

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 2336 of 2019**

**Balaram Baral**

**Vs**

**The State of West Bengal & Ors**

**For the Petitioner**

: Mr. Pabitra Mitra,  
Mr. Subhanwita Ghosh.

**For the Opposite Party Nos. 2-4**

: Mr. Baidurya Ghosh.

**For the State**

: Ms. Baisali Basu.

Heard on

: 16.01.2023

Judgment on

: 07.02.2023

**Shampa Dutt (Paul), J.:**

The present revisional application has been preferred by petitioners praying for quashing of the order dated 03.04.2019 passed by the Learned Additional District & Session Judge, 1<sup>st</sup> Court, Lalbagh, Murshidabad in Criminal Revision Case No. 06 of 2017 setting aside the order dated 29.11.2016 in proceeding 543/15 of S.D.E.M., Lalbagh, Murshidabad.

The petitioner is an owner of a piece and parcel of land measuring about 07 Decimals together with the structure situate and lying at Mouza – Panishali comprising of J.L. No. 36, R.S. Plot No. 422, L.R. Plot No. 668 (hereinafter referred to as “said land”) adjacent to Jiaganj-Ajimganj Municipality Road bearing R.S. Plot No. 413, L.R. Plot No. 673 (hereinafter referred to as “said road”).

The opposite parties No. 2,3 and 4 are the joint owners of land and building situated and lying at Mouza- Panishali comprising of J.L. No. 36, R.S. Plot No. 423, L.R. Plot No. 669 (hereinafter referred to as “said property”).

The said road runs from East to West started from R.S. Plot No. 409 between R.S. Plots No. 411,414,412,424,421 and 423 having length of 105’ feet and from North to South between R.S. Plots No. 422 and 423 having length of 19’ feet and the said land situates on the Eastern

side of the said road. The said road is used by the inhabitants of R.S. Plots No. 411, 414, 412, 424, 421, 423, 422 and 423 including the petitioner for ingress and egress.

That before initiation of petition case No. 543 of 2015 in the Court of the Learned S.D.E.M. at Lalbagh, Murshidabad by the petitioner, the said road was of length 19' and breadth was 5'-6" from North to South but as the opposite parties No. 2 to 4 tried to make construction and already constructed pucca building by encroaching a strip of road measuring about 19 Sq. Ft., i.e., 7' length x 2'-6" breadth on the Eastern side from North to South of the said road, the petitioner was compelled to lodge a complaint before the Jiaganj Police Station, Jiaganj-Ajimganj Municipality and to the B.L&L.R.O. requesting them to take action against the opposite parties No. 2 to 4 so that no further construction could be made by them by encroaching the road, to demolish the unauthorized construction made by encroaching the said road and to make measurement of the said road in presence of all inhabitants. But as no steps was taken by the concerned authorities, the petitioner filed a case being petition case No. 543 of 2015 in the Court of the Learned S.D.E.M. at Lalbagh, Murshidabad under Sections 133/142 of the Criminal Procedure Code.

The Learned S.D.E.M. at Lalbagh, Murshidabad by an order dated 05.05.2015 was pleased to direct the Officer-In-Charge, Jiaganj

Police Station, the Chairman, Jiaganj-Ajimganj Municipality and the B.L. & L.R.O (M-J) Block to cause an enquiry over the said Govt. Land and to send report and also directed the parties to maintain status quo and to serve notice.

In compliance with the said order dated 05.05.2015, the Jiaganj-Ajimganj Municipality and the B.L&L.R.O. (M-J) Block caused enquiry and submitted report and the opposite parties No. 2 to 4 filed written objection and after hearing the Learned Advocate appearing for the petitioner and opposite parties No 2 to 4 and on perusal of the report filed by the concerned authorities, the Learned S.D.E.M. at Lalbagh, Murshidabad on 29.11.2016 was pleased to allow the petition U/S 133 Cr.P.C and to pass an order directing the officer-In-charge, Jiaganj Police Station to arrange for removal of all kind of construction/obstruction/encroachment and nuisance from the pathway being R.S. Plot No. 413 L.R Plot No 673.

Against the said order dated 29.11.2016 the opposite parties No 2 to 4 preferred revision being criminal revision No. 06 of 2017 before the Learned Additional District & Sessions Judge, 1<sup>st</sup> Court, Lalbagh, Murshidabad under Section 397/398/399/401 of the Code of Criminal Procedure which ultimately came up for hearing on 3<sup>rd</sup> April, 2019 and after hearing, the Learned Additional District & Sessions Judge, 1<sup>st</sup> Court, Lalbagh, Murshidabad was pleased to set aside the order dated

29.11.2016 passed by the Learned S.D.E.M. at Lalbagh, Murshidabad of petition case No. 543 of 2015.

Hence the revision.

**Mr P.K Mitra, learned counsel for the petitioner** has submitted that the learned Additional District and Sessions Judge, 1<sup>st</sup> Court, Lalbagh, Murshidabad without applying his judicial mind passed the impugned order hurriedly.

And without appreciating the report submitted by the Jiaganj-Ajimganj Municipality and the B.L.&L.R.O (M-J) Block

The Learned Court should have appreciated that when the petitioner uses the alleged road which is the only way for his ingress and egress and when other inhabitants also use the same as pathways, that should not be obstructed by the opposite parties No. 2 to 4 when the same is a Govt. road.

The learned Court failed to perform its legal duty by not directing the concerned municipality to restore the Govt. road when from the record produced by the petitioner it is clearly ascertained that the alleged road is Govt. road and no one has any right to encroach the same and to cause obstruction to the public.

The impugned order passed by the Learned Additional District & Sessions Judge, 1<sup>st</sup> Court, Lalbagh, Murshidabad is erroneous, illegal

and full of irregularity inasmuch as the length and breadth of the alleged pathway and/or Govt. road would be very easily ascertained from the report of the B.L.&L.R.O. (M-J) Block and the Mouza Map filed by the petitioner as well as from the report of the surveyor. That the entire proceeding and order dated 03.04.2019 in Criminal Revision No. 06 of 2017 is totally bad and gross abuse of process of law and harassing and as such should be set aside.

It is further submitted that a supplementary affidavit has been filed on behalf of the petitioner wherein it is seen that the contentions are similar to the statements in the revisional petition. Only the report of the B.L.&L.R.O., MJ block and the report of the assessment in charge of Jiaganj Ajimganj Municipality Murshidabad had been annexed to the supplementary affidavit.

**Mr. B. Ghosh the learned counsel for the opposite party no. 2 to 4** has submitted that the order/judgment under revision of the session court is in accordance with law and on proper consideration of the reports. As such the revision is liable to be dismissed.

**Ms. B. Basu the learned counsel for the State** has filled a report of the officer in charge Jiaganj P.S. where in it has been noted that the relevant documents are in the court of Additional District and Sessions Judge, Lalbagh Murshidabad for hearing of the appeal case

and that the case record have not been returned to the court of SDEM, Lalbagh.

Heard the learned counsel for all the parties including the state. Perusal the materials on record and the documents filed. Considered.

Annexure A is the sketch map showing the disputed portion. It is seen that the plot of petitioner and the opposite parties is adjacent to each other. The portion shown as disputed is within the plot of the opposite parties. The petitioners plot no. 422 has been shown as divided and also occupied by one Alok Das. The pathway goes straight and ends at the plot of the petitioner being no. 422. The disputed portion as claimed by the petitioner is clearly within the plot of the opposite parties being no. 423. **The petitioner has been alleging that the said portion is a municipality road encroached upon by the opposite parties, which the municipality has clearly denied in their scientific and exhaustive report;** the municipality has clearly stated in the report that there is no encroachment at all on the municipality road. Whereas **the report of the BL and LRO is totally based on the submissions of parties and mainly on the submission of the petitioner, and also on the basis of the petition filed by the petitioner before the SDEM.** Finally it has been held that both the parties are using the said disputed portion as common portion as common municipality road.

