

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 534 of 2016**

- Mohammad Yunus S/o Hasam Aged About 60 Years R/o Nehru Nagar, Near Samudayik Bhavan, Bilaspur, P.S. Civil Line, Tahsil & District Bilaspur Chhattisgarh

---- Applicant**Versus**

1. Chitranjan Masih S/o Late Milan Masih Aged About 58 Years Occupation - Government Servant, R/o Jarhabhata, Bilaspur, P.S. Civil Line, Bilaspur, Tahsil & District Bilaspur Chhattisgarh
2. Municipal Corporation, Bilaspur Through The Commissioner, Municipal Corporation, Bilaspur, P.S. Civil Line, Bilaspur Chhattisgarh
3. State Of Chhattisgarh Through The District Magistrate, Bilaspur, District Bilaspur Chhattisgarh
4. Sub Divisional Officer (City), Bilaspur Chhattisgarh

---- Non-applicants

For Applicant	Mr. Somnath Verma, Advocate
For Non-applicant No.1	Mr. Rupesh Shrivastava, Advocate
For Non-applicant No.2	Mr. Akhilesh Kumar, Advocate
For State	Mr. Lav Sharma, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****23.11.2016**

1. The instant petition under Section 482 of the Cr.P.C. has been preferred seeking for quashment of order dated 23.04.2016 passed in Criminal Revision No. 203/2015 passed by the Sessions Judge, Bilaspur.
2. Vide the said impugned order the Revisional Court has affirmed the order passed by the Sub Divisional Magistrate (City), Bilaspur dated

24.09.2015 in Criminal Case No. 13/2014. The case of the Applicant in short is that Non-applicant No.1 had filed complaint under Section 133 of the Cr.P.C. addressing the Municipal Corporation on 06.01.2014 alleging that Smt. Harvinder Singh and Baba Khan encroached and obstructed the public pathway in front of the land situated on Survey No. 137/5 by constructing a Garage and few shops on the said pathway blocking the path permanently denying access to the road for the complainant's family. The matter was thereafter sent to the Sub Divisional Magistrate (City), Bilaspur who in turn registered the case as Criminal Case No. 13/2014 in the name of complainant Chitranjan v. Municipal Corporation. The Sub Divisional Magistrate (City), Bilaspur said to have ordered on 24.09.2015 directing the obstructors to remove obstruction by demolishing all the constructed portions erected on the public path. The said order dated 24.09.2015 was put to challenge by the present Applicant before the Revisional Court i.e. before the Court of the Sessions Judge, Bilaspur. The Sessions Court, Bilaspur registered the case as Criminal Revision No. 203/2015 and after considering the submissions put forth by the Counsel for the parties, the Revisional Court also vide its impugned order dated 23.04.2016 reached to the conclusion that there was no infirmity or illegality much less irregularity in the order passed by the Sub Divisional Magistrate (city), Bilaspur while deciding the application under Section 133 of the Cr.P.C., leading to the filing of the present Cr.M.P.

3. Learned Counsel for the Applicant assailing the two orders i.e. order passed by the Sub Divisional Magistrate (City), Bilaspur as well as the Revisional Court submitted that the two orders are not

sustainable in the eye of law for more than one reason.

4. According to the Counsel for the Applicant the Sub Divisional Magistrate (City), Bilaspur committed gross error in as much as inspite of registering the complaint did not think it proper for even issuing notices to the Respondents in the said case i.e. the Municipal Corporation proceeded with the case to decide in limine. It was further contended that the order under challenge is also bad in law for the reason that the Applicant herein is also an affected party but it has not been made party in the said proceeding. According to the Applicant he is in fact the lawful owner of the said property as is evident from the sale deed which have been executed in favour of the Applicant enclosed as Annexure P/7 to P/9 along with the present Petition. Since he is owner of the property by virtue of the registered sale deed, the suit premises would not fall within the ambit of a public pathway. It would be purely a private property. It was further contended that since it was private property as is evident from the sale deed the question of invoking Section 133 of the Cr.P.C. by the Sub Divisional Magistrate (City), Bilaspur is also bad in law. Thus the Magistrate has committed error of law both in exercising his powers and also for the reasons that the Applicant is directly affected person and he has not been made party. Therefore, the same deserves to be struck off.
5. Per contra, Counsel for the Non-applicant submitted that the case does not warrant any interference for the reason that the order of the Revisional Court is a well reasoned speaking order and also the order of the Sub Divisional Magistrate is also in accordance with the powers which have been conferred upon him under the provisions of

Section 133 of the Cr.P.C. He further submitted that the Petitioner is also known as Baba Khan who is said to have encroached.

6. Having considered the rival contentions put forth by the Counsel for the Applicant and on perusal of the provisions of the law what clearly reflects from the plain reading of Section 133 Cr.P.C., is the fact that said provision does not envisage issuance of notice to the persons who has created illegal obstruction or has created nuisance on the public path.
7. After reading the said provision of law it would clearly indicate that the order passed by the Sub Divisional Magistrate (city), Bilaspur was a conditional order for removing the unlawful obstruction / nuisance created on the public place which otherwise is law fully used by the public as a pathway. Further, from the impugned order it also reflects that the SDM while passing the order dated 24.09.2015 had taken into consideration report of the Tahsildar as well as the report of the Patwari of the said Halka Number. Since, the orders of the two Court below were passed on the basis of report of the Tahsildar as well as Patwari, this Court has no hesitation in reaching to the conclusion that the Court below have rightly passed the orders under Section 133 of the Cr.P.C. for removal of the obstruction / public nuisance by way of construction of Garage and shop on the said disputed land. It is all the more necessary to mention at this juncture that if at all right of the Applicant is being adversely getting affected in any manner he could have approached the Civil Court seeking for relief establishing his right, title and possession over the said piece of land.
8. So far as the proceeding under Section 133 of the Cr.P.C. is

concerned it is simply a provision whereby the authority has been conferred for removal of the obstruction of public place if any causing inconvenience to the general public. In the instant case since the report of the Patwari as well as the Tahsildar clearly shows that there was a public path present over which obstruction / nuisance has come up, it cannot be said that the Magistrate or for that matter Revisional Court have passed the order in excess of their jurisdiction or without any basis.

9. Thus, for the foregoing reasons this Court is of the opinion that the claim of the Petitioner seeking for setting aside of the two orders does not have any substance and deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE