
Satya Prakash Vs State of U.P. and Another

Criminal Miscellaneous Case No. 6664 of 1980

Court: Allahabad High Court

Date of Decision: April 1, 1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 18 Rule 18#Criminal Procedure Code, 1973 (CrPC) " Section 133, 134, 135, 136, 137#United Provinces Village Panchayat Act, 1920 " Section 72

Hon'ble Judges: M.N. Shukla, J; M. Wahajuddin, J

Bench: Division Bench

Advocate: U.C. Misra, for the Appellant;

Final Decision: Dismissed

Judgement

M.N. Shukla, J.

Doubting the correctness of the decision in Ram Dular v. State of U.P. 1980 AWC 325 : 1980 ACR 230 a learned

single Judge of this Court referred the instant case, arising out of Criminal Misc. Petition u/s 482 Code of Criminal Procedure, to a larger Bench

and that is how the matter has come before this Bench for adjudication. The question at issue involves the interpretation of Section 310 of the

Code.

2. The short facts are that on 1-6-1978 Respondent No. 2 Sri. Krishna Madhava Chaudhary moved an application before the City Magistrate,

Etawah alleging that the three storeyed building situate in Mohalla Sewa Kali, Etawah city owned by the present applicant Satya Prakash and his

two brothers was in a dilapidated condition, likely to fall down and cause injury to persons living or carrying on business in the neighbourhood or

passing by and consequently the removal of the budding was necessary. On this application the Magistrate called for a report from the Tahsildar,

Etawah who inspected the spot and submitted his report dated 25-7-1978. After a perusal of the report the Magistrate passed a preliminary order

u/s 133 Code of Criminal Procedure and issued notice to both parties to adduce their evidence. Besides recording the evidence the Magistrate

after giving notice to the parties made local inspection on 5-8-1979 and incorporated his inspection note. The applicant Satya Prakash and his two

brothers filed written statements. While Satya Prakash and his brother Jai Kumar opposed the allegations made in the complaint, the other co-

sharer, namely, Om Prakash supported the version of Sri. Krishna Madhav Chaudhary, complainant. The City Magistrate passed the final order in

the case on 13-8-1979 whereby he confirmed the conditional order dated 2-8-1978 and directed Satya Prakash and his brother Jai Kumar to get

the building demolished within a period of one month failing which it would be got demolished by the Nagar Palika, Etawah. The present applicant

Satya Prakash filed a revision which was rejected by the IV Additional Sessions Judge, Etawah and hence this application u/s 482 Code of

Criminal Procedure, in this Court with a prayer that the orders passed by the City Magistrate and the IV Additional Sessions Judge, Etawah be

quashed.

3. The principal contention urged on behalf of the applicant was that the City Magistrate, Etawah who was seized of the case u/s 133 Code of

Criminal Procedure made local inspection of the building in question and made use of that inspection in coming to the conclusion that the building

was in such a dilapidated condition that it was necessary to get it demolished. It was submitted that the City Magistrate had no jurisdiction to make

local inspection and his entire judgment stood vitiated by the fact of its being based on the said inspection. In support of the argument the learned

Counsel for the applicant relied on a decision of this Court in Ram Dular v. State of U.P. 1980 AWC 325 : 1980 ACR 230. In that case the

Magistrate who was seized of the matter u/s 133 Code of Criminal Procedure had made local inspection and then passed an order directing

demolition of the property. The argument advanced before the learned single Judge in that case was that the Magistrate had no jurisdiction to make

local inspection and his judgment was rendered illegal inasmuch as he was influenced by the local inspection made by him. This argument found

favour with the learned single Judge with the result that he quashed the order by "the Magistrate and remanded the case for fresh trial.

4. We have given our most anxious consideration to the decision in Ram Dular's case (supra) and we regret our inability to agree with the rule laid

down therein. It appears that Section 310 of the Code of Criminal Procedure which provides for local inspection went unnoticed in that ruling.

Section 310 falls in the Chapter ""General Provisions As To Inquiries And Trials"" and reads as follows:

310. Local inspection-(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit

and inspect any place in which an offence is alleged to have been committed or any other place which it is in his opinion necessary to view for the

purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any

relevant facts observed at such inspection. (2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or

accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of costs.

