

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 613 of 2018

Romi Sahu S/o Laxmi Sahu Aged About 26 Years R/o Mahamaya Steel Works Shop, Mandi Road, Baloda Bazar Tahsil Baloda Bazar District Baloda Bazar Bhatapara Chhattisgarh

---- Petitioner

Versus

1. Amardip Singh Chawla S/o Dilip Singh Chawla R/o Ward No. 10, Beside Sahu Nursing Home, Baloda Bazar District Baloda Bazar Bhatapara Chhattisgarh

2. State Of Chhattisgarh Through The District Magistrate Baloda Bazar District Baloda Bazar Bhatapara Chhattisgarh

---- Respondents

For petitioner - Shri P.K. Patel, Advocate.

For Respondent/State –Smt. Madhunisha Singh, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

28/03/2018

Heard.

1. Instant petition is against the order dated 13/03/2018 passed by the Sessions Judge, Baloda-Bazar in Criminal Revision No.04/2018 wherein order dated 18/01/2018 passed by the SDM, Baloda-Bazar was affirmed wherein SDM has ordered for recording evidence under section 133 of the Cr.P.C.

2. Facts of this case are that one application was filed by respondent Amardip Singh Chawla that the petitioner is illegally running a shop Mahamaya Steel Works Shop which prepares railing, doors, window. It was stated by respondent in order to prepare the same one cutter machine and other roller machine of leather are being used which used to cause severe noise pollution. Further fluctuation in the electricity is caused because of the high voltage consumption by welding machines. Therefore application was made to the SDM to remove such nuisance. The SDM

after receiving such application asked for reply of the petitioner against whom complaint was made. Reply was filed by the petitioner before the District Magistrate and thereafter SDM found it proper to record the evidence. Said order was under challenge before the Sessions Judge, Baloda-Bazar and the Sessions Judge, Baloda-Bazar by its impugned order dated 13/03/2018 dismissed the petition.

3. Learned counsel for the petitioner would submit that order under section 133 of Cr.P.C. is always conditional and it cannot be passed without recording any evidence and procedure has been prescribed in Section 138 of Cr.P.C. which mandate that show cause has to be given.

4. Perusal of the order of the SDM would show that till date no conditional order has yet been passed for removal of the nuisance under section 133 of Cr.P.C. The action contemplated can be stated to be that it is procedure in compliance to ascertain the prerequisite condition before any order u/s 133 of Cr.P.C. is passed. The section mandate that the order should be preceded by evidence. Record would show that same procedure are being carried out by the SDM.

5. Consequently, petition is premature at this stage, no interference is required in the order of Sessions Judge and order of SDM. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE