



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C. (MD) No.159 of 2019
and Crl.M.P (MD) Nos.2482 and 2483 of 2019

D.Varatharaj ... Revision Petitioner/Petitioner

Vs.

The Sub Divisional Magistrate and Sub Collector,
O/o. The Sub Collector,
Palani Division,
Dindigul District. ...Respondent/Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code to call for the records pertaining to the order in Na.Ka.2904/2018/A7 dated 4.6.2018 on the file of the respondent and set aside the same.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Ms. M.Anandha Devi
Government Advocate (Crl.side)

O R D E R

The present revision petition has been filed against the order passed by the Sub Divisional Magistrate and Sub Collector, Palani, Dindigul, dated 04.06.2018 under Section 133 Cr.P.C ordering closure of the unit run by the petitioner's industry.

2. Mr.Lajapathi Roy, learned counsel appearing for the petitioner would at the outset submit that Section 133 of Cr.P.C contemplates taking of evidence and calling for objections for the party concerned before any punitive action is taken under such Section. Unfortunately, the learned Sub Divisional Magistrate has passed an order dated 04.06.2018 without following such procedure, Therefore, the learned counsel would submit that the entire order is vitiated for non-adherence of the procedure contemplated under such Section and he prayed that the said order may be set aside.

3. On behalf of the respondent, Ms.Anantha Devi, learned Government Advocate(Crl.side) has entered appearance and she has filed a counter affidavit.



4. This Court, without going into the merits and demerits of the claim, is in agreement with the submissions of the learned counsel appearing for the petitioner.

5. Section 133 of Crl.P.C which is basis of the impugned order reads thus:

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

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

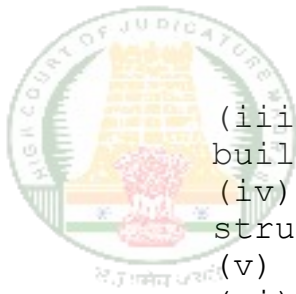
(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be



(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or
(v) to fence such tank, well or excavation; or
(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court

Explanation—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

6. From the above, it could be seen that Section 133 Cr.P.C contemplates elaborate procedure to be followed. However, this Court finds without following the elaborate procedure as contemplated in Section 133 Cr.P.C, the respondent/Sub Division Magistrate has directly ordered closure of the unit of the petitioner's industry.

7. The learned counsel for the respondent would submit that an opportunity was earlier given to the petitioner and since he did not respond to the earlier notice, a final action was taken.

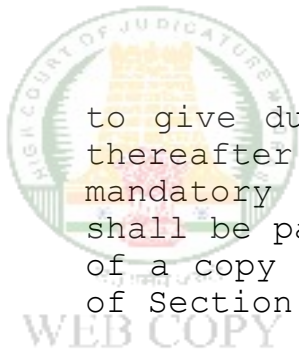
8. However, this Court finds no material whatsoever has been produced in order to substantiate the contention raised on behalf of the respondent.

9. Be that as it may, once Section 133 Cr.P.C contemplates the elaborate procedure to be followed, such procedure should be strictly followed by the authorities concerned before any final action is taken particularly, punitive action taken against the petitioner.

10. In this case, it appears that closure order was issued without following any due process of law as contemplated under Section 133 of Cr.P.C.

11. In such circumstances, on a limited ground that no proper procedure was followed by the respondent authority, the impugned order dated 04.06.2018 passed by the respondent is hereby set aside and the matter is remanded back to the respondent for fresh consideration and for passing orders in terms of Section 133 Cr.P.C.

12. The Sub Divisional Magistrate and Sub Collector, Palani, is directed to issue notice to the petitioner and



to give due opportunity to him and if necessary take evidence and thereafter proceed to pass final orders in full compliance with the mandatory provisions of Section 133 Cr.P.C. An appropriate order shall be passed within a period of 6 weeks from the date of receipt of a copy of this order after following due process of law in terms of Section 133 of Cr.P.C.

13. In fine, this Civil Revision Petition is allowed to the extent indicated above. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

1.The Sub Divisional Magistrate and Sub Collector,
O/o. The Sub Collector,
Palani Division,
Dindigul District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-99088[F] dated
18/11/2019)

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