

2023:PHHC:116223

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

SR. No.250

CRM-M-12329-2017 (O&M)

Date of decision:04.09.2023

Mohan Singh @ Tara Singh

...Petitioner

Versus

Balwinder Singh and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Barjinder Singh, Advocate for
Mr. Prateek Pandit, Advocate,
for the petitioner.

N.S. SHEKHAWAT, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 26.09.2013 (Annexure P-1) passed by Sub-Divisional Magistrate, Phillaur, whereby the application filed by the petitioner under Section 133 Cr.P.C. has been ordered to be dismissed. A further prayer has been made to set aside the order dated 21.01.2016 (Annexure P-2) passed by the learned Additional Sessions Judge, Jalandhar, whereby the revision petition filed by the petitioner against the order (Annexure P-1) was ordered to be dismissed.

2. Brief facts of the case, which are necessary for the effective determination of the issues involved in the present case, are that the petitioner had filed an application under Section 133 Cr.P.C. (Annexure P-3)

before the Court of Sub-Divisional Magistrate, Phillaur with a prayer to

issue directions to the respondents to stop the noise pollution/nuisance created by the operation of the factory run by the respondents and also for shutting down the said factory.

3. It was submitted by the petitioner that he was aged about 67 years and was suffering from various ailments. The respondents were running a factory of manufacturing ball bearing, adjacent to the house of the petitioner and due to the running of the heavy machinery by the respondents in their factory, a lot of noise and vibration was created, which caused nuisance to the petitioner. It was also submitted that the nuisance created by the factory of the respondents had also disturbed the daily life of the petitioner and other persons and was a source of public nuisance.

4. Learned counsel for the petitioner contends that both the courts had failed to appreciate the true import of Section 133 Cr.P.C. As per Section 133 Cr.P.C., a District Magistrate or SDM, may on receipt of a report by a police officer or other evidence direct the person carrying out any trade or occupation, which is injurious to the health or physical comfort of the community, to desist from carrying on such trade or occupation or to remove or regulate any such trade or occupation. For passing such an order, it was not necessary for the entire community or large number of persons to approach the court against any such nuisance and any individual could have knocked the doors of the court. Still further the respondents were operating the factory without any authorisation/permission from the government authorities. Further the courts failed to appreciate that the primary duty of the court, while exercising the jurisdiction under Section 133 Cr.P.C. is to assess whether the operation of the factory unit by the respondents was a

5. I have heard learned counsel for the petitioner and perused the case file minutely.

6. During the pendency of the matter before the Court of Sub-Divisional Magistrate, Phillaur, a report was called from the Punjab State Pollution Control Board (for short 'PSPCB') and the Assistant Engineer, Regional Office, Punjab State Pollution Control Board, Jalandhar had submitted a report dated 26.12.2012, wherein it was specifically stated that the running of the lathe machines did not create any noise pollution in the atmosphere. In fact, PSPCB is a statutory body and was competent to submit such a report, after assessing the situation on the ground. The Court of SDM, Phillaur had rightly relied upon the said report and had correctly held when the nuisance was not being created by the respondents, there was no question of invoking the powers of the court under Section 133 Cr.P.C. Further, it is also borne out from the record that the respondents had constructed a separate big room in its fields and they had been running the lathe machines continuously for the last 19 years. It was also apparent that the machines were operated from 8.00 AM to 5.00 PM and the noise caused by the said machines was even less than the other commonly used machines by agriculturists e.g. fodder cutting machine, generator, tractor etc. Still further, the machines were being operated since long time and no nuisance or obstruction was there, consequently the prayer of the petitioner was rightly declined by the courts. Even the revisional court has rightly held that from the allegations levelled by the petitioner/complainant, it was apparent that it appeared to be a dispute of personal nature, whereas the petitioner had levelled allegation against the respondents without any basis. I have gone

through the findings recorded by the courts in the present case and find no reason to deviate from the same.

7. Considering the facts and circumstances of the case, this Court is of the view that the present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

8. Resultantly, with the abovesaid observations made, instant petition stands dismissed.

(N.S. SHEKHAWAT)
JUDGE

04.09.2023
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO