



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.07.2017

CORAM

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THE HON'BLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.R.C(MD) .No.386 of 2017

and

Crl. MP(MD)No.3862 of 2017

A.Siddique

... Petitioner

-Vs-

The Sub Divisional Magistrate and
Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.

... Respondent

Prayer : Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records pertaining to the order in Na.Ka.A2/599/2017, dated 28.03.2017 on the file of the respondent and set aside the same.

For Petitioner : Mr.Pinaygash

For Respondent : Mr.C.Mayil Vahana Rajendran

Additional Public Prosecutor (Crl. Side)

O R D E R

This Criminal Revision Petition has been filed, challenging the order passed by the respondent under Section 133 Cr.P.C, preventing the petitioner from taking ground water from the bore-well.

2.The Learned counsel appearing for the petitioner submitted that the respondent/Sub-Divisional Magistrate, without issuing any show-cause notice, as contemplated under Section 138 of Cr.P.C, has straight away passed the impugned order, without conducting an enquiry. It is a mandatory violation under Section 133 of Cr.P.C.

3.As per Section 134 Cr.P.C, order should be communicated to the petitioner. But, in this case, the order passed by the respondent/Sub Divisional Magistrate was also not communicated to the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>
Per contra, the learned Additional Public Prosecutor supported the impugned order, stating that the petitioner has been



taking groundwater unauthorisedly, causing nuisance to the general public and that necessitated the learned Sub-Divisional Magistrate to pass the impugned order.

5. Heard Mr. I. Pinaygash, learned counsel appearing for the petitioner and Mr. C. Mayil Vahana Rajendran, Additional Public Prosecutor (Crl. Side), appearing for the respondent and perused the records carefully.

6. The impugned order purportedly has been passed under Section 133 of Cr.P.C. On perusal of records, it could be seen that the respondent/Sub Divisional Magistrate, without following none of the procedures contemplated either under Section 133 of Cr.P.C or under Section 138 of Cr.P.C and without giving any opportunity to the petitioner, straight away passed the order, preventing the petitioner from taking water, which is not permissible in law. The order has been passed in violation of mandatory requirements contemplated under Section 133 of Cr.P.C.

7. In the above circumstances, the impugned order passed by the respondent, dated 28.03.2017 is set aside and the matter is remanded to the respondent/Sub Divisional Magistrate and Revenue Divisional Officer, Sivagangai. The respondent is directed to pass orders strictly in accordance with Section 133 of Cr.P.C, after following all the mandatory requirements. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Sub Divisional Magistrate and
Revenue Divisional Officer,
O/o. The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.

+1cc to M/S.t.lajapathi Roy, Advocate SR.No. 63595

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VS

<https://hcmjce.scribd.com/document/3414072017/2P/3C>