

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 548 of 2015

Banarsi Gupta, Aged About 54 years, S/o Late Lal Ji Gupta R/o Masjidpara Dharamjaigarh, Police Station & Tahsil Dharamjaigarh, District Raigarh Chhattisgarh Civil & Revenue District Raigarh Chhattisgarh

---- Petitioner

Versus

1. Kanwaljeet Singh Komal, Aged About 50 Years S/o Angad Singh R/o Masjidpara Dharamjaigarh, Police Station & Tahsil - Dharamjaigarh, District Raigarh Chhattisgarh Civil & Revenue District Raigarh Chhattisgarh

2. State Of Chhattisgarh Through District Magistrate Raigarh Police Station Civil Line Raigarh, Tahsil & District-Raigarh (C.G.), Civil & Revenue District-Raigarh (C.G.)

---- Respondent

For Petitioner – Shri Ratnesh Kumar Agrawal, Advocate.
For Respondent No.2/State- Miss. Farah Minhaj, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

Order

08/07/2015

1. This is a petition against the order dated 18/06/2015 passed in Criminal Revision No.202200001002014 by the 5th Additional Sessions Judge, Raigarh whereby the order under challenge passed by the SDM in Misc. Criminal Case No.3/2014 under section 133 of Cr.P.C. in between Kanwaljeet Singh Vs. Banarasi Das Gupta was affirmed.

2. By the instant petition one of the parties namely Banarasi Gupta has challenged the order of SDO whereby shutter has been directed to be removed. It is case of the petitioner that at bus stand

Dharamjaigarh, District Raigarh, Nagar Panchayat has constructed different shops and shop no.14 was in occupation of the petitioner whereas shop no.13 was in occupation of Kanwaljeet Singh Komal. In between two shops path way was existing wherein shutter was placed by the petitioner. Subsequently, an application was filed by the respondent Kanwaljeet Singh Komal complaining that the petitioner has placed a shutter without seeking permission from the Chief Municipal Officer, Municipality Dharamjaigarh.

3. Learned counsel for the petitioner would submit that the SDO could not have passed such order as the dispute was falling out of the ambit of scope of section 133 of the Cr.P.C. as the place cannot be termed as public place and consequently public nuisance cannot be said to be existing. He would further submit that both court below has exceeded its jurisdiction not vested in it by law.

4. Per contra, learned State counsel opposes the same and submits that order is well merited which do not call for any interference.

5. Perusal of the revisional court order would show that a complaint was made on 26/01/2014 before the SDM by Kanwaljeet Singh complaining that in between shop No.13 and 14 over the path way without obtaining any permission from anyone, petitioner has placed a shutter in between intervening night of 25-26 January, 2014 and the way have been blocked. After such complaint, SDM issued

notice and heard the parties and got the place also physically inspected. During the course of enquiry before SDM, the petitioner namely Banarsi Gupta stated in its reply that shutter was placed by him after giving an application to the Nagar Panchayat, Dharamjaigarh on 28/08/2012 which was still pending, therefore it would be like a deemed permission. Consequently, placement of shutter was sought to be justified.

6. Perusal of the order would reflect that after such complaint was received, on enquiry Banarsi Gupta was directed to remove such shutter. The facts also reveals that the shutter was placed on the date of public holiday 26/01/2014 in the midst of night and therefore by an order dated 31/05/2014 he was directed to remove the said shutter and inform it to the Municipality.

7. Admittedly, the place in question is a shop constructed by the Municipal Council, Nagar Panchayat Dharamjaigarh wherein shops have been let out to persons. This fact cannot be doubted that different shops being situated at a market it has all the access to the general public which is also evident from the photograph which is enclosed along with this petition as Annexure A-7. The court has recorded in its finding that as per document which was perused place of the said shutter definitely falls within the definition of public place and finding of fact is recorded that in between shop No.13 and 14 the said place is a public way which belongs to Nagar Panchayat.

It is also submitted during the course of argument and it was referred that as per letter dated 29/01/2014 of Office of Nagar Panchayat, Dharamjaigarh, Kanwaljeet Singh Komal was directed to remove the shutter which was placed at shop No.13. Therefore, it was projected that shutter has been placed by the Kanwaljeet Singh Komal. In view of such contradictory submission made and the finding which is recorded by the learned court below that place wherein shutter have been installed is a public way the order passed by the court below appears to be just and proper. I do not find any extraordinary facts existing in this case to exercise power vested with the court under section 482 of Cr.P.C.

7. In a result, petition has no merit and it is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE