

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

CRM-M-32927-2019 (O&M)
Date of Decision: 10.05.2023

BACHITTAR SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ajay Chauhan, Advocate
for Mr. Diwan S. Adlakha, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

CRM-21105-2023

This is an application for placing on record Annexure P-7 (Complaint dated 26.12.2014) and Annexure P-8 (Report dated 21.05.2015) and also for exemption from filing certified copies of the same.

For the reasons recorded in the application, the same is allowed. Annexures P-7 and P-8 are taken on record, subject to all just exceptions.

CRM-M-32927-2019

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), seeking quashing of order dated 13.11.2018 (Annexure P-3), whereby, an application filed by him for implementation/compliance of order dated 12.08.2015 (Annexure P-1) passed by learned Sub Divisional Magistrate, Rajpura, under Section 133 of the Cr.P.C., has been dismissed.

2. Petitioner has also sought quashing of order dated 17.05.2019 (Annexure P-5) passed by learned Sessions Judge, Patiala, whereby, the Criminal Revision Petition filed by him against the above-said order dated 13.11.2018 (Annexure P-3) was also dismissed.

3. Briefly, the petitioner submitted a complaint to the Police Station Sambu against the respondents for un-authorizedly blocking the public road/passage. Upon this complaint, the concerned Station House Officer inspected the spot and prepared a *kalandra* under Section 133 of the Cr.P.C and sent the same for adjudication before the Court of learned Sub Divisional Magistrate, Rajpura, who after appreciating the material placed on the record, accepted the *kalandra* by directing the Block Development and Panchayat Officer (for short 'BDPO'), Rajpura, to remove the obstructions raised in the Panchayati Street vide its order dated 12.08.2015 (Annexure P-1). It is stated that although the respondents herein challenged the afore-said order dated 12.08.2015 (Annexure P-1) by filing a Revision Petition before the Court of Additional Sessions Judge, Patiala; however, the same was dismissed in default vide order dated 24.02.2016 (Annexure P-2).

4. As per the petitioner, he filed an application dated 11.05.2016 before the Sub Divisional Magistrate, Rajpura, seeking implementation of the afore-said order dated 12.08.2015 (Annexure P-1) for removal of encroachment. It appears that during the proceedings regarding implementation of order dated 12.08.2015 (Annexure P-1), learned Sub Divisional Magistrate, Rajpura, issued warrants to BDPO, Rajpura, who submitted a compliance report dated 20.02.2017, stating therein that the illegal constructions have already been removed. According to the petitioner, since the encroachment on the public street was not removed;

accordingly, he filed another application dated 03.03.2017, submitting therein that the septic tanks constructed by the respondents in the street have not been removed so far. Thereafter, the BDPO, Rajpura submitted a supplementary report dated 30.06.2017 stating that all the obstructions have been removed from the street and now, there is no construction creating any obstruction in the movement of traffic in the street. Thereafter, learned Sub Divisional Magistrate, Rajpura, again sought report from the Tehsildar, Rajpura, who submitted his report vide letter No.888/Reader dated 11.09.2017.

5. Thereafter, after considering the case, the Sub Divisional Magistrate, Rajpura, vide order dated 13.11.2018 (Annexure P-3) dismissed the application filed by the petitioner for implementation of order dated 12.08.2015 (Annexure P-1), by observing as under :-

“After hearing the counsels of both the parties and perusing the record, as per reports of BDPO Rajpura and Tehsildar Rajpura, illegal possession/encroachment has been removed. But on 23.03.2017, petitioner Bachittar Singh had moved an application that the respondent has not removed the illegal possession of septic tank pit. Due to that, Tehsildar Rajpura was directed to verify the reports given by the BDPO. In this way, Tehsildar, Rajpura sent a report vide his letter no.798 dated 17.10.2018 that outside the wall of Jaswinder Singh, a latrine pit is made which is under the earth. At the place of pit, bricks are laid. Due to this pit, there is no hindrance in the passage. The road/passage is absolutely proper. Reports of BDPO Rajpura are true and correct. Thus, upon being convinced/agreed with the reports of Tehsildar/BDPO Rajpura, the application made by the petitioner on 17.05.2016, is dismissed.”

6. Being dis-satisfied with the afore-said order dated 13.11.2018 passed by the Sub Divisional Magistrate, Rajpura, the petitioner filed a Criminal Revision before the Court of learned Sessions Judge, Patiala; however, the same was also dismissed vide order dated 17.05.2019, by holding as under :-

“8. After hearing the rival contentions and going through the record of the case, this Court is of the view that there is no merit in the instant revision petition. First of all, the perusal of order dated 12.8.2015 passed by the learned Sub Divisional Magistrate, Rajpura shows that the matter regarding septic tank was not the subject matter of the proceedings under Section 133 Cr.P.C. When the said matter was not under consideration in the proceedings under Section 133 Cr.P.C, there is no question of getting removed the septic tank for implementation of any such order. As per sub-section 1 of Section 133 Cr.P.C., the Magistrate has to pass a conditional order requiring the person concerned to remove the obstruction. Thereafter the said person can cause appearance before the Magistrate and show cause against the order. In case the respondent causes appearance and shows cause against the said order, the Magistrate is required to take evidence and thereafter the Magistrate has to pass final order in the matter. When no conditional order regarding removal of septic tank was passed against the respondents at any stage, there is no question of making such order absolute vide order dated 12.8.2015. Moreover, even the order dated 12.8.2015 does not relate to septic tank constructed by the respondents. Therefore, the said septic tank could not be got removed in implementation of the said order. Moreover, as per the report of Block Development Panchayat Officer, Rajpura, the septic tank does not cause any hindrance in the use of street by other

residents. In these circumstances, this Court is of the view that there is no merit in the instant revision petition and the same is hereby dismissed. Lower court record alongwith copy of this judgment be sent to the Court concerned and the revision file be consigned to the record room.”

7. Accordingly, the petitioner has filed the present petition.
8. Learned counsel for the petitioner submits that the impugned orders are liable to be set aside as the respondents have not removed the encroachment from the passage/street. It is submitted that the respondents have constructed underground septic tanks on the land forming part of the street; hence, the same were liable to be removed.
9. I have heard learned counsel for the petitioner and also gone through the paper-book with his able assistance.
10. A perusal of the file would show that the petitioner had initially filed a complaint to the Station House Officer against the respondents, seeking removal of blockage on the public road/passage. A perusal of the said complaint dated 26.12.2014 (Annexure P-7) would show that in the entire complaint, there is no allegation/objection regarding any septic tank; rather the only complaint was regarding blockage of street on account of parking of tractor and car therein. Subsequently, it appears that when the matter was pending before the Sub Divisional Magistrate, during arguments, the submission was made regarding construction of two septic tanks. However, Sub Divisional Magistrate, Rajpura, vide order dated 12.08.2015 (Annexure P-1) while accepting the *kalandra* under Section 133 of the Cr.P.C., directed the BDPO, Rajpura, to remove the obstruction raised in the Panchayati street and a further direction was issued that the general movement be started in a proper manner. Thereafter, when the

petitioner filed an application, seeking implementation of order dated 12.08.2015 (Annexure P-1), specific reports were called by the Sub Divisional Magistrate from BDPO, Rajpura and Tehsildar, Rajpura; wherein, it was reported that due to the pit, there was no hinderance in the passage and the road/passage is absolutely proper. The reports of BDPO, Rajpura were found to be true and correct and accordingly, the application filed by the petitioner was dismissed.

11. Still further, the Criminal Revision Petition filed by the petitioner before the Court of Sessions Judge, Patiala, was also dismissed by categorically holding that as per the report of BDPO, Rajpura, the septic tank does not cause any hinderance in the use of street by other residents. It was also observed that no conditional order regarding removal of septic tank was passed against the respondents at any stage and even order dated 12.08.2015 (Annexure P-1) does not relate to septic tank constructed by the respondents.

12. In view of the afore-said discussion, I do not find any merit in the instant petition and the same is accordingly dismissed.

May 10th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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