

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

W.P. No. 20027 of 2019

Date: 24.09.2019

Between:

M/s. I.N. Agrovat Products, and another.

... Petitioners

and

The State of Telangana,
Rep. by its Member Secretary,
Pollution Control Board,
Sanath Nagar, Hyderabad, and others.

... Respondents

Counsel for the petitioners:

Ms. T. Pushpa Rani

Counsel for the respondent No.2:

**Ms. Padmaja R.N.,
SC for PCB**

The Court made the following:

ORDER: *(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

The petitioners have challenged the legality of the order dated 07.09.2019, passed by the Sub-Divisional Magistrate & Revenue Divisional Officer, Choutuppal, whereby the learned Sub-Divisional Magistrate has directed closure of the factory owned by the petitioners.

Ms. T. Pushpa Rani, the learned counsel for the petitioners, submits that according to Section 138 of the Criminal Procedure Code ('Cr.P.C' for short), the learned Sub-Divisional Magistrate is supposed to follow the procedure for recording of evidence in summons cases. However, without following the procedure established by Section 138 Cr.P.C., the learned Sub-Divisional Magistrate has directed the closure of the factory. Therefore, as the mandatory provision of law has not been followed, the impugned order stands vitiated. In order to buttress this plea, the learned counsel has relied on the case of **C.A.Avarachan vs. C.V. Sreenivasan and another**¹.

On the other hand, Ms. Padmaja R.N., the learned Standing Counsel for the Pollution Control Board, submits that even in the year 2016, an inspection was carried out in the factory and certain deficiencies were discovered. Again an inspection was carried out in the year 2017 and again certain deficiencies were observed. These deficiencies relate to the non-operation of the ETP, and non-providing of the closed

¹ ((1996) 7 SCC 71)

refrigeration system for storage of the Chicken Offals. Therefore, according to the learned counsel, the learned Sub-Divisional Magistrate was well justified in directing the closure of the factory, as it created public nuisance for the inhabitants around the factory. Hence, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties, and perused the impugned order.

Section 133 Cr.P.C is as under:

“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 directed; or*
- (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."

Section 138 Cr.P.C. is also as under:

"Procedure where he appears to show cause. - (1) *If the person against whom an order under Section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case.*

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case."

A bare perusal of these provisions clearly reveals that under Section 133 Cr.P.C., either a District Magistrate, or a Sub-Divisional Magistrate, or any other Executive Magistrate, who is specially empowered in this behalf by the State Government, can pass a conditional order requiring the person causing such obstruction or nuisance, or carrying out

such trade or occupation, within a time to be fixed in order to remove the obstruction or the nuisance. However, under Section 138 Cr.P.C., before such an order can be passed, the Magistrate is required to record the evidence in the manner as in a summons case.

Section 254 Cr.P.C. deals with the manner in which the summons case is to be conducted. According to this Section, the Magistrate is required to proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. The Magistrate may also issue summons to any witness directing him to attend, or produce any document, or other thing. Therefore, prior to passing an order under Section 133 Cr.P.C., the learned Sub-Divisional Magistrate is required to follow the procedure established under Section 138 read with Section 254 Cr.P.C.

However, a perusal of the impugned order clearly reveals that the said procedure has not been followed by the learned Sub-Divisional Magistrate. Therefore, the impugned order is legally unsustainable.

For the reasons stated above, this Writ Petition is hereby allowed. The impugned order dated 07.09.2019 is set aside; the case is remanded to the learned Sub-Divisional Magistrate & Revenue Divisional Officer, Choutuppal. He is directed to follow the procedure established under Section

138 read with Section 254 Cr.P.C. He shall be free to call for the report from the Pollution Control Board, and in case such a report is called for, he shall permit the Officers of the Pollution Control Board to enter the factory, to inspect the same, and to furnish the report to him for his perusal. The learned Sub-Divisional Magistrate is directed to complete the said exercise within a period of two months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

Date: 24.09.2019

Note: Issue CC by 26.09.2019

B/o

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