

255

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

CRM-M-39852-2018

Date of Decision: 05.07.2023

Sheela Devi

...Petitioner

Vs.

J.P Honda Service Centre

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Nipun Vashisht, Advocate
for the petitioner.

Mr. Rajeev, Advocate for
Mr. Ashish Yadav, Advocate
for the respondent.

N.S.Shekhawat J.

1. The petitioner has filed the instant petition under Section 482 Cr.PC with a prayer to quash the order dated 13.03.2018, passed by the Court of Sub-Divisional Magistrate-Cum-Collector, Rewari (Annexue-P2).

2. The factual background projected by the petitioner is as under:-

An application under Section 133 Cr. PC was moved by 28 residents of Sati Colony, Rewari against JP Hero Honda Service Centre, the respondent by alleging that the respondent was carrying on the business of repair work of motorcycles. He was also storing mobil oil drums in his shop and also used to park 8/10 motorcycles on the road illegally. Apart from that, the oil was highly inflammable in nature and was spilled on the road. Due to this, the school going children and the women were facing hardships. It was also alleged that it was also affecting the studies of the students in the area and there were

complaints of Aasthma from the residents of locality.

3. The parties appeared before the Court of Sub Divisional Magistrate, Rewari and got their statements recorded. Gopal Sharma, one of the applicant appeared and made a statement that they had no dispute with the respondent and did not want to pursue the present application. Still, the SDM visited the spot and carried out the inspection personally. After the spot inspection and hearing the parties, the SDM arrived at the conclusion that there was only one hardship at the spot i.e the respondent used to park motorcycles on the main road, for repair and due to this, general public had to face difficulty on the road. Consequently, vide the order Annexure P-2, the SDM directed the respondent not to park motorcycle on the road/park illegally. He further ordered that in case any motorcycle was found, then it will be confiscated and directions were issued to SHO Police Station, City Rewari to carry out an inspection on the disputed site and to further ensure that the respondent did not park motorcycles on the road in the future. He further directed that in case any motorcycle was found parked on the road, legal action might be taken against the respondent and the copy of the order was sent to Police Station City, Rewari for compliance. With this observations, application under Section 133 Cr. PC was ordered to be disposed of by the SDM.

4. At this stage, it requires mention that application under Section 133 Cr. PC was moved by 28 residents of Sati Colony, Rewari and as per the record, none of them had challenged the said order. However, the present petition was filed by Sheela Devi wife of Bunbun Saini, who claimed herself to be resident of Sati Colony and was not a party to the litigation before the learned SDM, Rewari.

5. Learned counsel for the petitioner vehemently argued that the SDM, Rewari completely failed to appreciate that from the photographs Annexure P3, it was evident that the service of the motorcycles was being carried out on the road itself and it was causing public nuisance. Still further, the SDM passed the order that merely because of the fact that the commercial site plan was passed by the Municipal Committee, which was no ground under Section 133 Cr. PC. Rather the business of the respondent was causing lot of public inconvenience and discomfort. Consequently, appropriate action should have been taken against the respondent. On the other hand, learned counsel for the respondent submits that the petitioner had no locus to challenge the order dated 13.03.2018, Annexure P2 passed by the SDM, as she not even the party before the Court of SDM, Rewari, Apart from that, 28 persons had moved the application under Section 133 Cr. PC and appropriate action had already been ordered against the respondent and no applicant preferred to challenge the impugned order. Thus, the petitioner has no locus standi to challenge the impugned order.

6. Apart from that, the commercial site of the respondent had already been approved by the Municipal Committee and he was a motorcycle mechanic, which could never cause any kind of annoyance or discomfort to the general public. He has already been directed by the SDM, not to park his vehicles on the main road. Consequently, the petition was not maintainable before this Court.

7. I have heard learned counsel for the parties and perused the record with their assistance. It has been held by the Hon'ble Apex Court in the matter of Suhel Khan Khudyarkhan Vs. State of Maharashtra, 2009(3) RCR

(Criminal) 36: 2009(5) SCC 586 as follows:-

“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 'Indian Penal Code') 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 'Civil Procedure Code'). 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 Indian Penal Code. 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 tour".

*“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).*

8. Now, in the background of the legal principles set out above, this Court would advert to the facts of the instant case. In the present case, the SDM had personally carried out the spot inspection in the presence of the parties. Even though the applicants had levelled several allegations in the application under Section 133 Cr. PC; still the only problem, which was noted by the SDM at the spot, was that the vehicles had been parked for repair, on the road

illegally. It was also noticed that the general public had to face difficulty in passing through the said area and directions were appropriately issued to the police to ensure that the respondent did not park any vehicle on the road. Apart from that, directions were already issued to local police to take strict action, in case any vehicle was found parked illegally on the road. Thus, it is evident that the SDM had already passed appropriate directions to regulate the business of the respondent in such a manner that it did not cause nuisance, inconvenience or discomfort to the general public. Even otherwise, it is apparent from the record that the respondent was carrying on his lawful business, after seeking prior approval of the Municipal Committee, Rewari. The law is well settled that the proceedings under Section 133 are not intended to settle private disputes between different members of the public. They are infact intended to protect the public, as a whole against inconvenicne, therefore, the SDM has correctly observed that a lawful and necessary trade ought not to be intereferred with, unless it is proved to be injurious to health or physical discomfort of the general public. Even otherwise, the application under Section 133 Cr. PC was filed on behalf of 28 persons and all the applicants seemed to be satisfied with the impugned order and none of them had preferred the petition before this Court. However, the petitioner, who was not even an applicant before the learned SDM, choose to file the present petition and her petition is not maintainable before this Court. Apart from that, the present petitioner had also filed one application under Section 22-C of the Legal Services Authorities Act, 1987 on 09.05.2013, before the Permanent Lok Addalat, Public Utility Services, Rewari and the same was held to be not maintainable vide the order dated 30.09.2013.

The petitioner, however, filed the present petition on 10.09.2018, before this

Court. Thus, this Court does not find no merit in the present petition and the same is accordingly, ordered to be dismissed.

05.07.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No