

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	19.02.2019
Date of Order	12.04.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrl.R.C(MD)No.12 of 2019andCrl.MP(MD)No.966 of 2019

Shahul Hameed
M/s.Hameed Marine Private Limited,
No.2/1D, Irukkandurai Part II Village,
Radhapuram,
Tiruneveli.
: Petitioner

Vs.

1.The Sub Collector,
O/o.The Sub Collector,
Cheranmahadevi,
Tirunelveli.

2.A.Sethuramalingam
Taluk Secretary,
Indian Communist Party,
Rathapuram Taluk,
74-B, Rathapuram Road,
Valliyoor-627 117.

(2nd respondent has impleaded as
as per the order, dated 15.02.2019
made in Crl.MP(MD)No.1138/2019
in Crl.RC(MD)No.12 of 2019)

: Respondents

Prayer: Criminal Revision has been filed under Section 397
r/w 401 of Criminal Procedure Code, against the order in
Na.Ka.A1/12172/2018, dated 09.01.2019 passed by the first
respondent.

For Petitioner : Mr.S.M.A.Jinnah

For 1st Respondent : Mr.A.Robinson
Government Advocate
(Criminal side)

<https://hcservices.ecourts.gov.in/hcservices/> For 2nd Respondent : Mr.K.Rajeshwaran

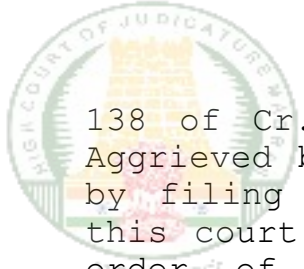
O R D E R

This Criminal Revision has been filed challenging the order of the first respondent made in Na.Ka.A1/12172/2018, dated 09.01.2019.

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2. Heard both sides and perused the materials available on record.

3. The learned counsel appearing for the petitioner submitted that the petitioner is running an establishment namely M/s. Hameed Marine Private Limited and the Industry is doing the production of fish foods, fish oil and fish paste by following entire rules and regulations imposed by the Tamil Nadu Pollution Control Board and during the year 2013, the petitioner applied for the commencement of industry and initially the Revenue Divisional Officer, Tirunelveli had given permission to run the industry in the above address and on 13.06.2013, the Department of Fire and Safety and Rescue issued "**No Objection Certificate**" and on 19.08.2013, the Department of Public Health and Preventive Medicine granted permission to run the factory, wherein it was clearly held that the site is found suitable for Public Health Point of view and thereafter, the building plan was also approved by the Assistant Director, Town Structure, Tirunelveli Division and Irukkanthurai Panchayat also gave approval to start the factor at the above address and received taxes for the same and thereafter, on 07.05.2013, the Tamil Nadu Pollution Control Board gave consent to establish the factory at the above address with certain conditions and after complying the conditions, on 11.02.2014 the Tamil Nadu Pollution Control Board issued a primary consent for the operation of the plant in the factory and the Department of Industry and Health has also given permission to start the factory, by order, dated 14.05.2015 and on 03.07.2015, the Tamil Nadu Pollution Control Board gave a final consent order to operate the factory till 31.03.2016 and subsequently, it was renewed and now, the consent is given till 31.03.2019, by order, dated 15.10.2017 and the petitioner availed various loan from TIIC and Tamil Nadu Mercantile Bank and invested the same to his factory and more than 40 employees are working in the factory and now the Industry situated at the rural area in Radhapuram, which is an outer area permitted by the local bodies to run industry and it situates well away from the people used placed and while so, during the year 2016, the 1st respondent issued a show cause notice, dated 12.03.2016 stating that some public have sent complaints against the factory as if it created un-breathable bad smell and it caused vomiting and dizziness to the Irukkanthurai people and the 1st respondent directed the petitioner to appear before him on 15.03.2016 and thereafter, on 15.03.2016 the petitioner appeared before the 1st respondent and submitted his written reply to the show cause notice and produced all the licenses and consent order issued by the Tamil Nadu Pollution Control Board and other authorities and while being so, on 02.09.2016, the petitioner was served with an order, dated 01.09.2016, wherein the 1st respondent passed an order under Section



138 of Cr.P.C and directed the petitioner to close the factory. Aggrieved by the said order, the petitioner approached this court by filing CrI.R.C(MD)No.640 of 2016 and after elaborate enquiry, this court has passed an order, dated 22.06.2018 setting aside the order of the 1st respondent. In such circumstances, the 1st respondent issued the impugned order, dated 09.01.2019. Aggrieved by the impugned order of the 1st respondent, the petitioner is before this court.

