



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27.01.2020

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

Crl.RC (MD) No.444 of 2015

Ramasamy Thevar

: Petitioner

Vs.

The Sub Divisional Magistrate-cum-Sub Collector,
Paramakudi,
Ramand District

: Respondent

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order passed by the respondent in his proceedings in NA.KA.A2-9475-2014, dated 30.04.2015.

For Petitioner : Mr.M.S.Jeyakarthik
For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

This criminal revision is directed against the order passed by the respondent in his proceedings in NA.KA.A2-9475-2014, dated 30.04.2015 under section 133 Cr.P.C.

2.The case of the petitioner is that he is doing cultivation in the lands comprised in Survey No.18/3 to an extent of 1.50 Acres and drawing water from Sonaiyenthal Kanmoi through pipeline with the permission of the Tahsildar, Paramakudi Taluk and Block Development Officer and in between his lands and Sonaiyenthal Kanmoi, Pappanenthal water channel is situated and the petitioner is also one of the Ayakattutharars of Sonaiyenthal Kanmoi and in these circumstances, the Revenue Authorities unnecessarily interfered with the agricultural works by stating that the petitioner closed the Pappanenthal Water Channel and subsequently, the respondent, by his proceedings, dated 19.12.2004 directed the petitioner to appear before him for giving explanation and accordingly, the petitioner appeared and gave a detailed explanation to the respondent. Thereafter, the respondent passed the impugned order, dated 30.04.2015 directing the petitioner not to shut the water flowing in the Papanenthal Water Channel by using pipeline. Challenging the said order, the petitioner is before this court.



3.The learned counsel for the petitioner submitted that the respondent without following the procedures contemplated and without application of mind, passed the order under section 133 Cr.P.C in the nature of final order; that under Section 133 Cr.P.C only conditional order can be passed and after following procedures contemplated under section 134 Cr.P.C to 140 Cr.P.C, the final order can be passed under Section 136 or 138 Cr.P.C and hence, prays for setting the impugned order passed by the respondent.

4.Per contra, the learned Additional Public Prosecutor submitted that the respondent after following the procedures contemplated under the Code of Criminal Procedure Code has passed the impugned order, which is perfectly valid in law and prays that the criminal revision has to be dismissed.

5.This court has carefully heard the submissions made on either side and perused the entire materials available on record.

6.It is seen from the records that the petitioner is one of the Ayakattutharars in the Sonaiyendhal Kanmoi for irrigation. Section 133 Cr.P.C speaks of a conditional order in the circumstances mentioned in Section 133, Cr.P.C itself and says that the Magistrate may make a conditional order requiring the person causing such obstruction or nuisance to remove such obstruction or nuisance within a time to be fixed in the 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."

7.On coming to the instant case on hand, the impugned order passed by the respondent under section 133 Cr.P.C clearly reveals that no minimum requirement of legal procedures is followed before passing the impugned order. Therefore, this court is of the considered view that without application of mind, the respondent has passed the impugned order in the nature of final order without any discussion or his findings and therefore, it is liable to be set aside.

8.In the result, the criminal revision is allowed. The impugned order, dated 30.04.2015 passed by the respondent is set aside. However, the respondent is always at liberty to issue any order in accordance with law.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar



To,

1.The Sub Divisional Magistrate-cum-
Sub Collector, Paramakudi, Ramnad District.

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

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-3443[F] dated 28/01/2020
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