

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.58 of 2021

Anusuya Rout

....

Petitioner

Mr. S.N. Sahoo, Advocate

-versus-

1. Satya Sundar Swain

2. Siba Sundar Swain

....

Opp. Parties

CORAM:

JUSTICE S.K. SAHOO

ORDER

26.07.2022

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

The petitioner Anusuya Rout has filed this revision petition for setting aside the impugned order dated 11.12.2020 passed by the Addl. Deputy Commissioner of Police -cum- Executive Magistrate, Bhubaneswar in CrI.Misc. Case No. 1646 of 2019 in a proceeding under section 133 of Cr.P.C.

The petitioner was the first party member in the said proceeding and the opposite parties were the second party members in the aforesaid proceeding under section 133 Cr.P.C.. It is the case of the first party that the schedule property is her self acquired property, purchased from one Rajendra Maharathi through registered sale deed dated 21.11.2011 and after

purchase, she mutated the land in her favour and constructed a residential building and residing thereon without any disturbance or any dispute. It is the further case of the petitioner that on the southern side of her house, there was a vacant land, which was used as private road, but the second party members constructed their residential house on the southern side constructing the boundary wall over the private road space. The second party members constructed one open waste water tank from which there was water leakage to the master bed room of the first party creating unhealthy atmosphere and when the petitioner requested the second party members to remove the waste water tank, they denied to demolish the same, rather threatened the first party with dire consequences.

The learned Executive Magistrate called for a police report, which revealed that there is a water tank inside the plot of the second party members at a distance of one feet from the boundary wall and the first party is also having her house inside her own plot and the water of the tank of the second party members leaks into the house of the first party. The learned Executive Magistrate after hearing both the parties and after perusing the police enquiry report, came to hold that the dispute between the parties is purely civil in nature and is confined to the parties only and the nuisance in question, i.e. the water tank, is not affecting the public in general,

which is the mandatory requirement for passing an order under section 133 of Cr.P.C. In view of the location of the water tank inside the premises of the second party members, the learned Executive Magistrate did not accept the prayer of the first party and disposed of the proceeding and hence, the revision.

Learned counsel for the petitioner submitted that the nature of dispute would come within the purview of section 133 (1)(d) of Cr.P.C. and therefore, the prayer made by the petitioner should be allowed and the impugned order be quashed.

Section 133 of Cr.P.C. deals with conditional order for removal of nuisance. So far as section 133(1)(d) is concerned, it states that when on receipt of the police report or other information and on taking such evidence as it thinks fit, a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, is of the opinion 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, conditional order can be passed requiring the person owning, possessing or controlling such building, tent, structure or owning the tree to

remove, repair or support such building, tent or structure or to remove or support such tree within a fixed time.

Law is well settled that the jurisdiction provided under section 133 of Cr.P.C. is confined to public right only. The provision under clause (d) of section 133(1) Cr.P.C. are not available to redress private remedies and mere inconvenience caused to the neighbour is not a public nuisance, which is defined in section 268 of the Indian Penal Code, to mean that it is an act or illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general, who dwell or occupy property in the vicinity.

In view of the aforesaid factual scenario and the nature of dispute between the parties, I am of the humble view that it does not come within section 133(1)(d) of Cr.P.C. and the learned Executive Magistrate, Bhubaneswar rightly did not entertain the prayer made by the petitioner in the petition under section 133 of Cr.P.C.

Accordingly, the revision being devoid of merit, stands dismissed.

(S.K. Sahoo)
Judge