



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12054-2024
Reserved on: 29.05.2024
Pronounced on: 31.05.2024

KANHI RAM

. . . . Petitioner

Vs.

STATE OF HARYANA AND OTHERS

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Sudhanshu Makkar, Advocate, for the petitioner.

Mr.Randhir Singh, Addl. AG, Haryana.

Mr. Ishnoor Singh Bains, Advocate, for
Mr. Vikram Singh, Advocate, for respondent Nos. 3 to 6.

Mr. Damanpreet Singh, Advocate, for respondent No.7.

DEEPAK GUPTA, J.

By way of this petition, petitioner prays to set aside the order dated 20.02.2024 (*Annexure P13*) passed by Id. Additional Sessions Judge, Bhiwani to the extent of remanding the matter back to respondent No.2-Sub Divisional Magistrate, Tosham-cum-Executive Magistrate so as to decide complaint (*Annexure P7*) filed under Section 133 of the CrPC made by private respondents No.3 to 6 against the petitioner; and for not accepting the revision in totality.

2. The perusal of the paper-book would reveal that private respondents (*i.e. respondents No.3 to 6 herein*) had filed an application under Section 133 CrPC against petitioner-Kanhi Ram for removal of encroachment

from public passage. Said application was decided by the Sub-Divisional Magistrate-cum-Executive Magistrate, Tosham vide order dated 06.01.2023, which was challenged in revision by the petitioner by filing CRR-189-2023 before court of Sessions. Ld. Revisional Court, Bhiwani by way of his order dated 13.09.2023, set aside the order dated 16.01.2023 and directed the Sub Divisional Magistrate-cum-Executive Magistrate, Tosham to decide the application under Section 133 CrPC afresh. Pursuant to this order dated 13.09.2023 of the Revisional Court, the Sub Divisional Magistrate-cum-Executive Magistrate, Tosham decided the application by way of order dated 07.12.2023 and directed the revisionist to remove the encroachment from the public passage within a week. The petitioner again challenged this order dated 07.12.2023 and the Revisional Court by way of the impugned order dated 20.02.2024 (Annexure P13) again remanded the matter to the Sub Divisional Magistrate-cum-Executive Magistrate, Tosham to decide the application under Section 133 CrPC strictly in accordance with the directions given in the order dated 13.09.2023 as earlier passed.

3. It is the aforesaid order of remanding back the application to the Sub Divisional Magistrate-cum-Executive Magistrate, Tosham, which is assailed by the petitioner before this Court.

4. I have heard ld. counsel for both the sides and have appraised the record.

5. The perusal of the paper-book would reveal that following observations have been made by the Ld. Additional Sessions Judge, Bhiwani, compelling him to remand the matter to the Sub Divisional Magistrate, Tosham:-

8. After considering the rival contentions of both the parties and after perusing the case file, it is considered view of this Court that Sh. Ashwani Kumar, learned Additional Sessions Judge, Bhiwani, while deciding earlier Criminal Revision No.189 of 2023, CNR No.HRBH01- 0003822023, titled Kanhi Ram Versus Rajesh and others, arising out of earlier order dated 06.01.2023 passed by the then Executive Magistrate, Tosham, has observed in para No.11 and 12 of the judgment dated 13.09.2023, which are as under:-

11. The revisionist has placed on record the copy of judgment dated 28.09.2017 passed by the then learned Addl. District Judge, Bhiwani in the appeal titled "Kanhi Ram Vs. Suresh @ Pappu etc." in which Gram Panchayat was also a party. A perusal of the judgment dated 28.09.2017, reveals that the plaintiff has proved his possession over the suit property and defendants were restrained from interfering in his peaceful possession over the same. However, Gram Panchayat was given opportunity to eject the revisionist in due course of law.

12. Under Section 133 (2) of Cr.P.C., if during enquiry, the Magistrate finds that there is any reliable evidence in support of denial of existence of public right then he shall stay the proceedings until the matter of existence of such right has been decided by a competent court. In this case, a perusal of impugned order nowhere reveals that before passing the impugned order, the then Sub Divisional Magistrate, Tosham had considered the judgment dated 28.09.2017 or any opportunity of leading evidence has been given to the revisionist.

9. Earlier revision petition was disposed of with direction to Executive Magistrate, Tosham, to decide the application under Section 133 Cr.P.C. as per the directions given in para No.14 of the judgment dated 13.09.2023, which provides as under:-

14. As per the aforesaid provision coupled with the lower court record reveals that after issuance of conditional order by Sub Divisional Magistrate, Tosham no opportunity to lead evidence has been given to the parties to corroborate their stand and rebut the inspection report. A final order under Section 138 of Cr.P.C. can be passed only on the basis of conditional order. A conditional order could be made absolute with or without modification. In the absence of giving an opportunity of leading evidence to the parties to corroborate their stand and only on the basis of local commissioner's report, the conditional order cannot be made absolute. In these circumstances, the main order which is alleged to be final order under Section 138 of Cr.P.C. is patently illegal and opposed to the provision contained in Sections 133 to 138 of Cr.P.C.

6. Thereafter Id. Additional Sessions Judge, noticed that after receiving the earlier order of the Revisional Court, though the Sub Divisional Magistrate, Tosham adjourned the matter from time to time, but did not receive any evidence from the petitioner. Even the report of the spot inspection was not made available on record and thus, the directions given in the order dated 13.09.2023, passed by the Revisional Court in CRR-189-2023 had not been complied with at all.

7. It was in the aforesaid circumstances that the Court of Id. Additional Sessions Judge, exercising the power of revision was compelled to remand the matter back to the Court of Id. Sub Divisional Magistrate, Tosham, so as to decide the matter afresh by making strict compliance of the directions given in the order dated 13.09.2023, as passed in CRR-189-2023.

8. After hearing Id. counsel for both the sides, this Court does not find any illegality whatsoever in the aforesaid order, as the order had been passed by the Sub Divisional Magistrate, Tosham-Executive Magistrate, without complying the directions earlier issued by the Revisional Court.

9. As such, finding no merit in the present revision, the same is hereby dismissed

Pending application(s), if any, also stand disposed of.

31.05.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes
No