

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.6.2015

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 451 of 2015

Eswaran

.. Petitioner

Versus

The Revenue Divisional Officer
The Sub Divisional Magistrate
cum-Revenue Divisional Officer,
Ponneri

.. Respondent

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. against the Order dated 16.04.2015 passed by the respondent in Na.Ka.No.1949/2014/A1.

For Petitioner : Mr.S.Giritharan

For Respondent : Mr. T.Arul
Government Advocate (Crl.side)

ORDER

The petitioner has filed this Criminal Revision Case as against the order dated 16.4.2015 passed by the respondent under Section 133 (A) of Cr.P.C.

2. The petitioner is running a Prawn Farm at Avurivakkam village, Ponneri Taluk, Thiruvallur District. Since the drainage water from the said Farm is being connected with the nearby canal, lake, channel and pond and as it affects the agricultural land as well as the drinking water in the said locality, based on the report of the Agricultural Department, a show cause notice was issued to the petitioner on 30.3.2015 directing the petitioner to appear and submit explanation. Since the petitioner has not given any reply on the said show cause notice, the respondent has passed the impugned proceedings under Section 133 (A) of Cr.P.C directing the petitioner to remove the Prawn Farm. Aggrieved against the said order, the petitioner has come forward with this revision.

3. According to the petitioner, the respondent has straight away passed the impugned order dated 16.4.2015, without following the procedures contemplated under Section 133 Cr.PC. According to him, no notice has been issued to the petitioner before passing such an order. According to the petitioner, he has not been examined and no opportunity was given to him to put forth his case.

4. The learned counsel for the petitioner submitted that without hearing the parties concerned, the impugned order has been passed. According to the learned counsel, the Executive Magistrate should conduct enquiry and decide whether there was reliable evidence or not to come to the conclusion to act under Section 133 of Cr.P.C. The learned counsel for the petitioner further submitted that the procedure for enquiry has been categorically contemplated in Section 133 Cr.P.C. by passing conditional order and requiring to show cause why the conditional order should not be made absolute. Therefore, the impugned order is in violation of the principles of natural justice. The learned counsel also relied on the judgment of this Court in IND BARATH POWERGENCOM LTD., VS. THE REVENUE DIVISIONAL OFFICER - CUM - SUB DIVISIONAL MAGISTRATE, KOVILPATTI SUB DIVISION, KOVILPATTI, TUTICORIN DISTRICT (CRL.RC.No.534 of 2011 and other connected matters) to substantiate the above contention.

5. The learned Government Advocate submitted that an opportunity has been given to the petitioner as per Section 133 but the petitioner has not utilised the same. The learned Government Advocate further pointed out that the petitioner can very well appear before the concerned Magistrate and adduce evidence that he has not violated the Rules.

6. As per Section 133 Cr.P.C, when the Executive Magistrate has taken up the job, he is bound to follow the procedures as contained in the Criminal Procedure Code. If the Government were to take action, necessary procedures have to be observed. However, as rightly pointed out by the learned Government Advocate (Criminal side), as per Section 138 of the Code, whenever, a show cause notice is issued, the petitioner can very well appear before the Magistrate concerned and adduce evidence that he has not violated the Rules.

7. In view of such circumstances, in the interest of justice, the petitioner is directed to appear before the respondent, by treating the impugned proceedings as a show cause notice, within a period of one week from the date of receipt of a copy of this order and adduce evidence to show that there is no violation in running a Prawn Farm. In the event of such appearance, the respondent shall pass orders in accordance with law, after hearing all the parties concerned.

With the above observation and direction, the Criminal Revision case is disposed of. Consequently, connected miscellaneous petition is closed.

ga

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Revenue Divisional Officer
The Sub Divisional Magistrate
cum-Revenue Divisional Officer,
Ponneri

2. The Public Prosecutor,
High Court, Madras 104.

+ 1 cc to Mrs.Giridharan, Advocate SR 28877

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