4.The learned Government Advocate (Criminal side) appearing for the first respondent submitted that based on the representations received from the public as well as the political parties stating that the petitioner's company had caused environmental hazard, injuries/hazardous to the public health and it came to understand that public nuisance is caused by the injuries/hazardous activities detrimental to public health and safety and hence, the impugned order was passed by the first respondent is correct and the criminal revision has to be dismissed.

5.The learned counsel appearing for the 2nd respondent submitted that the petitioner's company and other companies located in Radhapuram Taluk are releasing the waste water to the ponds across the villages by using containers and due to which, drinking water bores and soil are being hugely polluted and hence, the 2nd respondent and others sent representations to the concerned authorities and after knowing the real fact, the 1st respondent has passed the impugned order and prays for dismissal of the revision.

6.The main contention of the petitioner is that they installed the factory after getting permissions from various statutory bodies to govern the functioning of the factories. It is not denied on the side of the respondents.

7.The learned counsel for the petitioner submitted that the first respondent has power to pass a conditional order under Section 133 (1) (ii) Cr.P.C against a person to desist him from carrying on certain industrial activities, but the conditional order cannot be passed as interim order and the first respondent should be given an opportunity to the person against whom, the order is made to accept the conditional order or to object the order. In this case, the first respondent failed to follow the prescribed procedure as laid in the Code of Criminal Procedure and hence, the impugned order passed by the first respondent is liable to be set aside.

8.It is argued on the side of the respondents that there are totally three Fish Processing Units in the Irukkanthurai Village, Radhapuram Taluk, Tirunelveli District and due to the illegal above industries, air, soil and water of Irukkanthurai Village is being polluted and air of the locality to the radius of 15 Kilometres from the Village has been polluted and there is pungent smell is being spread by the above said companies and hence, the second respondent and others sent representations to the first respondent and others

and only after considering their representations and after coming to know about the irregularities committed by the above companies, the first respondent passed the above order in Na.Ka.A1/12172/2018 dated 09.01.2019 and when the health issues are imminent, the first respondent is having ample power under Section 133(1)(b) of the Cr.P.C to prevent the parties, who are all causing disturbance to the public and on that ground, the first respondent rightly exercised his power under Section 133(1)(b) of Cr.P.C and first respondent passed only interim orders and hence, no revision petition is maintainable and on that point itself, the above revision is liable to be dismissed and therefore, the impugned order passed by the first respondent is to be confirmed.

9.The main contention of the revision petitioner is that first respondent passed the impugned order on 09.01.2019 without giving reasonable opportunity and hence, the impugned order was passed as against the principles of natural Justice and therefore, it is liable to be set aside.

10.At this juncture it is necessary to refer the order passed by the first respondent on 09.01.2019, wherein it is stated as follows:-

“எனவே குற்ற விசாரணை முறைச்சட்டம் பிரிவு 133 உட்பிரிவு (1) (ii)-ன் கீழ் சுகாதாரகேடுகள் ஏற்படுத்தும் தங்களுக்குச் சொந்தமான மீன் அரவை ஆலையின் செயல்பாடுகளை உடனடியாக நிறுத்துமாறு இடைக்கால உத்தரவிடப்படுகிறது. (Interim Order) .

இந்த இடைக்கால உத்தரவு (Interim Order) தொடர்பாக தங்களுக்கு ஆட்சேபணை ஏதும் இருப்பின் 21.01.2019 அன்று காலை 11.00 மணிக்கு சேரன்மகாதேவி சார் ஆட்சியர் அலுவலகத்தில் சார் ஆட்சியர் அவர்கள் முன்னிலையில் நேரில் ஆஜராகித் தெரிவிக்குமாறு இதன் மூலம் தெரிவிக்கப்படுகிறது”

11.On perusal of Section 133(1)(b) of Cr.P.C., it reveals that the first respondent has got power to pass a conditional order and the first respondent has no power to pass an interim order under Section 133(1)(b) of Cr.P.C. Hence, this court is of the considered view that the order was passed under Section 133(1)(b) of Cr.P.C by the first respondent is a conditional order.

