



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.04.2017

Pronounced on : 05.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

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Criminal Revision Petition(MD)Nos.980, 988 and 1000 of 2011
and
M.P(MD)Nos.1,1 and 2 of 2011

Kumaravel	...	Petitioner in
		Crl.R.C(MD)No.980/2011
S.S.Krishnamoorthy	...	Petitioner in
		Crl.R.C(MD)No.988/2011
G.S.Rajendran	...	Petitioner in
		Crl.R.C(MD)No.1000/2011

Vs.

The District Magistrate and District Collector, Virudhunagar District, Virudhunagar	...	Respondent in all Crl.RCs.
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Petitions filed under Section 397 and 401 of Cr.P.C., against the summon issued by the District Magistrate and District Collector, Virudhunagar District, in Virudhunagar in M.C.(C1)/3/2011, dated 10.12.2011.

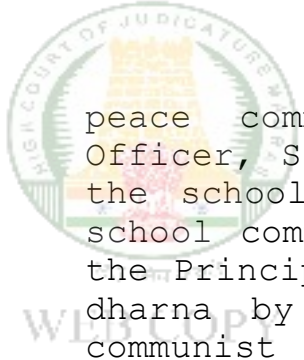
For Petitioners	:	Mr.V.Radhakrishnan, Senior Counsel for Mr.S.Kadarkarai
For Respondent (In all Crl.R.Cs)	:	Mrs.S.Prabha, Government Advocate.

COMMON ORDER

All these three criminal revision cases have been filed challenging the proceedings of the District Magistrate/District Collector, Virudhunagar initiated under Section 133 of the Code of Criminal Procedure, 1973.

2.The petitioners in Criminal Revision Case (MD)Nos.980 and 988 of 2011 are the former members of the school committee which runs the Srivilliputhur Lions School, which is an Higher Secondary School. The petitioner in Crl.R.C.(MD)No.1000 of 2011 is the Principal of the said institution.

3.It appears that there had been certain complaints against the Principal of the institution regarding his conduct in connection with the students and staff members of the said school. Those complaints were lodged by one of the parents and three of the teachers working in the said school. It appears that there was a



peace committee meeting convened by the Revenue Divisional Officer, Sivakasi on 03.12.2011 and the said Officer had directed the school management to suspend the Principal. Thereafter, the school committee had met and decided to continue the services of the Principal. It is also seen from the records that there was a dharna by some of the people who had joined hands with the communist parties which resulted in road blockade. This had in fact been the ignition for initiation of proceedings under Section 133 of the Code of Criminal Procedure, 1973. It is also seen that pending the said proceedings, the District Collector, Virudhuagar in his capacity as a District Magistrate had passed an order freezing the bank accounts of the school. The said proceedings freezing the bank accounts was challenged by the school in W.P(MD) No.14483 of 2011. By an order dated 11.04.2017 I had allowed the said writ petition quashing the order directing freezing of the accounts.

4. In these criminal revision petitions, the petitioners challenged the very power of the District Collector as a District Magistrate to initiate proceedings under Section 133 Cr.P.C.

5. A reading of the proceedings dated 10.12.2011, purportedly issued under Section 133 Cr.P.C. shows that the charges relate to the behaviour of the Principal, collection of smart class fee without conducting smart classes, misappropriation of the funds of the school, continuation of the Principal against the assurance given by the Revenue Divisional Officer on 03.12.2011 and insistence on payment of the school fee.

6. The question that arises is whether at all these allegations would constitute sufficient cause to enable the District Magistrate to invoke the provisions of Section 133 Cr.P.C.

7. Section 133 Cr.P.C reads as follows:-

"133. Conditional order for removal of nuisance.

(1) Whenever a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, consider --

(a) That any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel, which is or may be lawfully used by the public: or

(b) That the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or



occupation should be prohibited or regulated or such, goods or merchandise should be removed or the keeping thereof regulated; or

(c) That the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) That any building tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighborhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary: or

(e) That any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public: or (f) That any dangerous animal should be destroyed, confined or otherwise disposed of,

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank well or excavation, or owning or possessing such animal or tree, within time to be fixed in the order-

(i) To remove such obstruction or nuisance; or

(ii) To desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) To prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) To remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) To fence such tank, well or excavation; or

(vi) To destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate Subordinate to him at a time and place to be fixed by the order, and show cause, in

the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any civil court.

Explanation. A "public place" includes also property belonging to the state, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

8. The situation under which the District Magistrate or the Sub Divisional Magistrate would invoke Section 133 is no longer *res integra*.

9. In **The Manager, Kodanad Estate, Kothagiri Taluk, The Nilgiris District Vs. The Sub Divisional Magistrate and the Assistant Collector, Coonoor, The Nilgiris District** reported in **2008-1-L.W. (Cr1.) 643**, this Court had an occasion to consider the scope of Section 133 Cr.P.C. In the said decision, Hon'ble Mr. Justice K. Chandru, after referring to the observations of the Hon'ble Supreme Court in *Kachrual Bhagirath Agrawal Vs. State of Maharashtra* (2005) 9 SCC 36 had laid down the following criteria:

"12. Summing up:-

12.1. Thus, by a reading of Section 133 Cr.P.C and as interpreted by this Court and the Supreme Court through the decisions referred to above, the following proposition of law emerges:-

(a) The order under Section 133 Cr.P.C must be based upon material factors;

(b) The order should be reasonable restriction and it must not be arbitrary or excessive and the procedure and the manner of imposition of restriction must be fair and just;

(c) Proceedings under Section 133 Cr.P.C, are not intended to settle private disputes between different members of public.

