

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.M-35987 of 2011(O&M)
Date of decision: 26th February, 2015

Rajender Kumar

...Petitioner

Versus

Chander Bhan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Lajpat Sharma, Advocate,
for Mr. Vivek Khatri, Advocate,
for the petitioner.

None for respondent No.1.

Mr. Vipin Mahajan, Advocate,
for respondent Nos.2 and 3.

Mr.Anurag Jain, Mr. Raman B.Garg and
Mr. Amit Kumar, Advocates,
for respondent No.4.

INDERJIT SINGH, J.

Petitioner has preferred the instant petition under Section 482 Cr.P.C. against Chander Bhan etc.-respondents, for setting aside the impugned order dated 26.08.2011, passed by the learned Sub Divisional Magistrate, Hisar, ordering for removal the mobile tower and generator installed on the roof of the house of petitioner; the judgment, dated 11.11.2011, passed by the learned Additional Sessions Judge (Fast Track Court), Hisar, dismissing the revision petition of the petitioner against the aforesaid order dated 26.08.2011 and also the impugned notice under Section 141 Cr.P.C. dated

18.11.2011, issued by the Tehsildar, Hisar, for removing the said mobile tower and stopping the generator.

From the record, I find that the learned Sub Divisional Magistrate, Hisar, vide impugned order dated 26.08.2011 accepted the complaint filed by complainant-respondent No.1 under Section 133 Cr.P.C. and confirmed the conditional order dated 18.05.2011 and it was ordered that notice be also issued against respondents-petitioner Rajinder Kumar etc. under Section 148 Cr.P.C. that the tower and generator are installed in the residential area and same are creating nuisance. It was also ordered that respondent(s) will report in the office within a period of 30 days after receiving the said notice and after removing the tower and generator set. It was further ordered that the respondent(s) is liable to prosecute under Section 188 IPC if the order is not complied with.

Perusal of the impugned order shows that firstly the Court passed the conditional order dated 18.05.2011 against the respondents that they will remove the aforesaid nuisance within a period of 7 days and file reply upto 03.06.2011. The respondents appeared in the Court. Respondent No.1-petitioner Rajinder Kumar filed the affidavit in the Court and learned counsel appearing on behalf of respondent Nos.2 and 3 filed reply on their behalf. Thereafter, the case was fixed for arguments. Then after hearing the parties, the Sub Divisional Magistrate, Hisar, called for the report from the Haryana State Pollution Control Board, Hisar in this regard

and after receiving the report, again the case was fixed for arguments. Perusal of the impugned order shows that after the appearance of the respondents in the proceedings, no opportunity was given to either of the party to lead the evidence nor the case was fixed for this purpose. The case was fixed for arguments and then the report from the Haryana State Pollution Control Board, Hisar, was called. Even after receiving the report from the Haryana State Pollution Control Board, Hisar, no opportunity for leading the evidence was given. As per Section 133(1) Cr.P.C., the Sub Divisional Magistrate is to take the evidence in the matter as in the summons case. As the learned Sub Divisional Magistrate, Hisar, has not even fixed the case for evidence of any of the party nor any opportunity has been given to any of the party to produce the evidence, therefore, the impugned order passed under Section 133 Cr.P.C. is illegal, without following the procedure and also without any evidence. Therefore, the same is set aside. The judgment dated 11.11.2011, passed by the Additional Sessions Judge, Hisar, in revision petition also is not as per law and the same is also set aside. Both the impugned orders, therefore, amounts to miscarriage of justice. As the order dated 18.11.2011 (Annexure P-3) is on the basis of aforesaid both orders, therefore, the same is also set aside.

Therefore, from the above discussion, I find merit in the present petition and the same is accepted. The matter is remanded back to the Court of learned Sub Divisional Magistrate, Hisar with

directions to decide the matter afresh after applying the procedure as given under Section 133(1) Cr.P.C. and other provisions of the Code of Criminal Procedure by affording opportunity to the parties to lead the evidence, if any. The learned Sub Divisional Magistrate, Hisar is further directed to dispose of this matter expeditiously by giving short adjournments and if necessary adjourning the case on day to day basis.

26th February, 2015
mamta

(INDERJIT SINGH)
JUDGE