



CRM-M-55979-2023

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of decision : August 27, 2024

Kamal Singh

....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Anand Chhibbar, Senior Advocate with
Ms. Shreya B. Sarin, Advocate, for the petitioner

Mr. Pardeep Bajaj, DAG, Punjab
for respondent No. 1 and 2

Mr. Sandeep Arora, Advocate, for respondent No. 2

KULDEEP TIWARI,J. (ORAL)

1.

Through the instant petition filed under Section 482 of the Cr.P.C., challenge is thrown to conditional order dated 19.10.2022, Annexure P/5, passed by the Court of learned Sub Divisional Magistrate, Ludhiana (East), in exercising of its powers under Section 133 Cr.P.C., prohibiting the petitioner to carry out the business of *hadda rori*, at village Bhaiaromunna, Chandigarh Road, Ludhiana.
2.

At the time of issuing notice of motion, the following order

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was passed:-

“Aggrieved with the order dated 19.10.2022 passed by the Sub-Divisional Magistrate, Ludhiana exercising the powers under Section 133 Cr.P.C., the petitioner was prohibited to carry out the business of hadda rori.

Learned Sr. counsel for the petitioner at the very outset has submitted that though in the impugned order, there is reference of serving notice to him, in fact no notice has ever been served to him and no satisfaction was recorded by the Magistrate concerned that the petitioner is willfully evading the service, despite that the impugned order (Supra) prohibiting the petitioner to carry out his business was passed and the entire proceedings were infact conducted exparte, without giving any opportunity of hearing to the petitioner. He has further placed reliance upon the orders dated 18.10.2015 (Annexure P-1), dated 22.12.2022 (Annexure P-2) and dated 21.7.2017 (Annexure P-3) to submit that he already have injunction in his favour passed by the Civil Court in three different decree, and he could have placed on record all of them before the Magistrate concerned, in case he would have been granted an opportunity to do so. He has further submitted that the piece of land is being utilized as hadda rori which is one of the common purpose recognized under the Punjab Village Common Lands (Regulation) Act, 1961, and, therefore, all

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these aspects have not been considered by the Magistrate concerned while passing the conditional restrained order.

Notice of motion.

Mr. P.S.Grewal, DAG, Punjab, waives service on behalf of the respondents No.1 and 2.

Let notice be issued to respondent No.3 for 19.12.2023 on filing of requisite process fee.

In the meanwhile, the operation of the impugned order shall remain stayed.

In case the the learned counsel for the petitioner does not address the arguments on the next date, the interim order shall be deemed to be ipso-facto vacated without any further reference to this Court.

To be shown in the urgent list.”

3. Upon notice, the respondents have caused appearance, and filed their respective replies.

4. A perusal of the impugned order reflects that it is a conditional order passed under Section 133 Cr.P.C., and now the case is fixed before the learned authority concerned for making conditional order absolute under Section 138 Cr.P.C. It is not disputed that the impugned order has been passed without affording adequate opportunity of hearing to the petitioner.

5. Learned counsel for respondent no. 2 submits that the petitioner still has efficacious remedy by causing appearance before the authority concerned, and can raise all the pleas which have been

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raised before this Court, before the conditional order is made absolute, in exercise of powers under Section 138 Cr.P.C.

6. Learned senior counsel for the petitioner submits that the petitioner may be relegated to the authority concerned. However, he prayed for passing of the mandamus upon the authority concerned to consider all the pleas which have been raised before this Court, and after affording adequate opportunity of hearing, and thereupon, pass the final order.

7. Since the submissions made by learned counsel for the parties are bonafide, and innocuous, therefore, the instant petition is **disposed of** with the directions upon the petitioner to cause appearance before the authority concerned. In case the petitioner approach, and raise all the pleas which have been raised before this Court, the authority concerned shall pass a speaking order, but after affording adequate opportunity of hearing to all the parties concerned. It is further directed that each party shall be afforded three opportunities for leading their respective evidence, and thereupon, make all efforts to decide, and conclude the proceedings, positively within three months, on receipt of certified copy of this order. The impugned order dated 19.10.2022, is ordered to be remained stayed only till the conclusion of the proceedings before the authority concerned.



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8. It is made clear that any observation made hereinabove, by this Court shall not have any impact upon the proceedings, pending before the court concerned, and the latter shall take its independent decision in accordance with the law.

9. **Disposed of** accordingly.

August 27, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ?	Yes/No
Whether Reportable ?	Yes/No