

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

CRM-M-31521-2016 (O&M)

Date of Decision: 10.02.2023

Shingara Ram and others

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rakesh Gupta, Advocate for the petitioners.

Mr. Parneet Singh Pandher, AAG, Punjab.

Mr. Shakti Mehta, Advocate for respondent No.2.

Mr. Barjinder Singh, Advocate for respondent No.4.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., prayer is made to quash order dated 18.05.2016 (Annexure P-3) passed by Learned Sub Divisional Magistrate (SDM), Samana and the order dated 02.08.2016 (Annexure P-4) passed by Learned Additional Sessions Judge, Patiala dismissing the revision against Annexure P-3.

2. An application under Section 133 Cr.P.C. was filed by respondent No.2 Sikander Ram before SDM, Samana alleging that petitioners Shingara Ram etc. had blocked the public passage comprised in Khasra No.136 (6-11) situated in Village Chauhat. Pursuant to the notice issued by the SDM, petitioners filed reply admitting therein the existence of the public passage but stating that the same had been demolished 45 years back and that an alternate passage had been created out of land of petitioner No.2 Mohinder Ram, falling in Rectangle No.8 Khasra No.4/2(7-0) and

CRM-M-31251-2016 (O&M)

5/1(3-11), after Gram Panchayat had made an offer for exchange of such land in question. It was pleaded further that earlier passage was up to the land of Shingara Ram, which was not leading to the Dera. As the people of Dera were facing problem to approach their houses, so Gram Panchayat offered to exchange the land with that of the petitioners and so, the alternate passage was created. That alternate passage has since been converted into pucca road and that process of exchange of land was undergoing.

3. SDM Samana got the land in dispute demarcated and on that basis, passed an order asking to the petitioners to vacate the passage comprised in Khasra No.136 (6-11) within a period of 20 days, vide order dated 18.05.2016. Revision against this order has been dismissed by Learned Additional Sessions Judge, Patiala on 02.08.2016.

4. It is contended by learned counsel for the petitioners that impugned orders are illegal because the old passage was not convenient to the general public and so, the same was demolished. New passage was carved out by exchange after Gram Panchayat had passed resolution dated 27.11.2015. It is further contended that procedure under Section 137 & 138 Cr.P.C. has not been followed.

5. In reply, it is submitted by respondent No.1 that after verifying the report submitted by Field Kanungo and verifying the fact regarding passage, only conditional order under Section 133 Cr.P.C. was passed on 18.05.2016 and in case petitioners were not satisfied with the said order, then they could approach the respondent No.3 under Section 138 Cr.P.C. to show cause as to why the order passed under Section 133 Cr.P.C. be not

CRM-M-31251-2016 (O&M)

made absolute. No such remedy was availed by the petitioners.

6. Respondent No.2, who had initiated the proceedings under Section 133 Cr.P.C., defended the impugned orders.

7. Though no separate reply is filed by respondent No.4 – Gram Panchayat Village Chauhat but learned counsel representing the said respondent placed on file copy of a resolution dated 24.10.2021 passed by Gram Panchayat of the village, as per which previous resolution dated 27.11.2015 was revoked and it was resolved that public passage be restored in the land bearing Khasra No.136 (6-11) as per jamabandi for the year 2009-10 and that the said passage be got vacated from the petitioners. Learned counsel for respondent No.4 further urged that Gram Panchayat is not competent to exchange the land and so, the contention of the petitioners to the effect that land was exchanged, is devoid of merit.

8. Having considered submissions of both the sides, I find no merit in this petition.

9. It was not disputed by the petitioners that land comprised in Khasra No.136 (6-11) is a public passage. Their only contention was that said passage was demolished about 45 years back and that it was exchanged with an alternate passage.

