

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

**CRM-M No. 42446 of 2014
Date of decision: 12.08.2016**

Kuldeep Singh

...Petitioner

Vs.

Karamjeet Singh & Others

...Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : Mr. Sunil Garg, Advocate
for the petitioner.

Mr. Saurabh Kaushik, Advocate
for respondent Nos. 1, 2, 4 and 5.

Mr. Varun Garg, Advocate
for respondent No. 3.

Ms. Rimplejeet Kaur, AAG, Punjab
for respondent No. 6.

A.B. CHAUDHARI, J. (Oral)

Heard learned counsel for the rival parties.

Complaint was made under Section 133 Cr.P.C. before the Sub Divisional Magistrate, Nabha (for short '*SDM*') by the complainant that petitioner-Kuldeep has been running a piggery and large number of pigs have become a nuisance to the health of the neighbours as well as residents of the village.

Learned counsel for the petitioner vehemently argued that the SDM acted on the basis of a letter issued by the Block Development and Panchayat Officer, Nabha (for short '*BDPO*') about the existence of the pigs, multiple in number in his house. But then he was allowed opportunity of cross-examination though in terms of the Section 138

Cr.P.C. a regular trial was required to be held. Learned counsel for the petitioner has contended that the case of the complainant about the existence of large number of pigs is false and baseless though the petitioner is maintaining only one pig as per custom. He submitted that remand order should be made for retrial.

Per contra, the learned counsel for the respondents submits that the piggery of the petitioner with large number of pigs has become a nuisance to the neighbours and the residents of the village and that is likely to turn into a health hazard. Therefore, the SDM was right in making the order under Section 133 Cr.P.C. He further states that the petitioner did not even avail the opportunity of remaining present before the SDM but was proceeded ex-parte.

I have heard learned counsel for the rival parties for quite sometime. Learned counsel for the petitioner fairly and candidly stated on behalf of his client that he is maintaining one pig at his house, though he denies about the existence of piggery as such at his house. As to his contention that a regular trial should have been held under Section 138 Cr.P.C. and the letter issued by the BDPO, on which reliance has been placed by the SDM, I think the submission will have to be turned down. No doubt Section 138 Cr.P.C. provides for the manner of conducting trial in relation to Section 133 Cr.P.C. but it cannot be forgotten that the proceedings under Section 133 Cr.P.C. are of summary nature and the object is to prevent public nuisance/nuisance on emergent basis. If at all, the petitioner wanted to cross-examine the witness with reference to the letter of BDPO, he ought to have made an application to the SDM that BDPO, who issued the letter, should be

called for cross-examination. Admittedly, he did not do that. Therefore, no fault can be found in SDM relying on the letter issued by the BDPO. Learned counsel for the petitioner further submits that he was not given the opportunity of cross-examining the BDPO. Giving of opportunity does not mean that SDM should invite the petitioner for making cross-examination. It was for the petitioner to make an application if he really wanted to cross-examine the person issuing the letter particularly because the proceedings are of summary nature. In that view of the matter, it is not possible to accept the contention that a regular trial should have been held for conducting summary proceedings under Section 133 Cr.P.C.

Learned counsel for the petitioner as earlier stated has candidly accepted the existence of a pig at his house. The neighbours and the residents of the village are perceiving health hazards because of the existence of the pig. The petitioner is not entitled to retain a pig at his house at the cost of health of several residents as well as neighbours. The principle of utilitarianism cannot be forgotten and, therefore, the petitioner ought to remove the pig as ordered by the SDM.

In that view of the matter, I do not find any merit in present petition and the same is summarily rejected.

August 12, 2016
Ansari

(A.B. CHAUDHARI)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No