The opposite parties, considering the said disturbance by the petitioners also requested the municipality for measurement of the disputed portion by an Amin. Report of the B.L. & L.R.O. clearly shows that the sketch map attached to the petition filed by the petitioner was relied upon and as such the order of the S.D.E.M., Lalbagh on the basis of the said finding is not in accordance with law and is totally in denial and also against the exhaustive/scientific and proper report of the municipality.

The S.D.E.M., on the wrong consideration of the report of the municipality relied erroneously on the report of the BL and LRO which is totally based on the petitioner's petition and annexed sketch map.

**The findings of the Sessions Judge is as follows:-**

*“Perused the reports submitted by municipal authority, BL & LRO and the concerned PS. From the report of Revenue Inspector countersigned by BL & LRO dated 22.06.2015 I do not find any observation regarding any encroachment of the land in question except on sketch map showing disputed portion dated 23.03.2015 and even it has also not been mentioned in the report of BL & LRO that the said sketch map is the part and parcel of that report and on the other hand from the municipal report it has clearly been stated that no such encroachment or obstruction has made by anybody. The RS plot no. 413 which suggests that without applying proper judicial mind the impugned order has been passed. I have also gone through the case law of Manoharlal Dutta Vs State of WB & Anr. Reported in 2003 C CrLR (Cal) 613.*

*From the impugned order of the SDEM, Lalbagh it transpires that the provision of section 133 read with section 137 & 138 of the Cr. P. C has also not been followed properly and even no such evidence has also been taken in respect of two reports regarding maps, measurement etc submitted by both the municipality and BL&LRO authority prior to passing the impugned order dated 29.11.2016 which requires interference of this Court.”*

The Supreme Court in **Municipal Council Ratlam vs Vardichan and Ors., AIR 1980 SC 1622, on 29 July, 1980**, the Supreme Court held that:-

*“8. We proceed on the footing, as we indicated even when leave to appeal was sought, that the malignant facts of municipal callousness to public health and sanitation, held proved by the Magistrate, are true. What are the legal pleas to absolve the municipality from the court's directive under Section 133 Cr.P.C. ? That provision reads :*

*Section 133(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;*

*X X X 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 X X  
X*

*(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; 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.*

**9.** *So the guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. "All power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist." Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.*

**10.** *If the order is defied or ignored, Section 188 I.P.C. comes into penal play:*

*188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to obtain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction and if such disobedience causes or tends to cause danger to human life health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

**11.** *There is no difficulty in locating who has the obligation to abate the public nuisance caused by*

*absence of primary sanitary facilities. Section 123, which is mandatory, (we repeat), reads :*

*123. Duties of Council :-(1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a Council to undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely :-*

*(a) ...*

*(b) cleansing public streets, places and sewers, and all places not being private property, which are open to the enjoyment of the public whether such places are vested in the Council or not; removing noxious vegetation, and abating all public nuisances;*

*(c) disposing of night-soil and rubbish and preparation of compost manure from night-soil and rubbish.*

**13.** *Section 133 Cr.P.C. is categoric, although reads discretionary. Judicial discretion when facts for its exercise are present, has a mandatory import. Therefore, when the sub-Divisional Magistrate, Ratlam, has, before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The Magistrate's responsibility under Section 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by Section 188 I.P.C. Therefore, the Municipal Commissioner or other*

*executive authority bound by the order under Section 133 Cr.P.C. shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the Section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of Section 133 Cr.P.C. read with the punitive temper of Section 188 I.P.C. make the prohibitory act a mandatory duty.*

*Although these two Codes are of ancient vintage, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under Section 133 Cr.P.C. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Article 38 of the Constitution. This brings Indian public law, in its processual branch, in line with the statement of Prof. Kojima : "the urgent need is to focus on the ordinary man-one might say the little man..." "Access to Justice" by Cappelletti and B. Garth summarises the new change thus : Ibid p. 68-69.*