5. It has been vehemently contended by the learned Counsel for the applicant that the proceedings u/s 133 Code of Criminal Procedure in the

instant case constituted neither "inquiry" nor "trial" and, therefore, the provisions of Section 310 were not attracted, consequently the Magistrate

had no jurisdiction to make local inspection and utilise the same for the purpose of giving his decision. A perusal of Section 310 shows that it

makes use of three expressions:

(i) Inquiry,

(ii) trial, and

(iii) other proceedings.

6. A case u/s 133 Code of Criminal Procedure would surely not fall within the ambit of "trial" but we are inclined to hold that on a proper

construction of the term "inquiry" such proceedings would be embraced within its scope. The word "inquiry" used in Chapter XXIV must include

proceedings commenced under Chapter X, part B which deals with public nuisance, covered by Sections 133 - 143. Infact, the word "inquiry"

has been expressly used by the Legislature in Section 137, Sub-section(i) whereof provides that if a conditional order u/s 133 has been made, a

Magistrate shall before proceeding u/s 138 "inquire" into the matter. Sub-section (2) further says that if in such "inquiry" the Magistrate finds that

there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of existence of such right has been decided by

a competent Court. The definition of "inquiry" contained in Section 2(g) of the Code lends support to this interpretation. It says "inquiry" means

every inquiry other than a trial, conducted under this Code by a Magistrate or Court. The definition confirms the view that Section 310 is wide

enough to cover every kind of inquiry and the word has not been used in a limited sense. The term refers to any judicial inquiry into the matter by a

Magistrate or other court. Thus, there appears to be no tangible reason as to why a restricted meaning should be assigned to the word "inquiry" as

it occurs in Chapter XXIV of the Code.

7. Alternatively, however, there is absolutely no reason why a case u/s 133 Code of Criminal Procedure will not be covered by the expression

"other proceeding" occurring in Sub-section (1) of Section 310 Code of Criminal Procedure. The word "proceeding" is a noun from the verb

"proceed". "It is a word of equivocal import and of great generality, having many meanings and varied usages, and of varying and loose

significance. Where matters of procedure in courts or actions are involved, to conduct, to begin and carry on an action or proceeding, to begin and

carry on a legal action, to commence and carry on a legal process"". (See Corpus Juris Secundum, Volume 72, page 972) Black's Law Dictionary,

Revised Fourth Edition, page 1368 contains the following note on the connotation of "proceeding".

In a more particular sense, any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries,

for damages, or for any remedial object.

8. It appears that the Legislature advisedly incorporated the expression proceeding" in Sub-section (1) of Section 310 Code of Criminal

Procedure so that a Magistrate may have jurisdiction to make local inspection after commencing either an inquiry or trial relating to an offence, or

any other proceeding. Section 310 corresponds to Section 539-B of the old Code of 1898 and that provision was judicially construed in Ram

Kishan v. Rameshwar Dayal 1968 AWR 608. An identical argument was advanced in that case and repelled. It was contended that inasmuch as

the phrase "other proceedings" immediately followed the words "any inquiry" or "trial" it was merely "ejusdem generis" and referred to the

"proceedings" before the court of first instance and not before the appellate or revisional court. Rejecting the argument the Bench observed:

If the words "inquiry" and "trial" were followed merely by the word "proceeding" then perhaps the argument of Mr. Chaudhary would have had

some weight but the words used in the section are "at any stage of any inquiry, trial or other proceedings" which clearly indicate that the

contemplated proceedings should be other than and distinct from "inquiry" or "trial". The use of the word "other" in this context is very significant.

There can be no manner of doubt that appeals, revisions and/or intermediary steps taken by a Judge will be such "other proceedings".

9. The law appears to be settled that Section 310 Code of Criminal Procedure is applicable not only to an inquiry or trial relating to an offence but

also to other proceedings, such as those Under Sections 133 and 145 Code of Criminal Procedure. In fact proceedings u/s 133 and 145 Code of

Criminal Procedure are not in connection with inquiry or trial relating to an offence and yet they call for local inspection. Abundant authority is

available for that proposition but it appears those rulings were not cited before "the learned single Judge who decided the case of Ram Dular

(supra). Apart from Ram Kishan's case (supra) we may also advert to a few other notable decisions on the point. In Tirkha and Another Vs.