10. Section 133 of the Code of Criminal Procedure provides about the conditional order for removal of nuisance, which may be passed by a District Magistrate or Sub-Divisional Magistrate. The relevant part of the provision is as under:-

“133. Conditional order for removal of nuisance.—(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other

CRM-M-31251-2016 (O&M)

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; or

(b) to (f) xxxxxx (not relevant),

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, xxxxxx, within a time to be fixed in the order -

(i) to remove such obstruction or nuisance; or

(ii) to (vi) xxxxxx (not relevant),

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.”

11. As is evident from the above provision, in case District Magistrate or Sub Divisional Magistrate receives a police report or other information that unlawful obstruction has been created at any public place or on any way, the said authority may pass a conditional order requiring the person causing such obstruction to remove the same within the time to be specified by the order; and in case he objects to do so to appear before him.

12. By way of the impugned order dated 18.05.2016 (Annexure P-3), petitioners were asked to vacate the land comprised in Khasra No.136 (6-

CRM-M-31251-2016 (O&M)

11) within a period of 20 days and the matter was adjourned to 10.06.2016.

Thus, only a conditional order was passed.

13. Section 134 Cr.P.C. provides about service of notification of the order. Section 135 provides about the person to whom order is addressed to obey or show cause. Section 136 Cr.P.C. provides the consequences of his failure to do so.

14. Section 137 Cr.P.C. provides procedure where existence of public road is denied. It reads as under:-

“137. Procedure where existence of public road is denied. -(1)

Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 138.

(3) A person who has, on being questioned by the Magistrate under sub- section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial,

has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

15. Section 138 Cr.P.C. provides the procedure where he appears to show cause. It reads as under:-

“138. Procedure where he appears to show cause. - (1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons- case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

16. In the present case, despite the fact that petitioners were asked to vacate the passage within the period of 20 days and the matter was adjourned to 10.02.2016, petitioners failed to show cause within the specified time and thus, did not approach the Sub Divisional Magistrate concerned under Section 137 or 138 of the Cr.P.C. and straightway filed revision before Additional Sessions Judge, which has been dismissed. Therefore, this petition deserves to be dismissed as petitioners did not avail remedy of approaching the Sub Divisional Magistrate against order (Annexure P-3).

17. Proceedings further, existence of the public passage on the land in dispute i.e. Khasra No.136(6-11) was duly admitted. The only contention

CRM-M-31251-2016 (O&M)

of the petitioners was that said passage had been demolished and an alternate passage had been provided as per the resolution of the Gram Panchayat for exchange. Concededly, Gram Panchayat is not the competent authority for exchanging the land of the Rasta. As rightly noticed by Learned Additional Sessions Judge, Patiala in his order dated 02.08.2016, that it was stated by the petitioners that matter for approval of exchange was pending, which clearly meant that no permission for exchange of land had been given by any competent authority. Even till date no such permission has been placed on record. To the contrary, respondent No.4 – Gram Panchayat has placed on record copy of its resolution dated 24.10.2021 revoking the earlier resolution dated 27.11.2015 and resolving to restore the passage comprised in Khasra No.136(6-11).

18. Apart from above, having availed the remedy of filing revision before Additional Sessions Judge, against the impugned order of SDM, the present petition under Section 482 Cr.P.C. is abuse of the process of law. In ***Ranjit Singh V. Bhup Singh 1996(2) RCR (Criminal) 42***, revision against the order passed under Sections 133, 137, 138 of Sub Divisional Magistrate was dismissed by Additional Sessions Judge. Petition under Section 482 Cr.P.C. was filed before the High Court. Pleas taken in the petition under Section 482 Cr.P.C. were also taken before Additional Sessions Judge, who had dismissed the revision. It was held by this High Court that petition is in the nature of second revision in the garb of a petition to invoke the inherent jurisdiction of the High Court and so, the said petition is not maintainable.

CRM-M-31251-2016 (O&M)

Same view has been taken in *Sardar Singh v. State of Haryana 2002(2) C.L.J. (Criminal) 260.*

19. In view of above discussion, this court finds no merit in the present petition. As such, same is hereby dismissed.

February 10, 2023
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No