*The recognition of this urgent need reflects a fundamental change in the concept of "procedural justice".... The new attitude to procedural justice reflects what Professor Adolf Homburger has called "a radical change in the hierarchy of values served by civil procedure"; the paramount concern is increasingly with "social justice," i.e., with finding procedures which are conducive to the pursuit and protection of the rights of ordinary people. While the implications of this change are dramatic-for instance, insofar as the role of the adjudicator is concerned-it is worth emphasizing at the outset that the core values of the more traditional procedural justice must be retained.*

*"Access to justice" must encompass both forms of procedural justice.*

***16. The High Court has taken a correct view and followed the observations of this Court in Govind Singh v. Shanti Sarup where it has been observed :***

***We are of the opinion that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery."***

**Paragraph 23 is reproduced here only to put down the observation of Justice Krishna Iyer.**

*"23. We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfil its obligations under this order. The State will realise that Article 47 makes it a paramount principle of governance that steps are taken 'for the improvement of public health as amongst its primary duties'. The municipality also will slim its budget on low priority items and elitist projects to use the savings on sanitation and public health. It is not our intention that the ward which has woken up to its rights alone need be afforded these elementary facilities. We expect all the wards to be benefited without litigation. The pressure of the judicial process, expensive and dilatory, is neither necessary nor desirable if responsible bodies are responsive to duties. Cappelletti holds good for India when he observes.*

*Our judicial system has been aptly described as follows :*

*Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice of time, money and talent.*

*This "beautiful" system is frequently a luxury; it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims.*

*Why drive common people to public interest action ? Where Directive Principles have found statutory expression in Do's and Dont's the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal."*

**In *Suhelkhan Khudyarkhan & Anr. Vs State of Maharashtra & Ors.*, Criminal Appeal No. 1039 of 2005, on April 15, 2009, the Supreme Court held that:-**

*"6. Section 133 of the Code appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is a part of the heading "Public nuisance". The term "nuisance" as used in law is not a term capable of exact definition and it has been pointed out in Halsbury's Laws of England that:*

*“even in the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort”.*

**7.** In Vasant Manga Nikumba v. Baburao Bhikanna Naidu (1995 Supp (4) SCC 54) it was observed that nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable damage would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisance, and on the other hand applies when the nuisance is in existence. It has to be noted that sometimes there is confusion between Section 133 and Section 144 of the Code. While the latter is a more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute. The proceedings are more in the nature of civil proceedings than criminal proceedings.

**8.** One significant factor to be noticed is that the person against whom action is taken is not an accused within the meaning of Section 133 of the Code. He can give evidence on his own behalf and may be examined on oath. Proceedings are not the proceedings in respect of offences. The Water Act and the Air Act are characteristically special statutes.

**9.** *The provisions of Section 133 of the Code can be called in aid to remove public nuisance caused by discharge of effluents and air discharge causing hardship to the general public. To that extent, the learned counsel for the appellant is correct in his submission.*

**10.** *The above position is highlighted in State of M.P. v. Kedia Leather and Liquor Ltd. [(2003) 7 SCC 389].*

**11.** *A proceeding under Section 133 is of a summary nature. It appears as a part of Chapter X of the Code which relates to maintenance of public order and tranquility. The Chapter has been classified into four categories. Sections 129 to 132 come under the category of “unlawful assemblies”. Sections 133 to 143 come under the category of “public nuisance”. Section 144 comes under the category of “urgent cases of nuisance or apprehended danger” and the last category covers Sections 145 to 149 relating to “disputes as to immovable property”. Nuisances are of two kinds, i.e. (i) Public; and (ii) Private. ‘Public nuisance’ or ‘common nuisance’ as defined in Section 268 of the Indian Penal Code, 1860 (in short the ‘IPC’) is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general or by neglecting to do anything which the common good requires. It is an act or 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. ‘Private nuisance’ on the other hand, affects some individuals as distinguished from the public at large. The remedies are of two kinds – civil and criminal. The remedies under the civil law are of two kinds. One is under Section 91 of the Code of Civil Procedure, 1908 (in short ‘CPC’). Under it a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him. There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of IPC. The*

