

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.8169 OF 2016

ORDER:

1 This Petition, under Section 482 Cr.P.C, is filed seeking to quash the order dated 23.05.2016 passed in M.C.No.75 of 2016 on the file of the Court of the Mandal Executive Magistrate & Tahsildar, Kothapeta, East Godavari District.

2 The learned counsel for the petitioner would submit that the impugned order is not sustainable either on facts or on law on the following grounds: 1) The Mandal Executive Magistrate, Kothapeta is not specifically empowered to pass order under Section 133 Cr.P.C, 2) The impugned order was passed without giving an opportunity to the petitioner to put forth his grievance, which amounts to violation of principles of natural justice, and 3) If the impugned order is allowed to stand, it would amount to miscarriage of justice.

3 *Per contra*, the learned counsel for the second respondent submitted that the petitioner has been running a coir industry in the residential locality of Palivela village, which is causing ill-health to the public due to emerging of dust. He further submitted that the petitioner is storing the raw material on the road thereby causing obstruction to the passersby eventually the public are deprived of using the road. He would further submit that the impugned order passed by the learned Mandal Executive Magistrate is legally sustainable and does not call for any interference of this Court while exercising jurisdiction under Section 482 Cr.P.C.

4 The point that arises for consideration in this Criminal Petition is 'whether the impugned order passed by the learned Mandal Executive Magistrate is legally sustainable or not?'

5 A perusal of the record reveals that in the year 2011 the petitioner started a small scale industry in the name and style of Sri Kanaka Durga Coir Industry. The activity of the industry is processing of coconut coir and weaving of coconut rope from that coir. The material placed before the Court further reveals that the petitioner obtained necessary permissions from the General Manager, District Industrial Centre, Kakinada and No Objection Certificate from the Gram Panchayat, Kothapeta.

6 On 23.5.2016 the Mandal Executive Magistrate passed the impugned order *suo motu*. It is needless to say that no judicial or quasi judicial order can be passed without giving an opportunity to the affected party. The second respondent passed the impugned order as if the petitioner is keeping the raw material on the road, thereby causing inconvenience to the public and that the industry started by the petitioner also causes injury to the health of the residents of that locality. In such circumstances, the Mandal Executive Magistrate ought to have issued a show cause notice calling for the explanation of the petitioner. Instead of resorting to such procedure, the second respondent has straight away passed the impugned order directing the petitioner to close down the business. A perusal of the impugned order reveals that the learned Executive Magistrate passed the impugned order in gross violation of principles of natural justice.

7 The second respondent did not file even a single scrap of paper to establish that he is specially empowered to pass order under Section 133 Cr.P.C. The material placed before the Court falls short to establish that the second respondent was authorised by a competent authority to pass orders under Section 133 of Cr.PC. An order passed

without any authority is non-est in the eye of law. At this juncture, to substantiate the argument the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in **Sri Ayyappa Stone Crusher, Kuntrapakam vs. Mandal Revenue Officer, Tirupathi**¹ wherein this Court held at para Nos.9 to 11 as follows:

9. Coming in the realm of Chapter-X dealing with maintenance of Public order and tranquillity, Section 133 of the Code pertains to removal of public nuisance. A plain reading of the above provision shows that the Executive Magistrate is competent to issue proceedings under this Section upon receipt of a report from a police officer or other information and considers that nuisance should be removed from any public place. He may make a conditional order requiring a person causing such nuisance within a time fixed therein to remove such nuisance or if that person objects so to do to appear before him, on a date fixed by the order to show-cause to why the order should not be made absolute. In other words under Section 133(1) of the code, the Executive Magistrate should pass a preliminary order. Under Section 137 of the Code, the Executive Magistrate should conduct an enquiry and pass final orders as per the procedure laid down under Section 138 of the Code. Section 133(2) of the Code provides that such an order passed by the Executive Magistrate under Section 138 of the Code, shall not be called in question in any Civil Court. The orders passed under Section 133(1) of the Code are preventive in nature and meant to prevent any public nuisance. On a close scrutiny of the above provisions, it is obvious that the jurisdiction is vested to issue proceedings in the District Magistrate or the Sub-Divisional Magistrate, or any other Executive Magistrate who is specially empowered in this behalf by the State Government. Section 20 of the Code enables the State to appoint the Executive Magistrates in every district. One of them shall be the District Magistrate. In any Sub-Divisional of the District, the Government may also appoint an Executive Magistrate as the Sub-Divisional Magistrate. Under the hierarchy the Sub-Divisional Magistrate and the Executive Magistrate shall be subordinate to the District Magistrate as per Section 23 of the Code. Turning to Section 133 of the Code again either the District Magistrate or the Sub-Divisional Magistrate is competent to exercise jurisdiction under it. However, other Executive Magistrates are not competent to exercise jurisdiction, except those who are specially empowered in this behalf by the Sub-Divisional Magistrate. Therefore, for an Executive Magistrate to exercise jurisdiction under Section 133 of the Code, he must be specially empowered by the State Government for that purpose, whereas such empowerment is not necessary for a District Magistrate or a Sub-Divisional Magistrate.

10. The impugned proceedings in the instant case have been passed by the Mandal Executive Magistrate. It is not known as to whether the learned Mandal Executive Magistrate has been specially empowered in this behalf to act under Section 133 of the Code. No proceedings issued by the Government

¹ 2001 (1) ALT (CrI) 136 (A.P.)

appointing specially for the purpose has been placed before this Court nor has been articulated in the order expressly. In the absence of any such special empowerment it is obvious that the competence of the learned Executive Magistrate will be at stake and any order passed by him will become an order having been passed without jurisdiction.

11. The first respondent herein is the learned Executive Magistrate. He filed his counter resisting the present petition. In the prolix counter filed by him, it has not been mentioned anywhere that he is specially empowered in this behalf by the State Government. Under the circumstances it can be taken that the first respondent who issued the impugned proceedings has not been specially empowered in this behalf by the State Government. Therefore, he is not competent to invoke jurisdiction under Section 133 of the Code. In ordinary course either the District Magistrate or the Sub-Divisional Magistrate should have initiated the proceedings. The order passed by the first respondent for the above reasons is an order passed without jurisdiction and therefore, not an order in the eye of law.

8 The facts of the case on hand are almost identical to the facts of the case cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that this is a fit case to set aside the impugned order passed by the learned Mandal Executive Magistrate, Kothapeta under Section 133 of Cr.P.C.

9 In the result, the Criminal Petition is allowed, quashing the order dated 23.05.2016 passed in M.C.No.75 of 2016 on the file of the Court of the Mandal Executive Magistrate & Tahsildar, Kothapeta, East Godavari District. However, quashing of the impugned order does not preclude the learned Executive Magistrate to pass orders by duly following the procedure established under law. As a sequel, miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date:21-06-2017.

Kvsn