

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|---------------------|------------|
| Date of Reservation | 25.02.2019 |
| Date of Order       | 12.04.2019 |

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**THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI**

Cr1.R.C(MD)No.30 of 2019  
and  
CRL. MP(MD)No.1170 of 2019

1.Mr.Anand Chikkaya Kunder  
Director,  
Lax Bio Feeds Pvt. Ltd.,  
Weigh Bridge Campus,  
7/191, Irukkanthurai & Post,  
Radhapuram Taluk,  
Tirunelveli District.

2.Mrs.Vichitra Kumari Nair  
Director,  
Lax Bio Feeds Pvt. Ltd.,  
Weigh Bridge Campus,  
7/191, Irukkanthurai & Post,  
Radhapuram Taluk,  
Tirunelveli District.

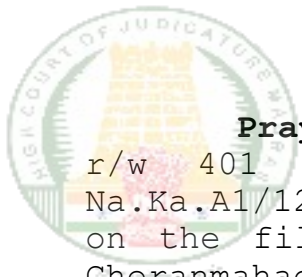
: Revision Petitioners/  
Petitioners

Vs.

1.The Sub Divisional Magistrate and Sub Collector,  
O/o.The Sub Collector,  
Cheranmahadevi,  
Tirunelveli.

2.A.Sethuramalingam  
Taluk Secretary,  
Indian Communist Party,  
Rathapuram Taluk,  
74-B, Rathapuram Road,  
Valliyoore-627 117.  
(R2 impleaded as per the order  
of this court, dated 18.02.2019  
made in Cr1.MP(MD)No.1413 of  
2019 in Cr1.RC(MD)No.30 of 2019)

: Respondents



**Prayer:** Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, against the order in Na.Ka.A1/12172/2018, dated 09.01.2019 under Section 133(1) of Cr.P.C on the file of the Sub Divisional Magistrate and Sub Collector, Cheranmahadevi District.

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For Revision Petitioners : Mr.T.Lajapathy Roy

For 1<sup>st</sup> Respondent : Mr.A.Robinson  
Government Advocate  
(Criminal side)

For 2<sup>nd</sup> Respondent : Mr.K.Rajeshwaran

### O R D E R

This Criminal Revision has been filed challenging the order in Na.Ka.A1/12172/2018, dated 09.01.2019 under Section 133(1) of Cr.P.C on the file of the Sub Divisional Magistrate and Sub Collector, Cheranmahadevi District.

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

3.The learned counsel appearing for the petitioners submitted that the petitioners are running an establishment namely M/s.Lax Bio Feed Private Limited in Irukkanthurai Village, Radhapuram Taluk, Tirunelveli District, to process Bio-Feed, which could be used for poultry feed and fish feed and the factory is located within 22 Acres campus, after obtaining permission from the concerned authorities and the Joint Director of Industrial Safety and Health has issued a Registration Certificate registering 12 workers to be employed in the factory and the Deputy Director of Health Services, Tirunelveli had also approved the site for the fish feed industry and issued **No Objection Certificate**. The Commissioner of Panchayat Union also granted approval for the factory and consent was also granted by Tamil Nadu Pollution Control Air (Prevention and Control of Pollution Act, 1981) Board under the Water (Prevention and Control of Pollution) Act, 1973. In the meantime, on 12.03.2016, the 1<sup>st</sup> respondent passed an order directing closure of the Industrial Unit within 24 hours and against which, the petitioners moved before this court and this court granted interim stay stating that closure of the factory caused irreparable loss to the petitioners and thereafter, on 07.03.2017, the Appellate Authority of the Tamil Nadu Pollution Control Board granted consent to establish the Industry. Though, the interim order granted by this court was extended till 31.03.2010, the first respondent has passed the impugned order on 09.01.2019 stating that this court directed the authority to pass fresh orders. Aggrieved by the impugned order of the 1<sup>st</sup> respondent, the petitioners are before this court.



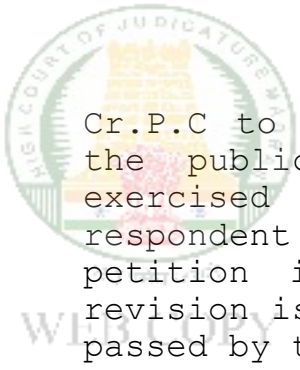
4. The learned Government Advocate (Criminal side) appearing for the first respondent submitted that based on the representations received from the public as well as the political parties stating that the petitioners company had caused environmental hazard, injuries/hazardous to the public health, a report was called from the Tahsildar, Radhapuram and the report reveals that public nuisance is caused by the injuries/hazardous activities detrimental to public health and safety and the subsequent inspection was also confirmed the same and hence, the impugned order was passed by the first respondent is correct and prays that the criminal revision has to be dismissed.

5. The learned counsel appearing for the 2<sup>nd</sup> respondent submitted that the petitioners company and other companies located in Radhapuram Taluk are releasing 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 2<sup>nd</sup> respondent and others sent representations to the concerned authorities and after knowing the real fact, the 1<sup>st</sup> respondent has passed the impugned order and prays for dismissal of the criminal revision.

6. The main contention of the petitioners 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 petitioners 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 petitioners 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 nuisance should be removed from any public place 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 petitioners 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 petitioners 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 petitioners, 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 petitioners.

16. On perusal of the records, it reveals that before passing order, no reasonable opportunity was given to the petitioners. 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 petitioners before passing the impugned order. In this case, no reasonable opportunity was given to the petitioners to put forth their 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 petitioners.

18. Further, it is seen that the petitioners 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 petitioners.

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-*

<https://hcservices.ecourts.gov.in/hcservices/>

*(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.''

WEB COPY 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 1<sup>st</sup> 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 1<sup>st</sup> 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 petitioners argued that before passing the impugned order, the 1<sup>st</sup> 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 petitioners produced a ruling reported in (2011)4 MLJ (Cr1) 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.

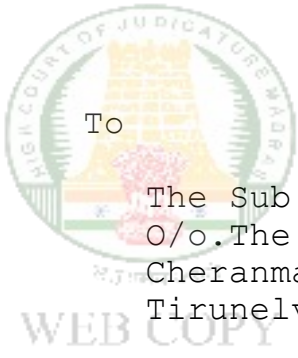
22.On careful perusal of the records produced on the petitioners and the respondents, it shows that the first respondent has not given any reasonable opportunity to the petitioners before passing the impugned order. Hence, this court is of the view that the impugned order passed by the 1<sup>st</sup> 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.

Sd/-

Assistant Registrar (C.O)

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To

The Sub Divisional Magistrate and Sub Collector,  
O/o. The Sub Collector,  
Cheranmahadevi,  
Tirunelveli.

+1 CC to M/s.K.RAJESHWARAN, Advocate SR-61110.

**Judgment made in  
Crl.R.C (MD) No.30 of 2019  
12.04.2019**

CS: (17/06/2019) 7P 3C