second provides for summary proceedings under Sections 133 to 144 of the Code, and the third relates to remedies under special or local laws. Sub-section (2) of Section 133 postulates that no order duly made by a Magistrate under this Section shall be called in question in any civil Court. The provisions of Chapter X of the Code should be so worked as not to become themselves a nuisance to the community at large. Although every person is bound to so use his property that it may not work legal damage or harm to his neighbour, yet on the other hand, no one has a right to interfere with the free and full enjoyment by such person of his property, except on clear and absolute proof that such use of it by him is producing such legal damage or harm. Therefore, a lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community. Proceedings under Section 133 are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience. A comparison between the provisions of Section 133 and 144 of the Code shows that while the former is more specific the latter is more general. Therefore, nuisance specially provided in the former section is taken out of the general provisions of the latter section. The proceedings under Section 133 are more in the nature of civil proceedings than of criminal nature. Section 133(1)(b) relates to trade or occupation which is injurious to health or physical comfort. It itself deals with physical comfort to the community and not with those acts which are not in themselves nuisance but in the course of which public nuisance is committed. In order to bring a trade or occupation within the operation of this Section, it must be shown that the interference with public comfort was considerable and a large section of the public was affected injuriously. The word 'community' in Clause (b) of Section 133(1) cannot be taken to mean residents of a particular house. It means something wider, that is, the public at large or the residents of an entire locality. The very fact that the provision occurs in a Chapter

containing “Public Nuisance” is indicative of this aspect. It would, however, depend on the facts situation of each case and it would be hazardous to lay down any straitjacket formula.

**12.** The guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present. “All power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs and all must exist”. The conduct of the trade must be injurious in presenti to the health or physical comfort of the community. There must, at any rate, be an imminent danger to the health or the physical comfort of the community in the locality in which the trade or occupation is conducted. Unless there is such imminent danger to the health or physical comfort of that community or the conduct of the trade and occupation is in fact injurious to the health or the physical comfort of that community, an order under Section 133 cannot be passed. A conjoint reading of Sections 133 and 138 of the Code discloses that it is the function of the Magistrate to conduct an enquiry and to decide as to whether there was reliable evidence or not to come to the conclusion to act under Section 133.

**13.** Section 133 of the Code as noted above appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is a part of the heading “Public nuisance”. The term “nuisance” as used in law is not a term capable of exact definition and it has been pointed out in Halsbury’s Laws of England that:

“even in the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort”.

**14. In Vasant Manga Nikumba v. Baburao Bhikanna Naidu (1995 Supp (4) SCC 54) it**

***was observed that nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable danger would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisances and on the other hand applies when the nuisance is in existence. It has to be noted that sometimes there is confusion between Section 133 and Section 144 of the Code. While the latter is a more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute.***

***15. The above position was highlighted in Kachrual Bagirath Agrawal v. State of Maharashtra (2005 (9) SCC 36)."***

The dispute in this case prima facie appears to be a private and personal dispute between the parties and if so the remedy lies in another forum.

Sec. 133 of Cr.P.C. clearly applies only to public property.

Thus the findings of the S.D.E.M. is not in accordance with law as discussed and the learned sessions judge rightly set aside the said order. Accordingly this court finds no reason to interfere with the judgment under revision as the same has been passed on proper consideration of the materials on record and is in accordance with law and as such there been no abuse of the process of law/court. And it will be against the interest of Justice if there is any interference by this court. And this is a fit case where the inherent powers of the court should not be exercised.

In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

*“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

*'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be*

*impossible to appreciate the width and contours of that salient jurisdiction.'*

*41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :*

*'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'* Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

**16.** *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation*

*by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

**17.** *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of***

***Maharashtra and Others, 2021 SCC  
Online SC 315.”***

Accordingly, the order dated 03.04.2019 passed by the learned Additional District and Sessions Judge, 1<sup>st</sup> Court, Lalbagh, Murshidabad in Criminal Revision Case No. 06 of 2017 being in accordance with law, is hereby affirmed.

Accordingly **CRR 2336 of 2019** is **dismissed**.

There will be no order as to costs.

All connected application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**

