

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No. M-29197 of 2016
DECIDED ON : AUGUST 24, 2016**

ASHOK KUMAR MANGLA AND ANOTHER

...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Vikas Chaudhary, Advocate,
for the petitioners.

JASPAL SINGH, J

By virtue of instant petition preferred under Section 482 of the Code of Criminal Procedure (for short 'Code'), petitioners have sought the setting aside/quashing of order dated 20.07.2016 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad vide which revision petition has been dismissed and order dated February 16, 2016 (Annexure P-2) passed by Sub Divisional Magistrate, Ballabgarh has been upheld.

The facts necessary for the disposal of instant petition are that respondent No.4, who is residing in the adjoining house of petitioner, moved an application under Section 133 of the Code before the Sub Divisional Magistrate, Ballabgarh for the removal of workshop being run by the petitioners in residential area. While acting upon the application of respondent No.4, Sub Divisional Magistrate, Ballabgarh personally inspected the site in

question. Even, thereafter, a report was also sought by him from District Pollution Board (for brevity 'Board'), who submitted the report unilaterally without obtaining the presence of the petitioners. The property in question is converted into a Dharamshala and is being used for community services. The residents of vicinity used to perform their personal, social and religious functions at property in question. Certain shops have already been allotted to the various persons including respondent No.1, who is running a workshop meant for electric works such as manufacturing of all kind of electrical control system, electrical instrumentation and automation panels. The workshop creates noise pollution within the area and further because of vibration of running of machines it caused substantial damages to the house of respondent No.4. Earlier, respondent No.4 moved an application with the Municipal Corporation, Faridabad with the request to take necessary steps to close the workshop. But no action was taken on his application. It was only, thereafter, respondent No.4 approached Sub Divisional Magistrate by way of application under Section 133 of the Code, which has been allowed by Sub Divisional Magistrate with direction for the removal of the workshop in question.

The contention of learned counsel for the petitioners is that impugned orders are absolutely illegal, malafide and without jurisdiction and is result of non application of mind. In fact, the appropriate remedy available to respondent No.4 was to approach the Civil Court, as proceedings under Section 133 of the Code can be initiated where the nuisance is of public nature and is emergent one, which are otherwise not intended to settle the private dispute between the parties or a substitute to settle civil dispute through such proceedings. Moreover, the workshop is engaged in the assembling of the

electric panel which do not involve the operations of any heavy machinery except the drill machine, which is in existence and is running for the last three years.

Moreover, the work being carried out in the workshop is not creating any kind of noise pollution or any public nuisance, especially in the circumstances that the property is open from two sides. He further contends that the report made by the Board is unilateral and the petitioners were not taken into confidence prior to it. As such the same is not binding qua the petitioners. In fact, the officials of the Board never visited inside the workshop to check the level of noise pollution. Thus, the so called monitoring and testing of noise pollution has been done from the outside of the disputed premises. While relying upon the judgment rendered by this Court in the case of **Makhan Lal vs. Buta Singh; 2003(2) RCR (Criminal) 416;** it has been submitted by learned counsel for the petitioner that Section 133 of the Code is just to enable an Executive Magistrate to pass orders speedily in a case where public nuisance or obstruction has been made in the right of the public at large. Objection of above-referred Section is not to enable the complainant to obtain order to safeguard his civil right nor he can obtain any relief in connection with his legal rights.

Learned counsel for the petitioners further contends that where the alleged nuisance or obstruction has been in existence for a long period and the only remedy open to the aggrieved party was to move the civil court. Thus, the impugned order dated dated 20.07.2016 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad upholding the order dated February 16, 2016 (Annexure P-2) passed by Sub Divisional Magistrate, Ballabgarh is not

sustainable in the eyes of law and is liable to be set aside.

This Court has given a deep thought to the submissions made by learned counsel for the petitioners but does not find any legal and factual substance therein.

Undoubtedly, the workshop in question is located in the residential area that too, in a building which is meant for community services. During inquiry into the averments made in the application moved under Section 133 of the Code, Sub Divisional Magistrate, Ballabgarh visited the spot and conducted the site inspection. He also obtained a report from the Pollution Control Board. The said report clearly depicts that levels of pollution were checked at the time of running of machines, which were compared with the level of pollution while the machines were lying switched off and the noise pollution was reported by the concerned officers. It cannot be said that the employees/owner of the workshop were not present at the spot.

Moreover, it is also well settled that no commercial unit should be allowed to run in the residential area and in the case in hand, workshop is being run in the residential area without the permission of authorities concerned. The mere fact that workshop is in existence for the last 2/3 years does not *ipso facto* mean that the jurisdiction of Sub Divisional Magistrate is ousted to take an action under Section 133 of the Code. A wrong doer cannot be allowed to perpetuate his wrongs. The establishment of workshop as well as running thereof, in the residential area is itself a wrong being committed by the petitioners. The judgment relied on by learned counsel for the petitioners is not applicable in the facts and circumstances of the case in hand.

Thus, this Court does not find any illegality, infirmity or

impropriety in the order date dated 20.07.2016 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad whereby, the order dated February 16, 2016 (Annexure P-2) passed by Sub Divisional Magistrate, Ballabgarh has been upheld.

In the light of what has been discussed above, instant petition being devoid of merit, is dismissed and orders dated dated 20.07.2016 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad as well order dated February 16, 2016 (Annexure P-2) passed by Sub Divisional Magistrate, Ballabgarh, are upheld.

However, petitioners are directed to remove the workshop as early as possible from the premises in question.

AUGUST 24, 2016
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(JASPAL SINGH)
JUDGE

<i>Whether</i>	<i>Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether</i>	<i>Reportable</i>	<i>Yes/No</i>