



IN THE PUNJAB AND HARYANA HIGH COURT  
AT CHANDIGARH

CRM-M-12650-2024  
Date of Decision: 21.03.2024

BAHADUR SINGH  
.....PETITIONER

VERSUS

GRAM PANCHAYAT MAULI BAIDWAN  
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. H. K. Aurora, Advocate  
for the petitioner.

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SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C. for setting aside the impugned order dated 24.01.2024 passed by the Revisional court, Mohali and for upholding the order dated 12.04.2016 passed by the SDM, Mohali. .

2. Factual matrix of the case unfolds that the complainant-respondent filed a complaint under section 133 Cr.P.C. before the court of SDM, Mohali to the effect that the petitioner has put additional lentils over the village street to join his house and further raised the building to 4<sup>th</sup> and 5<sup>th</sup> floor illegally thereby renting the room to PG's who creates nuisance and ruins the atmosphere of the village by performing immoral activities including drug and alcohol intake. Numerous complaints have been received by the Panchayat and the petitioner was also requested on numerous occasions to remove the illegal construction and curtail the nuisance but no heed was paid

by him which led To registration of FIR against the petitioner bearing no. 202 dated 26.08.2015 under section 188 IPC which pertains to non supply of information about verification of his tenants.

3. Counsel for the petitioner contends at the very outset that the impugned order dated 24.01.2024 passed by the revisional court suffers from severe illegality since it has failed to appreciate the order in CR No.4766 of 2016 dated 16.09.2016 wherein it has explicitly directed to the Gram Panchayat, Mauli Baidwan, Tehsil and District Mohali and BDPO, SAS Nagar, Mohali to demarcate the public street in question and thereafter if anyone violates that public area then that person would face lawful proceedings against him.

4. He further contends that no demarcation has even been conducted by the authorities stated above either in the civil suit or from the revenue authorities. In addition, the petition filed by the respondent against the petitioner under section 7 of the Punjab Village Common Lands Act, 1961 was also passed illegally vide order dated 31.08.2021(Annexure P-3) therefore the same was stayed in appeal vide order dated 28.09.2023(Annexure P-4).

5. Counsel for the petitioner vehemently contends that the proceedings under section 133 Cr.P.C are not intended to settle private dispute or unless there is an emergency and the public is put to great inconvenience and further relies on ***“Sukh Lal vs Dr. Brij Basi Lal and Others(1979) 01 AHC CK 0050A, wherein the Allahabad High Court has held that:-***

*"The proceeding u/s 133 should be taken in case of emergency where the public shall be put to great inconvenience and shall suffer an irreparable injury if the encroachment or nuisance is not removed at once by adopting the summary procedure contained in Ch. 10 and,*

*therefore, ordinarily no action u/s 133, can be taken where the obstruction or nuisance has been in existence for a long period. However, there is no legal bar to seeking remedy u/s 133 where there exists a genuine emergency to have the encroachment or nuisance removed. Such an action can be taken even though the encroachment or nuisance has been in existence for a reasonably long period. But if the obstruction has been in existence for a long period without any change in the circumstances the removal of such obstruction cannot be said to be urgent and remedy must be sought in Civil Courts."*

6. Heard counsel for the petitioner at length.
7. Before delving into the merits of the case, it is pertinent to have a look at section 268 IPC, which is reproduced herein below:-

***"268. Public nuisance.—***

*A person is guilty of a public nuisance who does any act or is guilty of an illegal 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, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.*

*A common nuisance is not excused on the ground that it causes some convenience or advantage"*

8. The instant case pertains to dispute over existence of public nuisance wherein the petitioner has raised construction to usurp the part of public street, has dismantled the street and has further put lentil over the street and has further raised illegal construction in the shape of rooms thereby running a business of PG's who further create nuisance by consuming alcohol, drugs and performing immoral activities.

9. Nuisance is an inconvenience that materially interferes with the ordinary physical comfort of human existence, it may be public nuisance or

private nuisance. As defined in section 268 IPC, public nuisance is an offence against public either by doing a thing which tends to the annoyance of the whole community in general or by neglect 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 the property in the vicinity.

10.           Thereafter, a complaint under section 133 Cr.P.C was filed in the court of SDM, Mohali which was dismissed vide order dated 12.04.2016 after having found that a civil dispute between the parties on same allegations is pending before this court which compelled the respondent to file a revision against the above stated order which was set aside by Additional Sessions Judge, S.A.S Nagar vide order dated 24.01.2024.

11.           In “*State of M.P. Vs Kedia Leather & Liquor Ltd. and Ors., 2003(7) SCC 389*” it has been held that the object and purpose behind section 133 Cr.P.C 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.

12.           From the perusal of the record in hand as well as the facts in the instant case, it is evident that the petitioner having done unauthorized construction raised the floors over the government street wherein he has stated to have taken permission from the owners of 4-5 houses but on the other hand has failed to disclose the name of any such person. Further, he has also opened a PG in the same house illegally which has spoiled the atmosphere of the village.

13. The court is of the considered opinion that civil suit decides the rights of the parties and it is permanent settlement of the rights of the parties, but if the nuisance is existing and urgent relief is required, section 133 Cr.P.C comes into play. Harmonious interpretation of the provisions of Cr.P.C and the fact of pendency of civil suit is that if the nuisance is such that there is urgent need of removal of nuisance or obstruction on the path, the inquiry is to be made by the Magistrate and order is to be passed and such right cannot be waived by the Sub Divisional Magistrate merely because some civil suit is pending wherein no specific order has been passed.

14. Keeping in view the facts of the instant case that the public nuisance is of such a nature that it would certainly impact the community residing in the village and the illegal construction raised is causing discomfort to the public residing in the vicinity and the aforesaid discussion, the instant petition stands dismissed and the order dated 24.01.2024 is upheld.

21.03.2024  
Poonam Negi

(SANDEEP MOUDGIL)  
JUDGE

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