



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-18299-2024 (O&M)

Date of Decision:-24.7.2024

Alop Giri Maharaj

... Petitioner

Versus

Parmanad and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ajay Kumar Gupta, Advocate for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 15.11.2023 (Annexure P-1) passed by learned Sub Divisional Judicial Magistrate, Loharu, District Bhiwani vide which an application filed by the petitioner under Section 133 Cr.P.C. has been declined.
2. The case set up by the petitioner in his application under Section 133 Cr.P.C. (Annexure P-2) is that the petitioner is Mahant/Manager/Priest of Mahant Baba Makhanpuri Maharaj Ashram and Gogaji Temple located in Village Jhuppakalan Tehsil Loharu, District Bhiwani and that several persons from neighbouring villages have great faith in the '*ashram*' and the temple and visit the said premises to pay obeisance. It is alleged that on 30.8.2023 the respondents formed an unlawful assembly and entered into the premises of the temple/ashram while under influence of alcohol and kicked the idols of Gods and Goddesses while wearing shoes. Although the petitioner tried to stop the accused from committing the said wrong, but the respondents hurled



abuses at the petitioner and gave beatings to him and even threatened to kill him. It is further alleged that on 18.7.2023, respondent No.1 - Parmanand had been roaming around the shrine while wearing shoes in the temple and had dishonoured idols and the petitioner had accordingly lodged a report with the police station. It is further alleged that on 30.9.2023, respondent No.1 accompanied by some other persons had come to the temple/ashram and when the petitioner confronted them as regards the reason for having come to the temple, then respondent No.1 replied that the complainant/petitioner should keep away. It is alleged that around the same time, the respondents in a well planned conspiracy formed an unlawful assembly and entered into the premises and made a murderous assault on him and gave beatings to him and dragged him on the road. The same miscreants are alleged to have even broken CCTV cameras and burnt the DVR and are also alleged to have taken away petitioner's mobile phone, his gold chain and an amount of Rs.10,400/-. The complainant called the police and submit a complaint and FIR No.248, dated 5.9.2023 at Police Station Loharu, District Bhiwani, under Sections 147, 149, 323 and 506 of Indian Penal Code was lodged against the accused.

3. Learned counsel for the petitioner submitted that the ashram being a public place, the conduct of the respondents would fall within the term 'nuisance' and as such Section 133 Cr.P.C. was required to be invoked, whereas learned Trial Court erred in dismissing the petition while observing that there was no truth in the allegations. Learned counsel submitted that learned Sub Divisional Judicial Magistrate was obliged to have afforded sufficient opportunity to the complainant to lead evidence and that since the impugned



order having been passed without having afforded any such opportunity, the same is liable to be set aside.

4. This Court has considered the submissions addressed before this Court.
5. Before proceeding further it is apposite to refer to Section 133 Cr.P.C., which for the sake of reference is reproduced hereinunder:

“133. Conditional order for removal of nuisance.—

- (1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—
 - (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
 - (b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
 - (c) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or
 - (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or



- (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or
- (f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—
 - (i) to remove such obstruction or nuisance; or
 - (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or
 - (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
 - (iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or
 - (v) to fence such tank, well or excavation; or
 - (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order, or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.



Explanation.—A “public place” includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.”

- 6. A perusal of the aforesaid provisions would indicate that the basic objective required to be achieved is that any kind of unlawful obstruction or nuisance in a public place should be removed.
- 7. The allegations as levelled in the application (Annexure P-2), even if taken to be correct, would show that the same pertain to 2-3 incidents where the respondents had allegedly entered into the premises of the temple/ashram and on one occasion giving beatings to the petitioner. The complainant had already lodged FIR in respect of one of the said incidents before the police. The instance of discretion of a religious place or an instance of giving beatings to the petitioner cannot be said to constitute nuisance so as to attract provisions of Section 133 Cr.P.C. There is even no element of continuity in the alleged ‘nuisance’.
- 8. As such, learned Sub Divisional Judicial Magistrate cannot be said to have committed any wrong in not initiating the proceedings under Section 133 Cr.P.C. Still further, this Court finds that the impugned order is reversible order and as per the settled practice the petitioner ought to have approached the Court of Sessions in the first instance by way of filing a revision petition.
- 9. The instant petition, as such, is found to be sans merit and is hereby dismissed.

24.7.2024	(Gurvinder Singh Gill)	
Pankaj	Judge	
Whether speaking /reasoned	Yes / No	
Whether Reportable	Yes / No	