

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

**CRM No.M-23494 of 2017(O&M)
Date of Decision: September 26, 2017**

Uma Shankar and another

...Petitioners

VERSUS

Resham Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Malwai, Advocate
for the petitioners.

Mr.Arihant Jain, Advocate
for the respondents.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against Resham Lal and other respondents for quashing the judgment dated 05.06.2017 passed by learned Addl. Sessions Judge, Sangrur vide which the revision filed by the respondents against the order dated 12.04.2017 passed by learned SDM, Malerkotla, was allowed and the matter was remanded back.

Notice of motion was issued. Learned counsel for the respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

In the present case, an application was filed under Section 133 Cr.P.C. by Uma Shankar and others, in which it is submitted that they are permanent residents of Mohalla Beriwalla, Choti Eidgah Road, Islam Ganj, Malerkotla and said area is a residential area. It is further stated that respondents are involved in the trade of storage of the hides of dead animals in the said area which is a nuisance problem. Upon receiving the application, notice was given to the respondent and order dated 12.04.2017 was passed under Section 133 Cr.P.C. The respondents were directed to stop the trade of processing and storage of the hides/skins of dead animals in the residential area.

As per order passed by learned SDM, Malerkotla, no evidence was produced by the parties. A report was sought from the District Epidemiologist and also from Tehsildar, Malerkotla. Learned SDM, Malerkotla also visited the spot in the presence of both the parties and passed the order under Section 133 Cr.P.C. and respondents were directed to stop their trade of pre-processing, storage and sale of skins of dead animals latest by 15.06.2017. Aggrieved from this order dated 12.04.2017, a revision was filed by the respondents and learned Addl. Sessions Judge, Sangrur, vide impugned judgment dated 05.06.2017, accepted the revision, set aside the order dated 12.04.2017 and remanded the matter back to the adjudicating authority to pass appropriate orders in accordance with law after following the procedure of summons case. The parties were given liberty to move an application to Deputy Commissioner for the transfer of their case to other SDM in case they feel that since the previous SDM has made local inspection, then prejudice may be caused to them.

present petition has been filed.

I have gone through the order passed by learned SDM as well as judgment passed by learned Addl. Sessions Judge, Sangrur. The judgment passed by learned Addl. Sessions Judge, Sangrur, is correct, as per evidence and law. Learned SDM, Malerkotla has not recorded the evidence as prescribed under Section 138 Cr.P.C. As per Section 138 Cr.P.C., the Magistrate is to record the evidence as in summons case. In no way, it can be held as a summary trial. As no evidence has been recorded therefore no opportunity to cross-examine the witness has been given to the other side. Similarly, learned SDM has himself visited the spot, which was not required. Learned SDM has already got report of Tehsildar and the other Expert. As the SDM himself has visited the spot and has made the base for passing the order, therefore, it is not as per law. The inspection of the SDM himself cannot be treated as evidence. The other party could not cross-examine the SDM nor confronted his report.

The Hon'ble Supreme Court in ***Keisam Kumar Singh vs. State of Manipur, 1985(2) RCR (Criminal) 492***, has held that normally court is not entitled to make a local inspection and if such inspection is made, it can never take the place of evidence or proof but is meant for appreciating the position of the spot.

In view of the above discussion, I find that learned Addl. Sessions Judge, Sangrur has rightly accepted the revision petition vide impugned judgment dated 05.06.2017 and matter has been rightly remanded back. The impugned judgment dated 05.06.2017 passed by learned Addl. Sessions Judge, Sangrur, is correct, as per evidence and law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

September 26, 2017	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No