

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10092 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in M.C.No.B/558/2017 dated 19.09.2017 issued by the Special Executive Magistrate, Hyderabad District, by exercising power under Section 133 Cr.P.C in Form No.20 directing the petitioner to remove Pool City Billiards Snooker Parlour Centre at R/o 10-3-5, Mujadaddy Estate, Mehdipatnam, Hyderabad within 48 hours from the date of notice and close the said property with a threat of taking legal action on failure to close the said property.

The only contention of the learned counsel for the petitioner before this Court is that the Magistrate has not followed the procedure contemplated under Subsection (1) of Section 133 Cr.P.C.

Subsection (1)(a) of Section 133 Cr.P.C conferred power on the Executive Magistrate to pass a conditional order for removal of nuisance and 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 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.

But, the contention of the learned counsel for the petitioner is that no conditional order was passed and no evidence is recorded.

It appears, from the notice in Form No.20 that the Executive Magistrate did not receive any information or report from the police and no evidence is recorded. Without conducting any enquiry, and affording an opportunity passing such an order, directing the petitioner to close the said property with a threatening action is illegal. The order under not in compliance of Section 133(1)(a) Cr.P.C and principles of natural justice.

Therefore, the criminal petition has to be disposed of, setting aside the order while permitting the Special Executive Magistrate, Hyderabad District, to follow necessary procedure under Section 133 Cr.P.C and pass appropriate orders in accordance with law.

Accordingly, the criminal petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Dated:01.11.2017
SP