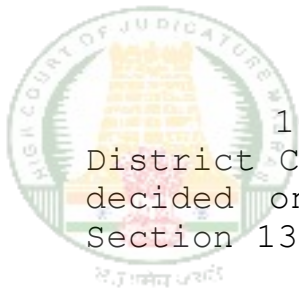
(d) Unless there is imminent danger to the physical comfort of the community, the order under Section 133 Cr.P.C. Cannot be passed.

(e) No action can be taken when the obstruction has been in existence for a long period and Section 133 Cr.P.C is attracted only in case of emergency and imminent danger.

(f) The proceedings under Section 133 Cr.P.C. is not a substitute for the civil proceedings.

(g) For invoking Section 133 Cr.P.C, there must be imminent danger to the property and consequential nuisance to the public.

(h) The exercise of the power should be one of judicious discretion objectively exercised on pragmatic consideration of the given facts and circumstances from evidence on record."



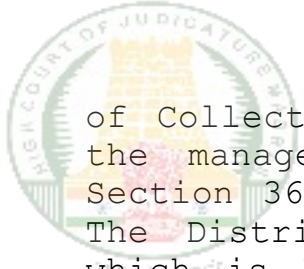
10.A Division Bench of this Court in S.Natarajan Vs.The District Collector, Trichirappalli made in W.A.(MD)No.330 of 2016, decided on 01.03.2016 also considered the scope and import of Section 133 Cr.P.C. and had observed as follows:

"7.For our present purpose, provisions of Section 133 Cr.P.C may be read as follows:-

Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighborhood or passing by, and that in consequence the removal, repair or support of such building, is necessary; such Magistrate may make a conditional order requiring the person possessing or controlling such building, within a time to be fixed in the order, to remove, repair or support such building in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate Subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

8.To embark upon a proceeding under Section 133 Cr.P.C., the Magistrate concerned primarily must be of the view that the existence of the building poses a danger to persons residing therein or passer-by. On being of such view, the Magistrate initially is required to pass a conditional order, requiring removal, repair or support of such building and by the persons in possession thereof. The conditional order shall also inform the right of the person in possession, (if such person has any objection) to appear before the Executive Magistrate or some other Magistrate subordinate to him and show cause why the order should not be made absolute."

11.From the above, it is clear that the power under Section 133 Cr.P.C. can be invoked by District Magistrate only when the circumstances contemplated therein exist. A perusal of the impugned preliminary order made under Section 133 Cr.P.C would show that the complaints necessarily relate to a functioning of an educational institution. The collection of fees by the school, is governed by the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. The educational agency of the school is a registered society and power of control over the affairs of the registered society vests with the Deputy Registrar of Societies under Section 36 of the Tamil Nadu Societies Registration Act, 1978. If at all, the school has collected more fees it could be solved under the provisions of the Tamil Nadu Schools (Regulation



of Collection of Fee) Act, 2009. If there are irregularities in the management of the society, the competent authority under Section 36 of the Societies Registration Act, shall take action. The District Magistrate cannot invoke power under Section 133 which is basically meant to tackle with emergent situation of nuisance.

12. In my considered opinion, the circumstances that have been brought to light do not satisfy even one of the guidelines laid down by this Court in **Kodanad Estate's** case referred to supra. Merely because some of the parents along with certain political parties sat in dharna obstructing the traffic, Section 133 cannot be invoked. If at all, it could be invoked, it could be done for abatement of nuisance. In that event, action should have been taken against the protesters who had indulged in an illegal activity of road blockade and not against the petitioners herein.

13. Learned Government Advocate (Criminal Side) appearing for the respondent produced the report of the Deputy Superintendent of Police, Srivilliputhur.

14. It is seen from the report that the action of the school management in allowing the Principal to continue despite the advice of the Revenue Divisional Officer was not to the liking of the authorities. To employ a person as a Principal is the sole prerogative of the management and I do not think that the revenue authorities can regulate the same and arm twist the management to remove the Principal by invoking the provisions of Chapter X of the Code of Criminal Procedure, 1973 which are essentially intended to address emergent situations. The other allegations relating to collection of fees etc., are essentially private disputes between the parents and the school management. The school being private unaided educational institution is entitled to collect fees as fixed by the committee formed for that purpose. If there is any excess fee, there is a remedy provided under the provisions of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009.

15. The report of the Deputy Superintendent of Police, Srivilliputhur itself shows that private issues between the other teachers of the school and the Principal were highlighted and they have been made a ground for invoking the provisions of Chapter X of the Code of Criminal Procedure, 1973. This in my considered opinion, cannot be countenanced. The conduct of the revenue officials, in my opinion, does not befit their positions. But however, in view of the lapse of time and the fact that the then Principal namely, the petitioner in CrI.R.C.No.1000 of 2011 is no longer continuing as a Principal of the said school. I do not



16.The very initiation of the proceedings against the petitioners suffers for want of authority. Moreover, the petitioners in CrI.R.C (MD)Nos.980 and 988 of 2011 are only former members of the school committee. Hence, I have no hesitation in holding that the very initiation of the proceedings under Section 133 of the Code of Criminal Procedure, 1973 suffers for want of authority and they are liable to be quashed.

17.Accordingly, the Criminal Revision Cases are allowed and the initiation of proceedings under Section 133 Cr.P.C against the petitioners are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To:

The District Magistrate
and District Collector,
Virudhunagar District,
Virudhunagar.

SMS

PSM/SKN/SAR1/14.06.2017/7P/2C

Pre-delivery common order made in
Criminal Revision Petition (MD) Nos. 980,
988 and 1000 of 2011
05.06.2017