Nanak and Another, Iqbal Ahmad, J. held that a local inspection by a Magistrate in proceedings u/s 133 Code of Criminal Procedure was

permissible u/s 539-B for the purpose of properly appreciating the evidence in the case but it was not open to the Magistrate to rest his decision

merely on the local inspection made by him. The learned Judge followed the earlier case of Ismail alias Chotiya v. Bunda AIR 1922 All 265 . The

same opinion was also endorsed in *Shib Singh Vs. Sridhar and Others*, in which Brij Mohan Lal, J. observed that Section 539B permitted a

Presiding Officer to make local inspection. In *Basant Lal v. Hira Lal* 1970 AWR 620 which was a case u/s 133 Code of Criminal Procedure it

was ruled that local inspection could be made by a Magistrate for the purpose of understanding the case but the inspection must be done after

giving notice to the parties, in their presence, or in the presence of their counsel. The same proposition with regard to cases u/s 133 Code of

Criminal Procedure was affirmed in *Devi Prasad v. State of U.P.* 1973 AWR 355. Numerous decisions of other High Courts follow same line of

approach. In *Lal Behari Saha v. Bejoy Shankar Sikdar* 1906 CrLJ 193 it was held by a Division Bench of the Calcutta High Court that in

proceedings u/s 145 Code of Criminal Procedure local inspection made by a Magistrate was legal but the judgment could not be founded on it and

local inspection could be used only for the purpose of better appreciating the evidence. In the case reported in *Kalisaday Ghoshal v. Siddheswar*

Banerjee AIR 1919 Cal 153 which arose out of proceedings u/s 133 Code of Criminal Procedure another Division Bench of the Calcutta High

Court expressed the opinion not that the local inspection could not be made by a Magistrate but that his order could not be based on that instead

of the evidence adduced in the case. In *Musammat Ram Ratan Kuar and Others Vs. Tarak Nath Bhattacharji and Others*, it was observed;

The object of local inspection is to understand and appreciate the topography of the land in dispute in order to aid the Magistrate in appreciating

the evidence offered in Court, but the local inspection cannot take the place of legal evidence, much less the result thereof can be used as a basis

for the decision.

In *Abdul Hamid Vs. Hasan Raja and Others*, it was ruled that Section 145 Code of Criminal Procedure expressly authorised local inquiry to be

made only by a Magistrate subordinate to the Magistrate before whom the case was pending or by that Magistrate himself. It was also ruled that it

was better to have such investigation made by some other person but there was nothing to prevent the Presiding Magistrate from himself making

the investigation by way of local inquiry. In *Batakrushna Naik Vs. Khageswar Kunda and Others*, Misra, J. observed that in a proceeding u/s 145

Code of Criminal Procedure a Magistrate was entitled to make local inspection but he should avoid making enquiries from the people on the spot

as to the truth of the matter in dispute. Thus, there remains no manner of doubt that the provisions of Section 310 Code of Criminal Procedure can

be pressed into service in proceedings other than those relating to any offence.

10. Another submission made on behalf of the applicant was that permitting a Magistrate to make local inspection in proceedings u/s 133 Code of

Criminal Procedure offended against the fundamental canon of justice, namely, that an officer deciding a case should not base his decision on his

personal knowledge otherwise he would be converting himself into a witness without being subjected to cross-examination. In other words, it was

emphasised that there was good psychological reason for not applying the provisions of Section 310 Code of Criminal Procedure to cases under

