of Section 133 of the Code of Criminal Procedure (shortly called the Code) directing the petitioners to close the holes of the wall of the house be quashed,

2. Sohan Lal and others were constructing a house in their village Guma, Sub-Tehsil Kotkhair and on one side of that house adjacent to it was a public path. It is stated that in the wall of their house facing the public path they kept certain holes.

Mohan Lal who was the complainant apprehended that such holes had been kept in that wall with the object of resting beams for covering the public path and he accordingly moved an application under Section 133 of the Code in the Court of Sub-Divisional Magistrate, Theog, against Sohan Lal and others with the prayer to restrain them from proceeding with the construction of their house. It had also been contended therein that the petitioners had encroached upon the public path while constructing their house.

3. The learned Sub-divisional Magistrate issued a preliminary order directing the petitioners to stop further construction of the house and to remove the material from the public path forthwith and also ordered them to show cause why that order should not be made absolute.

4. The petitioners contested the notice and submitted that they had not made any encroachment on the public path, which admittedly passed by the side of their house. The learned Magistrate held that although the house had been constructed by the petitioners on their own land but they had kept the holes in the wall facing the public path for resting beams so as to cover the public path, and, according to him, this amounted to a nuisance and he, therefore, ordered the petitioners to close the holes from outside facing the public path so that beams should not overhang the path.

5. Against this petitioners went in revision to the Sessions Judge, who has recommended that the order being without jurisdiction is liable to be quashed.

6. I have heard Shri M. G. Chitkara, learned Counsel for the petitioners, but none has appeared on behalf of the respondent. The learned Counsel for the petitioners supports the reference order and I am fully in agreement with the observations made by the learned Sessions Judge while recommending the revision. The order is beyond the scope of Section 133 of the Code. A perusal of this section would reveal that it gives the list of matters in respect of which the Magistrate is empowered to pass orders and this section nowhere confers absolute powers on the Magistrate of passing order on any other matters that he may consider necessary. This section would show that it applies only where the unlawful obstruction or nuisance is actually in existence. It does not justify any action being

taken in regard to anticipated obstruction or nuisance. The only exception when action can be taken under this section in anticipation of the actual nuisance is when there is construction of any building or the disposal of a substance which is likely to occasion a conflagration or explosion. But there is no such thing pleaded in the application. Therefore, keeping in view the provisions of Section 133 of the Code it would follow that the apprehended nuisance, as in the present case, was not a ground for giving jurisdiction to the Magistrate. Therefore, the order is manifestly wrong and is liable to be quashed.

7. I, therefore, accept this recommendation, quash the order of the learned Magistrate as being without jurisdiction.

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