

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-34453-M-2006 (O&M)
Date of decision : 26.05.2017

Rajinder Singh

...Petitioner

Versus

Gram Panchayat Village Bindrakh

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ramneesh Puri, Advocate/Amicus curiae,
for the petitioner.

None for the respondent.

JITENDRA CHAUHAN, J. (Oral)

The instant petition under Section 482 of the Code of Criminal Procedure, has been filed by the petitioner seeking quashing of order dated 22.11.2003, passed by learned Sub Divisional Magistrate, Roop Nagar, thereby, dismissing the application of the petitioner under Section 133 of the Code of Criminal Procedure and order dated 31.01.2006, passed by learned Additional Sessions Judge, Roop Nagar, whereby, the revision petition moved by the petitioner against order dated 22.11.2003 has also been dismissed.

It is the case of the petitioner that he had built his residential house in his own land comprising in khatoni No.52/74 khasra No.799, situated in Village Purkhali, Tehsil and Distt. Ropar, under the name and style Guron Farm. The respondent Gram Panchayat through some persons

has been throwing bodies of dead animals near the said farm house at a distance of about 15 feet and it is a source of constant nuisance. It is further alleged that there is danger to the lives of the family members of the petitioner and other passers-by because of emitting of pungent smell of dead animals throughout day and night. The petitioner requested the Sarpanch to remove the dead animals therefrom but to no avail, constraining him to file an application for initiating proceedings under Section 133 Cr.P.C. against respondent Gram Panchayat.

The respondent resisted the complaint and pleaded that the petitioner is an outsider and if any person makes construction of the property near the land reserved for *hadda rori* he cannot blame the Gram Panchayat.

After considering the report of the Tehsildar and evidence on file, learned Sub Divisional Magistrate dismissed the complaint vide order dated 22.11.2003. Feeling aggrieved, the petitioner filed revision petition, which was also dismissed vide impugned judgment dated 31.01.2006.

Still dissatisfied, the petitioner filed the present petition under Section 482 Cr.P.C. for quashing the impugned orders.

Learned *amicus curiae* for the petitioner submits that Article 21 of the Constitution of India is a fundamental right which guarantees every person right to life and personal liberty. Right to life includes right to live with human dignity. To buttress his argument, learned amicus curiae has placed implicit reliance on the law laid down by hon'ble the Supreme Court in landmark judgment of ***Menaka Gandhi Vs. Union of India, 1978 AIR SC 597.***

Learned amicus curiae further argued that the respondent-Sarpanch has been inimical to him and instigating people to throw *hadda rori* of dead animals near residential premises of the petitioner.

There is no assistance on behalf of the respondent.

I have heard learned amicus curiae for the petitioner and perused the case file.

There is no dispute about the proposition of law laid down in ***Maneka Gandhi's case*** (supra) but the ratio of reported case is distinguishable on facts of the present case.

In this case, certain material facts are not in dispute. It is the admitted position that *khasra* No.102(3-18) is owned by the Gram Panchayat and has been earmarked for the purpose of *hadda rori*. As per the report submitted by Tehsildar, *khasra* No.102(3-18) is also reserved for the said purpose. The same exists prior to the raising of construction by the petitioner. The petitioner knowing fully well that the site is reserved for *hadda rori* purchased the land and raised construction thereupon. It was for the petitioner to be vigilant at the time of purchase of the land. The petitioner cannot now claim benefit of Article 21 of the Constitution of India pleading that his fundamental right is being infringed. One who knowing and deliberately incurs a risk, cannot superimpose consequences thereof upon others. It is not in dispute that the said area, reserved for *hadda rori*, was in existence prior to raising construction by the petitioner. The argument with regard to inimical relations with the Sarpanch also do not carry any weight. No evidence has been led by the petitioner to prove the aforesaid assertion.

As a result, no fault can be found with the concurrent findings recorded by both the Courts below, which are hereby affirmed. The present petition is devoid of any merit and hereby dismissed.

26.05.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No