Chapter X of the Code because in the event of local inspection by the Presiding Officer he was bound wittingly or unwittingly to draw upon the

knowledge derived from his personal observation and inspection. We are unable to accede to this submission. There is nothing inherently wrong in

a Magistrate seized of certain proceedings, making spot inspection himself. The principle underlying such procedure is well established and

enshrined in legal statutes. Thus, for instance, Order 18, Rule 18 CPC provides that a court may at any stage of the suit inspect any property

concerning which any question may arise. There is no illegality "per se" in a Presiding Officer making local inspection. The illegality arises when the

finding or judgment is based merely on local inspection. Such inspection is permitted precisely for the purposes of properly appreciating the

evidence in the case and cannot take the place of evidence itself. Therefore, local inspection made in a case under Chapter X of the Code does not

vitiating the proceedings. It is merely the wrong use made of the result of such inspection which vitiates the proceedings. This broad caution was

postulated by the Supreme Court in *Pritam Singh and Another Vs. The State of Punjab*, in these words:

A Magistrate is certainly not entitled to allow his view or observation to take the place of evidence because such view or observation of his cannot

be tested by cross-examination and the accused would certainly not be in a position to furnish any explanation in regard to the same. In the

absence of such test having been applied and an explanation sought from the accused in regard to the same u/s 342, it is not open to the Judge to

incorporate these observations of his in the judgment and base his conclusion on the same.

Thus, in making local inspection a Magistrate should not do anything which would reduce him to the position of a witness. It is really meant for the

purpose of appreciating the evidence in the case and can be utilised for the purpose of drawing conclusions from the evidence but it cannot be

treated as evidence itself nor can a judgment be founded on it. See *Kotappa v. Serappa Sakalathi Rangappa* AIR 1955 Mys 131 . In short, the

test to be applied is whether the evidence adduced by the parties has entered into the decision-making or the judgment proceeds from non-

consideration of the evidence and its real foundation is knowledge derived from local inspection. The judgment should indicate that the evidence on

record was an element in its formulation and it was only buttressed by the observations of the Presiding Officer during the site inspection. See

Ugamsingh and Mishrimal Vs. Kesrimal and Others, . In the instant case the Plaintiff filed an application u/s 133 Code of Criminal Procedure on 1-

6-1978. The City Magistrate ordered a preliminary inquiry by way of local investigation to be made by the Tahsildar, Etawah who submitted his

report dated 25-7-1978 fully supporting the allegations made in the complaint. Thereafter the contesting parties filed their written statements and

evidence was adduced in the case. The complainant besides examining himself also examined an engineer who being an expert witness stated that

the building in question was in a dangerous condition and was likely to fall down. Arguments of the parties were heard and on 5-8-1979 the

learned City Magistrate made a local inspection after giving notice to both parties and passed the order dated 13-8-1979 directing demolition of

the building. The said order elaborately discusses the evidence adduced by the parties and it is quite clear from the sequence of events that the

decision rendered by the City Magistrate is based on appreciation of evidence and not on information appears of better evaluation of evidence. It

does not, therefore, vitiate the impugned order passed u/s 133 Code of Criminal Procedure nor has the procedure followed by the City Magistrate

in any manner prejudiced the present applicant who was the constesting opposite party in the court below.

11. On behalf of the applicant reliance was placed on the case of Kadhori Vs. King-Emperor, in which it was held that a Magistrate had no power

u/s 72 of the United Provinces Village Panchayat Act, 1920 to make local inquiry into cases relating to public nuisance and that he should in such

cases follow the procedure laid down by Sections 133 - 143 Code of Criminal Procedure. The present case is clearly distinguishable. In that case

the Presiding Officer did not himself make local inspection but merely directed certain panches to make local investigation and submit a report as to

whether a certain shop had been newly built. Moreover, u/s 72 of the United Provinces Village Panchayat Act, 1920 (United Provinces Act No.

VI of 1920) a Magistrate was competent to direct a previous local investigation to be made by a Panchayat u/s 202 Code of Criminal Procedure

1898 which provision only uses the words "complaint of an offence" and not "other proceedings" which occur in Section 310 Code of Criminal

Procedure.

12. Learned Counsel for the applicant invoked the rule of construction which is expressed in the maxim "generalia specia libus non derogant"

which means that when there is a conflict between a general and special provision the latter shall prevail. The said principle has been stated in

Craies on Statute Law, VII Edition, page 222 in these words:

Whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would

override the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the

statute to which it may properly apply.

13. But this rule of construction is not of univiersel application. It is subject to the condition that there is nothing in the general provision, express or

implied, indicating an intention to the contrary. (See Maxwell on Interpretation of Statutes XI Edition at pages 168-169). Moreover, one of the

well-accepted cannons of construction of a Statute requires the Court, as far as possible, to harmonise the different sections of an Act in order to

carry out the object of Legislation. Where two co-ordinate sections are apparently inconsistent, an effort must be made to reconcile them- Ebbs v.

Baulnois (1875) 10 Chapter A 479-44 LJ Chapter 691-23 WR 820-33 LT 342). In our opinion in this particular case there is no difficulty

whatsoever in applying that cannon while considering the two relevant sections of the Code of Criminal Procedure. Section 310 covers the whole

held of any inquiry, trial or other proceedings and confers the power of making local inspection. The provisions of Chapter X of the Code lay

down the procedure with regard to proceedings relating to the maintenance of public order and tranquillity and Group "B" thereof comprised of

Sections 133 - 143 deals with public nuisance. But these sections have to be strictly given effect to only so far as they go. They do not exhaust the

entire gamut of procedure which may have to be adopted in justly disposing of a case of public nuisance. Neither Section 310 which embodies the

general powers contains any proviso nor is there any prohibition in Chapter X which may restrict the generality contained in Section 310. Chapter

X is silent on the question as to whether there can be a local inspection by the Presiding Officer. The provisions of this Chapter over-ride and

prevail only in so far as they go. Since there is no provision for making of local inspection in Chapter X nor is there any prohibition in this regard

nor is Section 310 subject to any exception or proviso, it must have its full operation in the field covered by it. Obedience to Section 310 is

possible without disobeying the provisions of Section 133 - 143. Section 139 is not in any manner repugnant to Section 310. The former is an

enabling provision which clothes a Magistrate with the additional power to direct local investigation to be made by such person as he thinks fit.

These provisions do not collide with each other, they are not mutually exclusive. They represent two circles which may be contiguous and touch

each other but do not intersect. In our opinion where there are two provisions of law of a cognate and allied character, it does not follow that there

is repugnancy between them. It is our considered view that there is no inconsistency, much less an irreconcilable conflict between the two sets of

provisions and Ram Dular's case (supra) was not correctly decided. We, therefore, over-rule the same and hold that Section 310 must have its full

operation without being inhibited by the provisions of Chapter X of the Code.

14. We are also conscious of the limited scope of the present application made u/s 482 Code of Criminal Procedure. The applicant had preferred

a revision against the order of the City Magistrate and the said revision was dismissed by the learned IV Addl. Sessions Judge, Etawah by his

order dated 4-10-1980. The revisional court came to the conclusion that the case was concluded by a finding of fact based on satisfaction of the

City Magistrate with the evidence on record that the building was likely to fall down and thereby cause injury to persons living or carrying on

business in the neighbourhood or passing by. The said finding was neither improper nor illegal on the facts of the case and consequently no

interference in revision was called for. It is significant that the parties in the lower court never objected to the local inspection by the City

Magistrate In fact, no grievance on that score was made even in the application u/s 482 Code of Criminal Procedure which was filed in this Court

on 28-10-1980. It appears that this point occurred to the applicant only after he had seen the ruling in Ram Dular's case (supra) which was

decided on 21-4-1980. It is thereafter that the point was canvassed and has since then been pursued with tenacity. As pointed out in Municipal

Corporation of Delhi v. Ram Kishan Rohtagi AIR 1983 SC 67:

Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. This provision confers a separate and independent

power on the High Court alone to pass orders ex debito Justitiae in cases where grave and substantial injustice has been done or where the process

of the Code has been seriously abused.

We have already held that the findings recorded by the City Magistrate were neither improper nor illegal and the revisional court rightly held that it

was not a fit case for interference in revision. Needless to add that powers u/s 482 Code of Criminal Procedure are extraordinary powers and

have to be exercised sparingly to prevent abuse of the process of law or otherwise to secure the ends of justice. No such extraordinary ground has

been made out in the instant case and hence the petition u/s 482 Code of Criminal Procedure filed by the applicant has no force and is accordingly

dismissed.