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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.04.2018

DELIVERED ON : 29.06.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C. (MD) No. 104 of 2018

and

Crl. M.P. (MD) No. 1358 of 2018

M/s. Prime Industries (Sri Rajeswari Industries),
Represented by its partner,
P. Srinivasan,
Ramanujam Nagar, LNS Village, Karur,
Karur District.

.. Petitioner

Vs.

1. Sub-Divisional Magistrate/Revenue Divisional Officer,
Karur.

2. District Pollution Control Board Engineer
Tamil Nadu Pollution Control Board,
Ramakrishnapuram West, Karur, Karur District.

3. N. Ponnusamy

4. R. Natarajan .. Respondents
(Respondents 3 and 4 impleaded as per
order of this Court made in
Crl. M.P. (MD) No. 2090 of 2018 in Crl. R.C. (MD) No. 104 of 2018
dated 16.03.2018)

Prayer : This criminal revision case is filed under Sections 397
r/w. 401 of Cr.P.C., to call for the entire records in connection
with the order passed by the first respondent in NA.KA.A2/331/2018
dated 16.02.2018 and set aside the same as illegal.

For Petitioner : Mr. V. Ramamurthy
For Respondents 1 and 2 : Mr. K. Suyambulinga Bharathi
Government Advocate (Crl. Side)
For Respondents 3 and 4 : Mr. C. Mayilvahan Rajendran

ORDER

Heard Mr. V. Ramamurthy, learned counsel appearing for the
petitioner and Mr. K. Suyambulinga Bharathi, learned Government
Advocate (Crl. Side) appearing for the respondents 1 and 2 and



Mr.C.Mayilvahana Rajendran, learned counsel appearing for the respondents 3 and 4.

2.This petition has been filed to set aside the order passed by the first respondent in NA.KA.A2/331/2018 dated 16.02.2018.

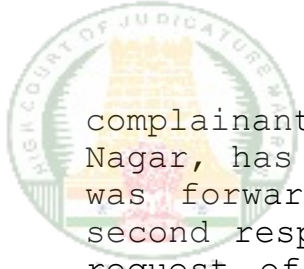
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3.The petitioner is running a industry from the year 1992 under various names. Due to some ill-feeling, the third respondent offered to buy the Company. On refusal by the petitioner, the third respondent instigated the second respondent to inspect the industry on 28.02.2017. The second respondent inspected the industries and they did not find any violation of the Rules. Later the third respondent instigated the Officials to pass an order on 16.02.2018 to close the functioning of the Company. The first respondent ordered notice under Section 133 Cr.P.C., Without considering the explanation of the petitioner, the first respondent passed the order on 16.02.2018.

4.On the side of the petitioner, it is stated that the petitioner is having licence to run the industry and after following the safety measures obtained the licence and renewed the same periodically. The petitioner and his wife were running business in the same premises for the past 20 years and there was no complaint against them. Section 133 Cr.P.C., empowers to removal the obstruction and condition for imposing the clause (vi) in Section 133 Cr.P.C., is not made out. As there is no nuisance to the public, nobody has come forward with a complaint. The industry is not emitting any polluting air. There is no pollution at all. The action should be taken only on receiving a report from the Pollution Control Board. The first respondent does not follow the procedure for proclamation and no opportunity was given to the petitioner to produce any witness and prayed that the order of the first respondent is to be set aside.

5.On the side of the respondents, it is stated that the petitioner is running a lathe works industry and he has not obtained permission from the Pollution Control Board. The Revenue Divisional Officer inspected the premises. The petitioner failed to receive the notice and the notice was affixed. Again when the Revenue Divisional Officer sent the second notice, the petitioner refused to receive the same. Again the notice was served by affixing. An opportunity was given to the petitioner. Only on the complaint from the public I.e., on 15.02.2018, summons to appear on 16.02.2018 was sent to the petitioner and no other notice is necessary.

6.On the side of the respondents 1 and 2, it is stated that Amaravathy Hospital is situated 15 meters from the petitioner's industry, Gughan Hospital is situated 30 meters from the occurrence place. There is a temple within 30 meters from the place of occurrence. It is further stated that the industry is running in residential area. Section 133 is attached with Sections 133(i) and 133(iii) is also attracted. It is further stated that the



complainant namely one N.Sakthivel who is the resident of Ramanujam Nagar, has lodged a complaint before the Collector and the complaint was forwarded to the second respondent by the Collector and the second respondent called for explanation from the petitioner and on request of the second respondent, the first respondent has issued notice to the petitioner. The petitioner refused to receive the summons twice. Now the petitioner is claiming that he has not been given an opportunity. Even thereafter, on 06.02.2018 and on 12.02.2018, the petitioner did not appear before the first respondent. On 13.02.2018 the petitioner has given a written statement admitting that he has not obtained permission from the second respondent and other related Departments and that under Section 58 of Indian Evidence Act admitted facts need not be proved and that the violation caused are proved and admitted.

