

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 321 of 2022

Satyananda Panda & Anr.

`....

Petitioners

Mr. R.K. Nayak, Advocate

-Versus -

State of Odisha & Anr.

....

Opp.Parties

Mr. P. Tripathy, Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

17.11.2022

Order No.

06.

1. This matter is taken up through hybrid mode.
2. The petitioner no.1 runs a fabrication unit in his residential house. He claims to have obtained licence in this regard from the Ministry of MSME, a copy of which has been enclosed as Annexure-3 to this revision petition.
3. The opposite party no.2 is the brother of the petitioner no.1 and is his neighbor. He filed an application under Section 133 of Cr.P.C. before the learned Sub-Divisional Magistrate, Jajpur being Crl. Misc. Case No. 1869 of 2017 alleging that the functioning of the fabrication unit is causing a lot of inconvenience and difficulty to his family. It was specifically alleged that the fabrication unit was producing very high sound and therefore, disturbing his family members. As such, the petition was filed with prayer to stop the unit and to remove the same from the spot.
4. Pursuant to notice, the petitioners appeared and filed their show cause through their lawyer. It is submitted that the case was taken up on several dates and on most of the dates, despite

instructions from the petitioner no.1, his lawyer did not appear. It is further submitted that final order was passed on 13.03.2020, which is impugned in the present revision allowing the application in the absence of any representation by the petitioner no.1. It is further held in the impugned order that the unit has been causing sound pollution and power fluctuation.

5. Mr. R.K. Nayak, learned counsel appearing for the petitioners submits that the allegations are entirely false and baseless and have been leveled only to give vent to personal grudge arising out of family disputes. He further submits that there is no public nuisance in any manner, which would be evident from the report of the R.I. pursuant to order of the learned Executive Magistrate. A perusal of the enquiry report of the Revenue Inspector reveals that it has only been mentioned that the fabrication unit is functioning in Mouza-Andeigoda over Plot No. 509 of Ac.0.08 dec. under Khata No. 15 without stating anything at all with regard to the allegations.

6. An order under Section 133 Cr.P.C. is required to be passed on subjective satisfaction of the Magistrate regarding existence of public nuisance. In the case at hand, learned Executive Magistrate has held that fabrication unit creates troubles, such as sound pollution, power fluctuation etc. but the same is only the opinion of the learned Executive Magistrate and not based on any evidence. In any case, the enquiry report does not speak anything with regard to the so called public nuisance.

7. In such view of the matter, this Court is of the view that the impugned order cannot be said to have been passed in consonance with the requirement of Section 133 of Cr.P.C. The impugned order is therefore, set aside. The matter is remitted to learned Sub-Divisional Magistrate, Jajpur to cause necessary enquiry specifically into the allegations made by the complainant and thereafter to pass orders afresh in accordance with law after granting opportunity of hearing to both parties. The whole exercise shall be completed within a period of six weeks.

8. The CRLREV is accordingly disposed of.

9. Issue urgent certified copy as per Rules.

(Sashikanta Mishra)
Judge

A.K. Rana

