

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 867 OF 2022

Vilas Babulal Jaiswal

.Vs.

The Sub-Divisional Officer, Khamgaon and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri Dheeraj I. Jain ,Advocate along with Shri Mahesh Rai,
Shri S.M. Morey, Advocates for petitioner.
Shri Amit Chutke, APP for respondent No.1.
Mrs. Sonali Saware, Advocate for respondent Nos.2 to 11.
Shri Mayank S. Sharma, Advocate for respondent No.12.

CORAM: G.A. SANAP, J.

DATE : 08/08/2023

Heard finally at the admission stage.

2. Perused the record and proceedings.
3. A short question involved in this petition can be addressed on the basis of the provisions of Section 133 of the Code of Criminal Procedure (for short “the Cr.P.C.).
4. The basic contention of the petitioner is that the order in question, passed by the learned Sub Divisional Magistrate, Khamgaon, is not strictly in

compliance with the mandate of Section 133 and other related provisions of the Cr.P.C. It is pointed out that in this case, preliminary conditional order was not passed. The show cause notice as contemplated under the section was not issued in conformity with the preliminary conditional order.

5. The application was made before learned Sub Divisional Magistrate by respondent No.2 to 11 for removal of the obstructions/encroachment made on the lane. Learned Sub Divisional Magistrate issued the notice of the said application to the petitioner. Petitioner appeared and filed his reply. Learned Sub Divisional Magistrate thereafter passed the impugned order and directed the petitioner to remove the obstructions by demolishing the construction/wire fencing and gate. This order was challenged in revision before the learned Additional Sessions Judge. Learned Additional Sessions Judge dismissed the revision and confirmed the order.

6. Learned Advocate for the petitioner took me through the provisions of Sections 133 to 143 of the Cr.P.C. These sections are part of chapter X, Part B. Part B deals with the cases of the Public nuisances. Section

133 to Section 143 provides the complete mechanism to take care of the removal of nuisance. Section 133 provides for conditional order for removal of nuisance. Section 134 provides for service or notification of the conditional order passed under Section 133 of Cr.P.C. Section 135 provides for show cause notice to a person against whom the order is passed. Section 137 provides for the procedure where existence of public right is denied by the person to whom the show cause notice is issued. Section 138, in that eventuality, provides for the procedure to be followed by the Magistrate to decide the disputed issue for the limited purpose.

7. On going through the order passed by learned Sub Divisional Magistrate, it is seen that in exercise of the power under Section 133 of the Cr.P.C., learned Magistrate has passed the order and given it the finality without following other provisions of this part of Chapter of Cr.P.C. providing the procedure for giving finality to the said order. In the facts and circumstances, in my view, the order is not in accordance with law. Learned Magistrate did not follow the procedure. Learned Additional Sessions Judge has not properly appreciated this aspect.

8. In my view, therefore, the order of the learned Additional Sessions Judge dated 29/09/2022 as well as the order of learned Sub Divisional Magistrate dated 10/08/2022 are required to be quashed and set aside.

9. Accordingly, Criminal Writ Petition is allowed. The order of the learned Additional Sessions Judge dated 29/09/2022 as well as the order of learned Sub Divisional Magistrate dated 10/08/2022 are quashed and set aside.

10. Considering the dispute raised by the non-applicants and the right claimed by the petitioner, it would be appropriate to remit the matter back to learned Sub Divisional Magistrate, Khamgaon.

11. Accordingly, the matter is remitted back to the learned Sub Divisional Magistrate, Khamgaon. Learned S.D.M., Khamgaon, shall follow the procedure laid down as discussed above and pass the final order.

(G. A. SANAP, J.)