



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C(MD) .No.504 of 2017
and
CRL.M.P(MD)NO.5605 OF 2017

Anno Agro Coirs,
represented by its Proprietrix G.Pakkiyam
Pirandaikulam Village,
Allur Panchayat,
Kalayarkovil Taluk,
Sivagangai District.

... Petitioner

-Vs-

The Executive Manager and Revenue
Divisional Officer,
Sivagangai District.

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying this Court to call for the records in Na.Ka.No.2 of 2025/2017, dated 15.6.2017 on the file of the respondent and to set aside the same as arbitrary, illegal and against the principles of natural justice.

For Petitioner : Mr.D.Veerasekaran
For Respondent : Mr.C.Mayil vahana Rajendran
Additional Public Prosecutor (Cr1. Side)

O R D E R

Challenging the order passed by the respondent, dated 15.06.2017 under Section 133(1)(b) of Cr.P.C., the present revision has been filed.

2.Heard the submissions made by Mr.D.Veerasekaran, learned counsel for the Petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondents and perused the materials placed before this Court.

3.The learned counsel for the Petitioner would submit that the Petitioner is running a RO Water Unit and has also obtained the licence from the Bureau of Indian Standards and the licence is



valid till 10.3.2018 and another licence under the Food Safety and Standards Act, 2006, which expired on 14.5.2017 and now the Petitioner has filed an application for renewal of licence, which is also pending.

4. In the above circumstances, the respondent without conducting any enquiry and without drawing any preliminary order as required under Section 133 of Cr.P.C., passed the impugned order preventing the Petitioner from taking water for three months. It is totally illegal and the order is passed in violation of the mandatory requirements under Section 133 of Cr.P.C.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that considering the fact that there is a severe drought in Sivagangai District and there is severe drinking water shortage whereas the Petitioner is taking water from his deep bore-well and using nearly 9000 litres per day for his RO Water Unit. Since there was an urgent need to preserve the ground water and in the public interest the impugned order has been passed and non drawing of a preliminary order is only an irregularity, which does not vitiate the proceedings.

6. I have heard the rival submissions made on either side and considered the materials on record.

7. Section 133 of Cr.P.C contemplates the Executive Magistrate to draw a preliminary order, then after issuing a show cause notice, and conducting an enquiry as contemplated under Section 138 of Cr.P.C., he can make a preliminary order absolute. But in the instant case, the respondent/The Executive Magistrate and Revenue Divisional Officer, Sivagangai District without drawing any preliminary order and without issuing any show cause notice and also without following the procedure contemplated under Section 138 of Cr.P.C, has straightaway passed an order preventing the Petitioner from taking water for three months, which is not permissible in law. The Honourable Supreme Court in **C.A.Avarachan .vs. C.V.Sreenivsan and another, reported in (1996) 7 Supreme Court Cases Page 63** has held that without drawing of a preliminary order before proceeding with under Section 133 of Cr.P.C vitiates the entire proceedings and that the Executive Magistrate should follow the procedure contemplated under Section 138 of Cr.P.C. But in the instant case, without following the mandatory requirements, the Executive Magistrate straightaway passed an order, which is un-sustainable in law and it is vitiated.

8. In the above circumstances, this Criminal Revision case is allowed and the order passed in Na.Ka.No.2 of 2025/2017, dated 15.6.2017, on the file of the respondent is set aside. However



liberty is given to the respondent to initiate fresh proceedings under Section 133 of Cr.P.C, if he so desirous, by following the mandatory requirements. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Executive Manager and Revenue
Divisional Officer,
Sivagangai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.Veerasekaran, Advocate Sr.No.64616

VSN

VB/MR/KKR/SAR4/03.08.2017/3P/4C

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