

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.10470 of 2009

ORDER:

This criminal petition is filed under Section 482 of Cr.PC to quash the order dated 07.12.2009 passed under Section 133 Cr.P.C., by the second respondent—the Mandal Executive Magistrate and Tahsildar, Sabbavaram Mandal, Visakhapatnam District in Rc.No.309 of 2009.

2. The contention of learned counsel for the petitioner is that the second respondent issued notice to the petitioner who in turn issued reply. He further contended that the second respondent without considering the material submitted by the petitioner passed the impugned order. The learned Public Prosecutor submitted that the second respondent considered the material placed before him in right perspective and passed the order.

3. It is an admitted fact that the petitioner established poultry farm in the year 2001 in Bata Jangalapalem (B.J.Palem) village, Sabbavaram Mandal, Visakhapatnam District. He carried on the business in the same premises without any complaint whatsoever till 2008. A perusal of the record reveals that by the year 2008 some persons constructed houses around the poultry farm of the petitioner. Some of the residents of B.J.Palem village allegedly complained the matter to the Collectorate, Visakhapatnam District stating that due to carrying of the poultry farm, pollution in the area has increased, which is causing ill-health to the residents of the locality.

4. One of the contentions raised by the learned counsel for the petitioner is that several persons are carrying on poultry business in and around B.J. Palem and the impugned order has been issued only against the petitioner. There is no mention in the order that some other persons are also running poultry farms in and around B.J. Palem. Whether some other persons are also running poultry farms or not is

purely a question of fact, which has to be considered by the second respondent. If really some other persons are also carrying on poultry business in and around B.J. Palem, the second respondent has to take into consideration that fact also while passing the orders.

5. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the order dated 07.12.2009 in Rc.No.309/2009-A passed by the second respondent. The second respondent is hereby directed to conduct fresh enquiry, if the problem is persisting, and take necessary action in accordance with law only after giving reasonable opportunity to the petitioner to ventilate his grievance.

6. With the above observation, the criminal petition is allowed. The order dated 07.12.2009 passed under Section 133 Cr.P.C., by the second respondent—the Mandal Executive Magistrate and Tahsildar, Sabbavaram Mandal, Visakhapatnam District in Rc.No.309 of 2009 is hereby quashed. Miscellaneous petitions, if any pending in this criminal petition shall stand closed.

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T.SUNIL CHOWDARY, J.

March 21, 2016.

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