

REVISIONAL CRIMINAL

Before Mr. Justice Radha Krishna Srivastava

1939
October, 2

KEDAR NATH AND ANOTHER (ACCUSED-APPLICANTS) *v.* SATISH CHANDRA AND OTHERS (COMPLAINANT-OPPOSITE-PARTY)*

Criminal Procedure Code (Act V of 1898), sections 133 and 140—Mills working for ten years under Municipal licence—Proceedings for nuisance under Chapter X of the Code of Criminal Procedure—Order passed by Magistrate—Suit in civil court to prevent Magistrate from carrying out his order, if permissible—Magistrate, whether can go behind order of his predecessor on same facts.

Section 140 of the Code of Criminal Procedure lays down the procedure on order being made absolute and the consequences of disobedience of the order. If a Magistrate causes the act ordered to be performed, then that order cannot be questioned in the civil court, and no suit can be maintained in the civil court to prevent the Magistrate from carrying his order into effect.

Where certain mills have been working for the last ten years and that too under a licence from the Municipal Board, which is authorized to grant such licences under the United Provinces Municipalities Act, it is not proper to have recourse to the provisions of Chapter X of the Criminal Procedure Code. The proceedings under that Chapter are of a summary nature and intended to enable Magistrates to deal with cases of emergency and not intended to enable a complainant to obtain, by having recourse to this chapter, relief which he should seek in the civil court.

A Magistrate is not competent in law on the same facts to go behind the orders of his predecessor.

Mr. J. N. Misra, for the applicants.

Mr. P. N. Chowdhari, for the opposite-party.

Mr. H. S. Gupta, Rai Bahadur, Government Advocate, for the Crown.

RADHA KRISHNA, J.:—This is an application in revision against the order, dated the 25th February, 1939, of the Additional Sessions Judge of Bahraich, upholding

*Criminal Revision No. 32 of 1939, of the order of B. N. Hukku, Esq., Additional Sessions Judge of Bahraich, dated the 25th February, 1939.

the order of the Magistrate, first class, of Bahraich dated the 20th July, 1938.

The facts leading to this application are that the applicants have been working their flour mills in the heart of the Bahraich City for the last ten years under a licence from the Municipal Board of Bahraich. It is admitted before this Court that under the said licence the licensees are allowed to work their mills from 7 a.m. to 7 p.m. every day. In 1934 certain persons applied under the provisions of section 133 of the Code of Criminal Procedure complaining that the mills worked even after 8 p.m. and the neighbouring houses shook when the mills worked and thereby their foundations were damaged, further that the persons living in the vicinity were very much annoyed by the noise of the engine of the mills and could not sleep and that the gas from the engine made the air unhealthy. The Magistrate passed a conditional order for the removal of the nuisance but after hearing the evidence of the parties on the 26th June, 1934, set aside that order on the view that section 133 of the Code of Criminal Procedure did not apply to the case inasmuch as the nuisance affected the convenience of a few persons only and not of the community.

The matter was re-agitated in 1937 when at the instance of certain persons proceedings under section 133 of the Code of Criminal Procedure were again started. In these proceedings the learned Magistrate on the 18th March, 1937, ordered as follows:

"I think the entire removal of the mills will cause great hardship to their owners and the nuisance can easily be removed if the owners do not work their mills with full speed, fit in improved silencers and Ram Asrey to work his *thali* mill more carefully. I therefore make my order under section 133, Criminal Procedure Code, absolute but modify it to this extent that Ram Asrey and Kedar Nath shall desist from working their engines at full speed and that they fit improved silencers to their engines so as to prevent or considerably reduce the noise. A notice shall

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accordingly issue to Kedar Nath and Ram Asrey under section 140 Criminal Procedure Code."

The present application was moved by a larger number of persons complaining against the petitioners that their flour mills are situated on either side of the *pucca* road in the city of Bahraich and they were causing serious public nuisance, making considerable noise, and vibration and shaking and were damaging the neighbouring buildings and causing physical discomfort and affecting the health of the public and also causing disturbance to the proper receipt of telegraphic messages in the branch post office. The application was treated as an application under section 133 of the Code of Criminal Procedure.

The learned Magistrate after hearing the evidence and making a local inspection came to the conclusion that the mills caused noise, shaking and vibrations and were a great nuisance and caused great physical discomfort to the neighbours. He came to the conclusion that the removal of the mills would cause great hardship and expense to the mill-owners and passed the following order:

"I therefore make my order absolute but with this modification that the engines of Kedar Nath and Ram Asrey be located in *pucca* cemented reservoirs at least six feet deep and this I expect would remove the public complaint; if matters do not improve the complainants would be at liberty to seek remedy again. Let two months' notice be issued."

