

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

CRM-M No.15280 of 2024 (O&M)

Date of decision: 30.04.2024

Aditi Garg

... Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Petitioner in person (through V.C.).

Ms. Manjot Kaur, AAG, Punjab for respondent Nos.1 to 4.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*for short* 'Cr.P.C.') for quashing of impugned order dated 12.07.2023 (P-9), whereby criminal revision of the petitioner was dismissed by learned Additional Sessions Judge, Ludhiana and the order dated 26.06.2018 (P-6), passed by Deputy Commissioner-cum-District Magistrate, Ludhiana, thereby transferring her complaint under Section 133 Cr.P.C. from Sub Divisional Magistrate, Ludhiana (West) [*for short* 'SDM (West)'] to Sub Divisional Magistrate, Ludhiana (East) [*for short* 'SDM (East)'], was affirmed.

(2) It is alleged that during August, 2017, respondent Nos.5 to 7 started construction of a building in the plot adjoining to house of petitioner. Further alleged that aforesaid respondents were unloading the construction

materials on roadside and that resulted into obstruction of the public way as well as caused nuisance while blowing horns in front of the house of petitioner. Also alleged that respondent Nos.5 to 7 were using machine(s) like wood/marble cutter(s) in their open portion and that created noise pollution beyond the statutory limit. Harassed with the above situation, petitioner and her family members requested respondent Nos.5-7 to mend their ways; but they failed to do so. Hence, petitioner filed a complaint under Section 133 Cr.P.C. on 06.03.2018 (P-1) before SDM (West) and the same was transferred to SDM (East) by the Deputy Commissioner, Ludhiana vide order dated 26.06.2018 (P-6).

(3) Aggrieved against the aforesaid order, petitioner preferred a revision before learned Additional Sessions Judge, Ludhiana; but the same was dismissed vide impugned order dated 12.07.2023.

(4) Still dis-satisfied with the order of Revisional Court, petitioner has filed the present petition on 19.03.2024.

(5) This Court on 01.04.2024 passed the following order:-

*“Learned State counsel seeks time to have instructions about the fate of complaint which was transferred to Sub Divisional Magistrate, Ludhiana (East) by the then Deputy Commissioner-cum-District Magistrate, Ludhiana.
Posted for 09.04.2024.”*

(6) On 23.04.2024, learned State Counsel apprised the Court that complaint under Section 133 Cr.P.C. had already been dismissed prior to filing of present petition by the SDM (East) on 06.11.2019 and copy of the order was placed on record as Mark ‘X’.

It is not in dispute that order dated 06.11.2019 (*supra*) has duly been received by the petitioner.

(7) It is contended by the petitioner that application under Section 133 Cr.P.C. was dismissed for non-prosecution by the SDM (East) and there is no adjudication on merits.

(8) *Per contra*, learned State Counsel opposed the contention while submitting that petitioner failed to convince the SDM (East) and as a result thereof, application was dismissed while passing the reasoned order. Learned State Counsel also submitted that if petitioner is still aggrieved against the order passed by SDM (East), she has a remedy under Section 397 Cr.P.C. before Revisional Court; hence, present petition is liable to be dismissed.

(9) Heard both sides and perused the paper-book.

(10) Precisely, the grievance of petitioner was against the order dated 26.06.2018, passed by the Deputy Commissioner, Ludhiana, whereby her application instituted under Section 133 Cr.P.C. was transferred from SDM (West) to SDM (East).

(11) Learned Additional Sessions Judge while dismissing the revision on 12.07.2023 observed as under:-

“8. Taking into account the facts and circumstances of the case, this court finds that the revisionist has filed the present revision against an administrative letter bearing No.13539 dated 26.6.2018 written by the Deputy Commissioner, Ludhiana to Sub Divisional Magistrate, Ludhiana (West) with copy of Sub Divisional Magistrate, Ludhiana (East), vide which he has transferred the case of the revisionist from SDM, Ludhiana (West) to SDM

Ludhiana (East). The revisionist has failed to point out as to how she has been prejudiced to present her case before the Sub Divisional Magistrate (East), Ludhiana, who is vested with the same powers as that of Sub Divisional Magistrate (West), Ludhiana. Moreover, no law has been shown under which the present revision against an administrative letter is maintainable in this court. It is pertinent to mention here that petition before the SDM already stands decided and that order can be challenged in appeal. So, when the main petition of the revisionist has been decided, the present revision has become infructuous.

9. *Resultantly, the revision fails and is hereby dismissed. Lower court record be returned. Revision file be consigned to the record room.*

From the above observations, it is clearly discernible that application under Section 133 Cr.P.C. of the petitioner had been declined by the SDM (East) much prior to the decision of Revisional Court.

(12) Also noteworthy that SDM (East) while dismissing the applicaiton on 06.11.2019 had examined the matter thoroughly and for reference, operative part of the order (translated version) reads as under:-

“The facts on record were read and both sides were heard. After hearing, I have come to the conclusion that after passing of conditional order on the application given by the applicant, she had to prove the allegations by way of evidence of witnesses; but she did not produce any witness in the Court and father of the applicant Sh. Arun Garg misbehaved and uttered derogatory words in the Court. Apart that, she did not appear in the Court from 03.06.2019 to 29.11.2019 and neither she produced any concrete evidence, which could be acted upon according to law. Therefore, this petition is dismissed. Order pronounced. File after proper compilation be consigned to record-room.”

A perusal of the above extract clearly indicates that order had been passed by the SDM (East) after due application of mind and as such, it is wrong to contend that petition under Section 133 Cr.P.C. was dismissed for “non-prosecution”.

(13) Above all, the order dated 06.11.2019 is not under challenge. Also not in dispute that against the order datd 06.11.2019, petitioner had a remedy before learned Revisional Court; but she failed to avail the same for reasons best known to her.

(14) In view of the above, no ground is made out to entertain the present petition against the order dated 12.07.2023, passed by learned Additional Sessions Judge, Ludhiana.

(15) Consequently, there is no option, except to dismiss the petition.

(16) Ordered accordingly.

(17) The above observations may not be construed as an expression of opinion on merits of the present case in any manner.

(18) Pending application(s), if any, shall also stand disposed off.

30th April, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes