

*

THE HIGH COURT OF DELHI AT NEW DELHI

+

Crl. MC No.3692/2011

Date of Order: 09.11.2011

Thomas Mathai

.....Petitioner

Through: Mr. Suresh C. Sati and Mr. Vijay
C. Joshi, Advocate

Versus

Mrs. Manju Grover

..... Respondent

Through: Nemo

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

- | | | | |
|----|---|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | - | No |
| 2. | To be referred to the Reporter or not ? | - | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | - | Yes |

M.L. MEHTA, J. (Oral)

Crl. MA 17607/2011 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

Crl. MC 36922011 & Crl.MA 17606/2011

1. This is a petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C against the order dated 25.8.2011 passed by learned Additional Sessions Judge (ASJ) in Criminal Revision No.30 of 2011.
2. I have heard learned counsel for the petitioner and perused the record including the impugned judgment.

3. The petitioner herein is a resident of 164, DDA Flats, Mount Kailash, East of Kailash, New Delhi and the respondent herein is the resident of Flat No.163, DDA Flats, Mount Kailash, East of Kailash, New Delhi. The flat of the petitioner is on the first floor whereas that of respondent on the ground floor. The respondent made a complaint to the police whereupon police prepared a Kalandra under Section 133 Cr.P.C and referred the same to SDM, Defence Colony. The complaint alleged that the water falling in her courtyard from the Air Conditioners as installed by the petitioner herein was stagnating and creating drainage and thereby causing nuisance. The learned SDM directed the *Tehsildar* for inspection of the site who reported that there was seepage in the walls of the bedroom of the respondent and he also noticed algae (*Kai*) and some water accumulating on the roof causing seepage in the walls of the respondent's house. The SDM also directed the concerned Engineer of MCD to get the site inspected. As per report of MCD Engineer, the ACs were installed in the front and rear side of the flat bearing number 164 belonging to the petitioner herein and the water of these ACs, installed by the petitioner in the rear side, falls on the *Chhaja* and also on the floors of Flat No.163 belonging to the respondent. The learned SDM in exercise of his powers under Section 133 Cr.P.C directed the petitioner herein to make necessary and alternative arrangements for draining out the accumulated water coming out from the ACs so that it does not stagnate on the roof or floors of the respondent. The learned SDM also directed the respondent

to make necessary arrangements so that the water coming out from her ACs and cooler also does not stagnate.

4. The petitioner being aggrieved against this order, filed a revision petition before learned ASJ which came to be dismissed vide the impugned order. The ground taken in the revision petition was that the learned SDM was not competent to pass an order under Section 133 Cr.P.C since the allegations leveled against the petitioner do not fall under any of the Clauses of Section 133 (1) Cr.P.C. The learned counsel for the petitioner relied upon the case of **Kachrual Bhagirath Agrawal and others v State of Maharashtra and others** [2004 Cri.L.J. 14634] to contend that the proceedings under Section 133 Cr.P.C cannot be invoked to settle a private dispute between the different members of the public and that in case the respondent had any grievance, the appropriate remedy was not under Section 133 Cr.P.C, but a civil suit against the petitioner.

5. With the consent of the counsels for the parties, I have heard the matter finally.

6. There is no dispute about the fact that the petitioner had installed four ACs in his flat and the water from those ACs was falling down and accumulating in and around the premises of the respondent. In order to know the truth of the allegations made by the respondent, the learned SDM got the inspection of the site done from the *Tehsildar* as well as from the Engineer of the MCD. As noted above, they both gave identical reports confirming the allegations that the water falling

from the ACs was accumulated on the roof and ground floor thereby causing seepage in the walls of the flat of the respondent. The question for consideration is as to whether this would fall within any of the category of nuisance under Section 133(1). The relevant portion of Section 133(1) is Clause (a) which reads as under:

“133. Conditional order for removal of nuisance.

(1) Whenever a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially powered in this behalf the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, consider --

(a) That any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel, which is or may be lawfully used by the public: or”

7. There is no dispute with regard to the proposition of law that the proceedings under Section 133 Cr.P.C are not meant for the private disputes between the different members of the public and they are in fact intended to protect the public as a whole against the inconvenience. In the aforesaid case of **Kachrual Bhagirath Agrawal**(supra), it was held as under:

*“13. In **Vasant Manga Nikumba v Baburao Bhikanna Naidu** [MANU/SC/1346/1995] it was observed that nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the*

public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the senses that if the Magistrate fails to take recourse immediately irreparable danger would be done to the public. It applies to a condition of the nuisance at the time when other order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisance and on the other hands applies when the nuisance is in existence. It has to be noted that sometimes there is confusion between Section 133 and Section 144 of the Code. While the latter is a more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute.”

8. In view of the inspection carried out by Tehsildar as well as MCD Engineer, it is noted that the water was accumulating on the ground floor and also on the roof and the courtyard of the respondent and was also further causing seepage in the walls. Notice can be taken of the fact that the flat where the petitioner and respondent are residing are DDA Flats in a DDA Complex where large number of residents share common space in the sense of community living. Accumulation of water is bound to cause unhygienic conditions in and around that area. The accumulation and stagnation of water is the source of waterborne

diseases. Likewise, seepage in the walls of the premises on the ground floor is also, if not checked in time, may affect structural stability of the entire block of flats. This would resultantly amount to public nuisance and would be within the scope and ambit of Clause (a) of Section 133(1). The SDM was within his competence to pass a conditional order. It is to be noted that it was not only a conditional order passed against the petitioner, but similar order was passed against the respondent herein also so as to ensure that there was no accumulation and stagnation of water in the complex.

9. Having regard to the foregoing facts and circumstances, I do not find any illegality or perversity in the impugned order. The petition is hereby dismissed. In the facts of the case, there shall be no order as to costs.

10. The petition and the application stand disposed of.

**M.L. MEHTA
(JUDGE)**

November 09, 2011

rd