12.Section 133 of Cr.P.C. reads as follows:-

''133.Conditional order for removal of nuisance.-

(1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers.

(a) that any unlawful obstruction or
or from any way, river or channel which is or may
be lawfully used by the public; or



(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

13. In view of the above, the order passed by the first respondent is a conditional order and hence, the revision petition filed by the revision petitioner is maintainable. Therefore, the argument put forth on the side of the respondents stating that the order passed by the first respondent is an interim order and hence, the revision is not at all maintainable is not acceptable.

14. The learned counsel for the petitioner argued that the first respondent has not given any option to object any conditional order, but he straight away pass the order to close the factory and as per Section 135 of Cr.P.C, the person to whom the show cause notice was made is liable to response the same and without giving opportunity to the petitioner, the first respondent passed the impugned order and hence, it is liable to be set aside.

15. In this case, the first respondent issued a show cause notice only on 09.01.2019. The order passed by the first respondent discloses that only on the basis of the report given by the Tahsildar Radhapuram, he passed the closure order of the unit belonging to the petitioner.

16. On perusal of the records, it reveals that before passing order, no reasonable opportunity was given to the petitioner. No documents were produced on the side of the first respondent to prove that before passing the impugned order, the alleged complainants and public were examined by the first respondent. Further, no evidence was recorded before passing of the impugned order.

17. It is to noted here that it is the bounded duty of the first respondent to peruse the objection from the petitioner before passing the impugned order. In this case, no reasonable opportunity was given to the petitioner to put forth his case with relevant records. No documents were produced on the side of the respondents to prove that before passing the impugned order, Scientific Expert Inspected the premises of the petitioner.

18. Further, it is seen that the petitioner produced relevant documents to show that they obtained permission from several statutory bodies to run the industries. As per Section 135 of Cr.P.C, the person to whom the show cause notice was made is liable to respond the same. But in this case, before passing the impugned order, the first respondent straight away passed the order for closure of the factory belonging to the petitioner.



19. At this juncture, it is relevant to refer Section 135 of Cr.P.C, which would run thus:-

''135. Person to whom addressed to obey or show cause. The person against whom such order is made shall-

(a)perform, within the time and in the manner specified in the order the act directed thereby; or

(b)appear in accordance with such order and show cause against the same.''

In Sec.135 of Cr.P.C. the word ''or'' has given clear meaning that when an order was made against a person, he can perform the order within the time in the manner specified in the order or to appear in accordance with such order and show cause against the same. Hence reading of the above provision clearly reveals that the 1st respondent cannot pass an order u/s.133(1) to close the factory and directed the person to appear before him, instead he can pass an order to close the factory or to appear before him. But the 1st Respondent totally misunderstood the provisions and without applying his mind, he directed to close the factory and to appear before him."

20.Further, the learned counsel for the petitioner argued that before passing the impugned order, the 1st respondent has not conducted local investigation and appointed an expert to find out the truth, but nothing was done in the present case. The first respondent without following the rules had arbitrarily passed the order and hence, the impugned order is passed by the first respondent is not valid in law.

21.Further, the learned counsel appearing for the petitioner produced a ruling reported in (2011)4 MLJ (Crl) 933, (Ind Barath Powergencom Ltd., Vs. Revenue Divisional Officer-cum- Sub Divisional Magistrate, Kovilpatti) to the effect that what are the procedures to be followed before passing the order by the first respondent.

22.On careful perusal of the records produced on the petitioner and the respondents, it shows that the first respondent has not given any reasonable opportunity to the petitioner before passing the impugned order. Hence, this court is of the view that the impugned order passed by the 1st respondent in Na.Ka.A1/12172/2018, dated 09.01.2019 is liable to be set aside.



23. In the result, this criminal revision is **allowed**. The impugned order, dated 09.01.2019 passed by the first respondent is set aside. Consequently, connected CMP is closed.

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Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar(CS)

To

The Sub Collector,
Cheranmahadevi,
Tirunelveli District.

+1 CC to Mr.S.M.A.JINNAH, Advocate SR-60959.

+1 CC to Mr.K.RAJESHWARAN, Advocate SR-61109.

**Judgment made in
Crl.R.C(MD)No.12 of 2019
12.04.2018**

CS: (20/06/2019) 7P 4C