

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.5667 OF 2014

Ashok S/o. Sonyabapu Shirsat .. Applicant

Versus

Bhawarlal S/o. Narayan Prajapati
and other .. Respondents

Mr.S.A.Gaikwad, Advocate h/f Mr. S.B.Bhaskar, Advocate
for the applicant

Mr.R.B.Bagul, APP for the respondent/State

S.N.Patekar, Advocate h/f Mr. P.R.Katneshwarkar, Advocate
for respondent Nos.1 and 2

S.M.Mandlik (Deshpande), Advocate for respondent No.5

CORAM : A.V.NIRGUDE, J

DATE : 01.08.2016

P.C. :-

1. This litigation has checkered history. It is an admitted fact that, the respondent's marble cutting work is established in residential area which is within the local limits of Bhusawal Municipal Council.

2. The applicant moved a complaint against the respondents under Section 133 of the Criminal Procedure Code seeking direction for removal of nuisance and pollution. The applicant alleged that the respondent's marble cutting work created nuisance in the form of sound

pollution as well as water pollution. The applicant moved his first application under Section 133 in 2002 and as expected the learned Sub-Divisional Magistrate recorded such evidence as he thought fit for deciding the question as to whether there was nuisance due to running of marble cutting works and whether such nuisance should be abated /removed?

3. The learned Sub-Divisional Magistrate on 25.05.2004 directed respondent for making arrangement to avoid noise pollution and also for disposal of waste water etc. The applicant challenged the order asserting that it did not fully serve his purpose. He expected that the SDM would direct shifting of the Works of marble cutting. He filed a criminal revision application in the Session Court, Jalgaon but his application was rejected. The Additional Sessions Judge, (surprisingly), held that the Sub-Divisional Magistrate cannot pass order directing stoppage of such work. The applicant then came to this Court by filing the writ petition No.3104/2007. This Court passed following order.

"Heard learned counsel for the petitioner.

Petitioner has moved this petition for seeking compliance of the order passed by Sub-Divisional Magistrate, Jalgaon by this order dated 25.05.2004 apparently passed under Section 133 of the Criminal Procedure Code. It is submitted that inspite of the said order, no compliance is made. However, it is clear that

the compliance of the order is within the jurisdiction of the said Authority itself. Under the circumstances, Advocate for the petitioner seeks permissions to withdraw the petition. Hence permission granted. Petition stands dismissed as withdrawn with liberty to approach the concerned authority for necessary compliance of its own order"

4. The applicant thereafter moved another application to the Sub-Divisional Magistrate for seeking complete stoppage of nuisance. This time a fresh notice was given to the respondents. Sub-Divisional Magistrate called for reports from the various authorities. On one hand he found that the nuisance of pollution was tried to be reduced by putting additional cover to the marble work. But, the Sub-Divisional Magistrate found from the report of Assistant Town Planning Officer, Jalgaon that marble cutting is an 'industry' and such industry is not permitted as per building by-laws applicable to Bhusawal town in R-2 Zone. In other words it was made clear that the Municipal Council ought to stop this impermissible use of the plot situated in R-2 Zone. Having regard to this Sub-Divisional Magistrate passed an order directing respondent to stop their marble cutting work completely. The respondent challenged this order by filing the criminal revision No.29/2014.

5. The learned Sessions Judge allowed the same holding that the impugned order almost amounted to double jeopardy. Learned Sessions Judge held that for one cause of action two different officer could not have taken two different views.

6. It is now my tern to examine the correctness of this order. In my view learned Sessions Judge did not peruse the provision of Section 133 properly. He even did not realize the liberty granted by the High Court to approach the Sub-Divisional Magistrate for further redressal of his complaint. Learned Sessions Judge did not examine a new ground based on Assistant Town Planning Officer's report. I found and I expressed my view to the learned counsel that the impugned order deserved to be set aside and the order of the SDM should be restored.

7. Learned counsel for the respondent urged for remand of the case back to the learned Sessions Court. The SDM used the report of the Assistant Town Planning Officer Jalgaon. This was a new ground for allowing the application. He rightly pointed out that this aspect of the case was not discussed at all by the learned Sessions Judge. The reasons for seeking remand looks somewhat lame to me but I am allowing the same. This would give the learned Sessions Judge to have fresh look at the case.

This indulgence shall come with a condition.

i] The Criminal Application is partly allowed.

ii] The impugned order 08.08.2014 passed by Sessions Judge, Bhusawal is set aside.

iii] Parties are directed to appear before the learned Sessions Judge who shall decide the criminal revision application, after examining all the aspects of the impugned order of the Sub-Divisional Magistrate. This indulgence is shown to the respondent on condition that they shall completely stop the marble cutting works from today till the learned Sessions Judge decides the criminal revision application and two weeks thereafter.

iv] Respondent No.5-Maharashtra State Pollution Control Board, Jalgaon should monitor obedience of this order.

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v] Criminal application stands
disposed.

[A.V.NIRGUDE, J.]

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