A.F.R.

Court No. - 44

Case :- APPLICATION U/S 482 No. - 19142 of 2016

Applicant :- M/S Bokhara Palace Pvt. Ltd. And 3 Others
Opposite Party :- State Of U.P. And 3 Others
Counsel for Applicant :- Hari Narayan Singh,Sri O.P. Singh,Vinay Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Karuna Nand Bajpayee,J.

This application under Section 482 of Cr.P.C. has been filed by the applicants with the prayer to quash the impugned conditional order dated 27.4.2016 passed by Sub Divisional Magistrate, Mariyahun, Jaunpur/respondent no. 2 as well as the entire proceedings of Case No. 2/16, State vs. Shamim Alam and others, under Section 133 Cr.P.C., pending in the court of Sub Divisional Magistrate, Jaunpur.

Heard learned counsel for the applicants and learned A.G.A. for the State. Perused the record.

Submission of the counsel for the applicants is that the impugned order passed by the S.D.M. dated 27.4.2016 whereby a time limit of one week has been given to the applicants to stop the factory and show cause why the conditional order should not be made absolute, is not tenable in the eyes of law as without finally adjudicating upon the correctness of the allegations on the basis of which the factory has been required to be stopped, a direction to stop the factory has been made. Further submission is that the factory is being run in accordance with the rules and regulations and the running of the factory is not causing any kind of such nuisance or unlawful activity which may have any harmful effect on anything at all. But, it has been fairly admitted by the counsel that so far no objections in reply to the impugned show cause notice or the conditional order have been submitted on behalf of the applicants in the court below.

I have considered the submissions made at the Bar and have perused the record in the light of the same.

It appears that the grievance of the people and a complaint with regard to the manner in which the factory in question was being run and the air pollution and the water pollution etc. which it was said to have been

causing, was reported to the police and the station officer of the police station was apprised about the contaminating deleterious effects of the same. In this regard some application in writing was also made to the police, according to which men, animals and even the plantations were being badly affected by the same. It further transpires that an inquiry in this regard was also made by the police and it was found by the police that there was substance in the complaint. The findings of the police after enquiry were also to the same effect and as a result thereof a report was made by the police to the concerned Magistrate about the polluting effects of the factory alleging therein that as the factory had in its near vicinity, a village also, the nearby crops and the passersby were all being injuriously affected by the polluting effects of the factory in question. In fact, according to this report made by the police to the Magistrate concerned, even this was alleged that some men were also said to have died because of grave polluting effects of the factory. It was on the basis of such a report made by the police that the S.D.M. deemed it fit to issue a notice under Section 133 of Cr.P.C. to the applicants and made a conditional order in this regard which has been challenged by the applicants in this Court.

The perusal of the impugned conditional order or the show cause notice purported to have been given under Section 133 of Cr.P.C. does not reflect anything wrong on the basis of which the same may be assailed. The police report was duly considered by the S.D.M. and the S.D.M. was satisfied that dust and pollution emitted by the running of factory was adversely and seriously affecting the health of the people around and was also causing environmental damage to ecology and the crops etc. around it. Being so satisfied, a time bound notice was given to the applicants to stop the objectionable activity and to show cause as to why the conditional order should not be made absolute. In this regard, a bare perusal of the relevant Section 133 of Cr.P. C. would indicate that if the S.D.M. concerned is satisfied on a report of the police officer or even on any other information that any of the eventualities are taking place as have been described in Section 133 (a), (b), (c), (d), (e) and (f) of Cr.P.C., such Magistrate may make a conditional order requiring the person causing such objectionable construction or nuisance or carrying on such objectionable trade or occupation or keeping any such goods or merchandize or any other such activities, which ought to be stopped or

removed to remove such obstructions and to desist from carrying on such trade or occupation within a time frame as may be fixed in the order. The Magistrate may also require the person concerned carrying on such objectionable activity to show cause why the conditional order should not be made absolute, in case the person has any objection to the terms of the notice. The entire procedure has been elaborately given starting from Section 133 up to Section 143 of the Code of Criminal Procedure as to how the Magistrate should initiate proceeding, as to how the conditional order may be passed, how the show cause notice is to be given, how the explanation may be furnished, how the evidence would be recorded and as to how the conditional order shall be made absolute. Many other details of eventualities, modalities of procedure etc. have also been provided in detail. How and when the proceeding would come to an end, have all been given without any ambiguity in the same. Section 142 of Cr.P.C. provides the power to take immediate measures to prevent the danger or injury to the public and issue injunction over the objectionable activity during the course of pendency of the matter also. No useful purpose shall be served by quoting the entire sections right from Section 133 to Section 143 of the Code of Criminal Procedure in this regard. Suffice it to say that this Court does not see any illegality in the impugned order on the basis of which the same may be castigated. There is absolutely no abuse of court's process which may call for any interference in the same. It is so obvious that the explanation or the reply in accordance with law as has been called upon by the Magistrate, has not yet been furnished by the applicants and, therefore, it is difficult to understand as to how the order may be assailed straightaway in the High Court by invoking its inherent jurisdiction. No final order has been passed by the Magistrate nor the order has been made absolute.

It is very much open and is also required under law that the applicants must furnish their explanation or reply and show cause and must submit to the jurisdiction of the Magistrate. In fact, this is also not quite understandable as to why explanation or reply and the objections have not been furnished in the court below even when the date fixed was 3.5.2016 and sufficient period has lapsed since then. It goes without saying that if explanation in reply to the show cause notice or the conditional order is given by the applicants, it shall be duly considered by the court below and if any material is furnished in defence, the same shall also be duly

considered. All or any objections as have been placed before this Court by the applicants' counsel, may be placed before the court below which is the right forum to consider and adjudicate upon the same. It is not needed that the entire procedure starting from Section 133 Cr.P.C. onwards should be repeated in this order or that this Court should once again enlighten the court below as to how the proceedings under Section 133 of Cr.P.C. or the proceeding under other given sections are to take place. The procedure is exhaustive and elaborate both. It is expected that the court below must adhere to the provisions and proceed to act strictly in accordance with law and not otherwise. The applicants also do not have any dearth of opportunity to show cause or to adduce evidence in their defence and the procedure provided by law confers on them, more than ample scope and opportunity to defend their cause. The applicants must avail the same in the court below, if they so desire.

The regular procedure provided by law must be adhered to and the inherent jurisdiction of the Court cannot be allowed to bypass the same without just cause. The powers under Section 482 of Cr.P.C. are not to be exercised in a cavalier manner in a matter like this when there appears to be no such illegality or abuse of court's process which may vindicate such exercise. In view of this Court, the impugned order or proceeding arising therefrom do not call for any interference.

Application stands disposed off with the aforesaid observations.

Order Date :- 24.6.2016
Naresh