

Gobind Singh

Vs

Shanti Sarup

Criminal Appeal No. 59 of 1973

(CJI Y. V. Chandrachud, R. S. Sarkaria, O. Chinnappa Reddy JJ)

15.09.1978

JUDGMENT

CHANDRACHUD, C.J. –

1. The respondent who is a partner of the Punjab Oil Mills Khanna, filed in the Court of the Sub-Divisional Magistrate, Samrala, an application under Section 133 of the Code of Criminal Procedure, 1898, complaining that the appellant, who had been carrying on the occupation of a baker in the premises let out to him by the Mills, had constructed an oven and a chimney which constituted a nuisance under Section 133 of the Code.
2. By an order dated December 16, 1969, the learned Sub-Divisional Magistrate served a conditional order on the appellant under Section 133(1) of the Code calling upon him to demolish the oven and the chimney within a period of 10 days from the date of the order and to show cause why the order should not be confirmed. After hearing the parties and considering the evidence led by them, the learned Magistrate made the conditional order absolute on June 18, 1970. While confirming the conditional order, the learned Magistrate however directed the appellant to cease carrying on the trade of a baker at the particular site and not to lit the oven again.
3. The appellant filed a revision petition against the order of the Sub-Divisional magistrate under Sections 435 and 436 of the Code. By a judgment dated August 26, 1971, the learned Additional Sessions Judge, Ludhiana, disagreed with the order passed by the Sub-Divisional Magistrate and made a reference to the High Court of Punjab and Haryana recommending that since there was no evidence on record to show that the oven was enlarged by the appellant in the year 1969 as alleged by the respondent and since there was positive documentary evidence on the record to show that the particular oven was in existence for a period of 16 or 17 years, the order passed by the Sub-Divisional Magistrate should be quashed.
4. The reference was heard by a learned single Judge of the High Court, who by a judgment dated January 15, 1973 rejected the recommendation of the learned Additional Sessions Judge and upheld the order of the Sub-Divisional Magistrate. Being aggrieved by the judgment of the High Court the appellant has filed this appeal by special leave of this Court.
5. Section 133(1) of the Code of 1898 provides insofar as is relevant that :

Whenever a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence if any as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river or

channel which is or may be lawfully used by the public, or from any public place, or 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 that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or 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 neighborhood 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, 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, to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure

6. It is clear from the judgment of the learned Sub-Divisional Magistrate that the evidence disclosed that the smoke emitted by the chimney constructed by the appellant was "injurious to the health and physical comfort of the people living or working in the proximity" of the appellant's bakery and that there was no justification on the part of the appellant for discharging the smoke from the chimney on the G.T. Road. The learned Magistrate had made a local inspection on the basis of which he prepared a report dated February 11, 1970. That report and the photo-print Ex. 'A', show that the upper horizontal portion of the chimney constructed by the appellant juts out into the G.T. Road to the extent of about six feet. Considering the nature of this construction and the volume of smoke emitted by it the learned Magistrate concluded that the chimney was not only an encroachment upon a public place but its construction led to a graver consequence. Allowing the use of the oven and the chimney was, according to the Magistrate, "virtually playing with the health of the people". A strong wind, according to the learned Magistrate could carry the flames over a distance and cause a conflagration.

7. It is true that the learned Additional Sessions Judge did not agree with the findings of the Sub-Divisional Magistrate, but considering the evidence in the case, the reasons given by the Magistrate in support of his order and the fact that the High Court was unable to accept the recommendation made by the Additional Sessions Judge, we are of the opinion that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery.

8. The learned Magistrate has however gone beyond the scope of the conditional order which he had passed on December 16, 1969, by which he required the appellant "to demolish the said oven and the chimney" within a period of 10 days from the issue of the order. The final order passed by the learned Magistrate is to the effect that the appellant shall cease to carry on the trade of a baker at the particular site and shall not lit the oven again. Preventing the appellant from using the oven is certainly within the terms of the conditional order but not so the order requiring him to desist from carrying on the trade of a baker at the site. While, therefore, upholding the order of the learned Magistrate and the view of the High Court, we consider it necessary to clarify that the proper order to pass would be to require the appellant to demolish the oven and the chimney constructed by him within a period of one month from today. It is needless to add that the appellant shall not in the meanwhile use the oven and the chimney for any purpose whatsoever.

9. For these reasons we dismiss the appeal with the modification suggested above in the order passed by the learned Magistrate.

</html