



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2021

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.647 of 2020

and

Crl.MP(MD)No.6309 of 2020

WEB COPY

M.Koodalingam : Revision Petitioner/ Respondent

Vs.

1.The Additional District Magistrate-
Cum-District Revenue Officer,
Virudhunagar.

2.The Sub Divisional Magistrate-
Cum-Revenue Divisional Officer,
Sivakasi. : Respondents/Complainants

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order passed by the 2nd respondent in Na.Ka.A2/6910/2020, dated 02.12.2020.

For Revision Petitioner : Mr.K.P.S.Palanivel Rajan
For Respondents : Mr.A.Robinson
Government Advocate
(Criminal Side)

O R D E R

This Criminal Revision is directed against the order passed by the 2nd respondent in Na.Ka.A2/6910/2020, dated 02.12.2020.

2.It is the case of the petitioner that the 2nd respondent inspected his Fire Crackers Shop namely Sri Ambal Fireworks, on 21.10.2020 and subsequently, on 22.10.2020 issued a notice under section 133(2) Cr.P.C calling upon him, regarding the storage of huge volume of Fire Crackers in an un-safety manner. After receipt of the notice, the petitioner submitted his representation, on 28.10.2020 stating that he obtained proper license from the 1st respondent, on 24.04.2008 and running the Fireworks Shop without violating the Explosive Substances Rules and Regulations. However, the 2nd respondent passed the impugned order, dated 02.11.2020 under section 133 Cr.P.C, thereby made absolute the order passed on 22.10.2020. Aggrieved by the said order passed by the 2nd respondent, the petitioner is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.



4.It is mainly contended by the learned counsel appearing for the petitioner that the impugned order passed by the 2nd respondent is prima facie illegal, arbitrary and it was passed without application of mind.

5.A mere perusal of the impugned order passed by the 2nd respondent would indicate that after issuing the preliminary order under section 133 Cr.P.C, he has not separately passed any interim order under Section 142 Cr.P.C, but he has chosen to conduct regular enquiry itself and virtually passed the final order under section 142 Cr.P.C read with Section 133 Cr.P.C., which according to this court, is not legally correct.

6.The scope of Section 142 Cr.P.C is to see that pending proceedings, under Section 133 of Cr.P.C., nuisance is not perpetrated, but in this case, Section 142 was not invoked by the 2nd respondent with that purpose. However, he has passed the final order itself. In the final order also, he has not restricted his scope only to prevent the petitioner from committing nuisance, but he went to the extent of preventing the petitioner from doing business itself.

7.At this juncture, it is relevant to highlight the actual jurisdiction of the 2nd respondent/Sub Divisional Magistrate-Cum-Sub Collector, Sivakasi. If a person carries on illegal activities, then the learned Sub Division Magistrate under Section 133 Cr.P.C once and for all, could pass an order preventing that person from doing that illegal business. But on the other hand, if the learned Sub Divisional Magistrate finds that certain nuisance is being carried on in the business place, his jurisdiction is only to prohibit that nuisance and he is having no jurisdiction to pass orders so as to prevent the petitioner from doing the very business itself, which is otherwise legal and legitimate.

8.It is to be noted here that the petitioner is doing business from 2008 without any complaint. In the show cause notice, the 2nd respondent has not stated as to when he had visited and inspected the premises of the petitioner as to come to the conclusion that there was imminent danger to the public. Coming to the instant case on hand, the 2nd respondent without application of mind, has passed the impugned order under section 142 Cr.P.C, in an arbitrary manner.

9.For all the reasons stated above, this court is of the view that the impugned order passed by the 2nd respondent is not correct and accordingly, it is set aside and the matter is remitted back to the 2nd respondent for passing orders afresh, by contemplating the procedures enunciated under section 138 Cr.P.C

10.In fine, this Criminal Revision is **allowed**. The impugned order dated 02.11.2020 passed by the 2nd respondent is set aside and



the matter is remitted back to the 2nd respondent and the 2nd respondent is directed to pass the orders afresh, purely on merits and in accordance with law, after complying with the procedures contemplated under section 138 Cr.P.C. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

- 1.The Additional District Magistrate-
Cum-District Revenue Officer,
Virudhunagar.
- 2.The Sub Divisional Magistrate-
Cum-Revenue Divisional Officer,
Sivakasi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate (SR-16665[F] dated 20/04/2021)

Crl.RC (MD) No.647 of 2020
19.04.2021

SE(CO)
LR (27.07.2021) 3P 5C