It is this order of the learned Magistrate which is questioned in revision. Before coming to this Court the applicants applied in revision before the learned Additional Sessions Judge, who dismissed their application on the 25th February, 1939. Towards the end of the judgment the learned Additional Sessions Judge observed that it would have been better if the parties got this matter settled by the civil court once for all and further that it was open to the present petitioners to go to the Civil Court and get the matter settled even

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now if they are dissatisfied with the order of the Magistrate. It is difficult to see how the latter observation of the learned Additional Sessions Judge is justified in law. Section 140 of the Code of Criminal Procedure lays down the procedure on order being made absolute and the consequences of disobedience of the order. If a Magistrate causes the act ordered to be performed, then that order cannot be questioned in the Civil Court and in my opinion no suit can be maintained in the Civil Court to prevent the Magistrate from carrying his order into effect. Clause (3) of this section says that no suit shall lie in respect of anything *done* in good faith under this section. It would be mere trifling with the Act to hold that the Civil Court can give relief to the petitioners against the order of the Magistrate when the Act says that no suit in respect of anything done by him shall lie. I feel that the learned Additional Civil Judge might have taken a different view of the case had he not been firm in his view that the applicants can get the redress in the Civil Court if entitled to it in law.

It is admitted before me that the silencers as ordered by the order dated the 18th March, 1937, in the previous case have been put on the engines and no new additions have been made to the engines or the machinery. Further, there is no evidence that any additional nuisance in the shape of noise or vibrations has been caused. It is further admitted that the mills are being worked under a license granted by the Municipal Board. There is no evidence in the case whether the new branch post office existed in this locality since before the mills were started or was located there during the last ten years when the mills were working. If the post office has been located during the last ten years, then it would follow that the post office authorities deliberately chose to locate their office in the neighbourhood of the mills and can have no cause for grievance. I have heard the learned counsel for the parties at length and I am of opinion that the order passed by the learned Magistrate should be discharged

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and the parties left to have their redress, if any, in a competent court. The Magistrate under Chapter X of the Code of Criminal Procedure, on receiving information about any unlawful obstruction or nuisance, has jurisdiction to require the person causing such obstruction or nuisance or carrying on such trade or occupation as is injurious to the health or physical discomfort of the community to remove or regulate in such manner as may be directed, such trade or occupation. In the present case in 1937 the carrying on of the mills was regulated by the Magistrate, first class, Bahraich, by ordering that the applicants shall desist from working their engines at full speed and shall fit in improved silencers to their engines. It is admitted that this order was complied with. There is no evidence that the engines have been worked at full speed. I am very doubtful if the working of the mills as regulated by the said order can be described in law as a nuisance, for the purposes of fresh proceedings under Chapter X of the Code of Criminal Procedure. The working of the mills after the order dated the 18th March, 1937, is under the order of the Criminal Court. Further, the law does not contemplate a continued interference with the carrying on of the trade such as is contemplated by the order of the learned Magistrate. It would be too much to put the present applicants to the expense of building *pucca* cemented reservoirs at least six feet deep, put their engines into the said reservoirs, and then if it does not suit the convenience of the complainants to have the matter reconsidered on their fresh complaint as ordered by the learned Magistrate and to take fresh action against the applicants. After a full enquiry into the matter and hearing such evidence as was placed before him and local inspection Mr. Krishnanand, the predecessor of the learned Magistrate, had come to the conclusion in 1937, that the mills could be allowed to work after silencers had been put on the engines, and I do not think that the present learned Magistrate was

competent in law on the same facts to go behind the orders of his predecessor. Further, I am of opinion that in the present case where the mills have been working for the last ten years and that too under a licence from the Municipal Board, which is authorized to grant such licences under the United Provinces Municipalities Act, it is not proper to have recourse to the provisions of Chapter X of the Criminal Procedure Code. The proceedings under that Chapter are of a summary nature and intended to enable Magistrates to deal with cases of emergency and not intended to enable a complainant to obtain, by having recourse to this Chapter, relief which he should seek in the Civil Court. In my opinion that in the circumstances of the case, and especially in view of the previous order of 1937, the Magistrate should have left the complainants to move either the Municipal Board or to seek their redress in the Civil Court.

I, therefore, allow the application and set aside the orders passed by the learned Courts below. The proceedings under section 133 against the applicants will be consigned to records.

Application allowed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice J. R. W. Bennett

THAKUR LAL RAM PARTAP SINGH (PLAINTIFF-APPELLANT) *v.* GANGA PRASAD AND ANOTHER (DEFENDANTS-RESPONDENTS)*

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Agriculturists' Relief Act (XXVII of 1934), section 33—Usurious Loans Act (X of 1918), as amended by U. P. Act (XXIII of 1934), section 3—Suit, whether can be brought on series of transactions under Usurious Loans Act—All transactions, whether can be re-opened.

Where three mortgage-deeds were executed by the plaintiff in favour of the defendant and by the second the first deed

*Second Civil Appeal No. 333 of 1936, against the order of Babu Gopendra Bhushan Chatterji, District Judge of Gonda, dated the 21st July, 1936.

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