7.On the side of the petitioner, the learned counsel relied upon the Judgment passed by the Hon'ble Supreme Court in the case of Kachrual Bhagirath Agrawal and others v. State of Maharashtra and others reported in 2004 CrI. L. J. 4634, which reads as follow:

" Public nuisance - Trade injuries to health or causing physical discomfort - It must be shown that public discomfort was considerable and large section of public was affected injuriously - Magistrate is to conduct enquiry and decide whether there was reliable evidence"

8.On the side of the petitioner, the learned counsel placed reliance on the Judgment passed by the Hon'ble Supreme Court in the case of Vasant Manga Nikumba and others v. Baburao Bhikanna Naidu (Deceased) by LRS. And another reported in 1996 Supreme Court Cases (Cri) 27, which reads as follows:

" The proceedings under Section 133 is not intended to settle private disputes or a substitute to settle civil disputes though the proceeding under Section 133 is more in the nature of civil proceedings in a summary nature."

9.On the side of the petitioner, the learned counsel placed reliance on the Judgment passed by the Hon'ble Supreme Court in the case of C.A.Avarachan v. C.V.Sreenivasan and Another reported in 1996 Supreme Court Cases (Cri) 174, which reads as follows:

" The omission on the part of the Sub-Divisional Magistrate to draw up a preliminary order, which is a sine qua non for initiating proceedings under Section 133 Cr.P.C., and without following the procedure provided for by Section 138 Cr.P.C., the order made by the Sub-Divisional Magistrate directing the appellant to permanently close the quarry operations is unsustainable and is vitiated."



10. Records perused. The main allegation of the petitioner is that the petitioner was not given sufficient opportunity. On the side of the respondents, it is stated that on two occasions, the Enquiry Officer sent notice to the petitioner but the petitioner refused to receive the same. It is further stated that the petitioner was absent on two occasions and he was present on the third occasion and admitted the allegations and that the Revenue Divisional Officer ordered to close the industry in 24 hours from the date of receipt of copy of this order on 16.02.2018.

11. On the side of the petitioner, it is stated that nobody has lodged a complaint against the petitioner for the past 30 years, and only due to political motive, this false case has been registered.

12. On the side of the respondents, it is stated that one Sakthivel lodged a complaint and so many villagers have represented before the Revenue Divisional Officer.

13. On the side of the petitioner, it is stated that the first respondent did not enquire the witness and did not conduct enquiry. It is stated that the first respondent can only pass temporary order and he could not pass a permanent order under Section 133(i)(ii) Cr.P.C., to close down the premises permanently.

14. A perusal of the record reveals that the Revenue Divisional Officer has passed order under Section 133(i)(ii) that clearly instructed to close the industry. The order is not a temporary order but a permanent one. The first respondent has not examined any witness. The Judgment cited by the petitioner is clearly applicable to the facts of this case. The first respondent has failed to prove the mandatory requirement of drawing up the preliminary order before initiating proceedings under Section 133 Cr.P.C. Moreover, the licence issued to the petitioner is filed.

15. For the above reasons, there seems to be reasonable grounds for the petitioner and the petitioner is running the business. If the industry is being closed, the petitioner will be put to irreparable loss. Hence, this criminal revision petition is allowed and the order passed by the first respondent is hereby set aside. Consequently, Crl.M.P.(MD)No.1358 of 2018 is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

1.Sub-Divisional Magistrate/Revenue Divisional Officer,
Karur.

2.District Pollution Control Board Engineer
Tamil Nadu Pollution Control Board,
Ramakrishnapuram West,
Karur,
Karur District.

+1CC to Mr.V.Ramamoorthy Advocate in SR.No.70776.

+1CC to Mr.C.mayilvahana Rajendran Advocate in SR.No.70519.

MRN

DS/SKN-RSK/SAR-1 :17.07.2018: 5P/5C

Crl. R.C.(MD)No.104 of 2018
29.06.2018