

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

113

CRM-M-15914-2014

Date of Decision: September 18, 2018

Manager, Tower Vision India Pvt. Ltd.

.....Petitioner(s)

versus

Mahavir and another

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Jasbir Mor, Advocate for the petitioner.

Mr. Jagjeet Beniwal, Advocate
for respondent No.1

Sudhir Mittal, J. (Oral)

The petitioner has installed a mobile tower in a plot adjoining the plot of respondent No.1. The installation work was completed in January 2010. Respondent No.1 filed a complaint under section 133 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') alleging public nuisance and the same was allowed vide order dated 26.02.2013 by the Court of Sub-Divisional Magistrate, Charkhi Dadri. Revision against the said order has been dismissed by the Additional Sessions Judge, Bhiwani, vide judgment dated 02.04.2014. Hence, the present quashing petition.

2. Learned counsel for the petitioner submits that a reading of the complaint filed by respondent No.1 shows that allegations have been made in respect of the property of the complainant and not of any public nuisance or general damage to the public at large. Thus, the proceedings under section 133 Cr.P.C. are not maintainable.

He places reliance upon *Makhan Lal Vs. Buta Singh 2003(2)RCR(Criminal)416*. He

further submits that the mobile tower was installed after seeking permission from the Gram Panchayat. The permission of the Gram Panchayat is Annexure P-5 on the record. The ownership and possession of the lawful owner has been verified vide Annexure P-6. Thus, the tower was installed after taking necessary permissions. The installation is also in accordance with the Indian Standard Specifications as is evident from Annexure P-4. There is no illegality in erection of the tower and thus, the Courts below have erred in passing the impugned orders.

3. Learned counsel for respondent No.1 submits that the Government of Haryana, Department of Development and Panchayat, has issued notification dated 20.07.2012 providing for a procedure to be adopted for installation of mobile communication towers. The said notification also bans erection of such towers within the village *abadi*. The procedure prescribed in the said notification has not been followed in the instant case. The erection of the tower in the village *abadi* is also violative of the said notification as no mobile communication tower can be installed within the village *abadi*. Thus, the impugned orders are just and legal.

4. A specific question was directed towards learned counsel for respondent No.1 as to whether any public nuisance had been alleged in the complaint. He replies in the affirmative but when he was asked to read the complaint, it transpired that no public nuisance has been alleged in the complaint.

5. Regarding the notification of 2012, learned counsel for the petitioner submits that the said notification is under challenge in **CWP No.6145 of 2013**. The matter has been referred to a Full Bench and is next pending for 05.12.2018. Adoption of coercive method has meanwhile been stayed.

6. A perusal of the judgment in **Makhan Singh's case** (supra) leaves no manner of doubt that proceedings under section 133 Cr. P.C. can only be initiated in relation to public nuisance or obstruction when the emergent nature of the case so

demands. The complaint in the present case is regarding the private grievance as the allegations therein are that due to the vibrations being caused by the generator set up along with the mobile communication tower, the house of the petitioner developed cracks. The complaint is regarding the redressal of private grievance and section 133 Cr.P.C. could not have been invoked. The complaint is held to be not maintainable.

7. Arguments of learned counsel for respondent No.1 based upon the notification of 2012 also cannot be accepted because the mobile communication tower has been established in January 2010 and the notification of 2012 cannot have any retrospective operation. In any case, the said notification is under challenge as mentioned hereinabove and adoption of coercive means have been stayed. Under these circumstances, judicial discipline restrains me from passing any orders based upon above notification.

8. Learned counsel for respondent No.1 does not deny that before erection of the concerned mobile tower, permission of the gram Panchayat had been obtained. Thus, even if I consider the complaint to be maintainable, there is no illegality in erection of the tower. It has been set up after obtaining requisite permission. Certificate Annexure P-4 further shows that the design of the tower conformed to Indian Standard Specifications and under these circumstances, it cannot be said that the construction does not fulfill the requisite norms.

9. For the aforementioned reasons, the impugned orders cannot survive. The petition is allowed and the impugned orders are quashed.

September 18, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes