

(1984) 11 CAL CK 0026

Calcutta High Court

Case No: Rev. No. 689 of 1983

W.C. Shaw (P) Ltd.

APPELLANT

Vs

Bhagwan Das

RESPONDENT

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**Date of Decision:** Nov. 14, 1984**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 133

**Citation:** 89 CWN 149**Hon'ble Judges:** N.G. Chatterjee, J; G.C. Chatterjee, J**Bench:** Division Bench**Advocate:** D.K. Dutta and Hem Kumar Chaturvedi, for the Appellant; Dhrubajyoti Ghose and Priya Nath Ghosh for the State, for the Respondent**Final Decision:** Dismissed

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### Judgement

Gobindra Chandra Chatterjee, J.

The petitioner W.C. Shaw (Pvt) Ltd., is a private limited company carrying on business of foreign liquor at premises No. 46 G.T. Road, Asansol. The premises is owned by the opposite party Bhagwan Das. Bhagwan Das filed Title Suit No. 142 of 1976 in the Civil Court at Asansol for ejectment of the petitioner on the ground of building and re-building stating that the building was in an insecure condition. Bhagwan Das also moved the local Magistrate concerned for drawing up a proceeding u/s 133 Cr. P.C. for demolishing the said premises on the ground that the building stands in a dangerous and insecure position. In the said Title Suit the petitioner filed an application for an injunction restraining Bhagwan Das from taking steps for demolishing the structure. The petitioner then moved the learned local Magistrate for stay of the proceeding pending u/s 133 Cr. P.C. The learned Magistrate refused to do so. This Court was thereafter moved for stay of the proceeding u/s 133 Cr. P.C. till the disposal of the said Title Suit. Mr. Justice B.N. Maitra by his judgment dated 22.8.78 stayed the proceeding u/s 133 Cr. P.C. till the disposal of the said injunction matter. Thereafter the Title Suit No. 142 of 1976 was

disposed of in favour of Bhagwan Das. The petitioner filed an appeal. That appeal is now pending (Title Appeal No. 45 of 1982). As the Title Suit itself was disposed of, the learned Magistrate by his order dated 10.4.83 directed the parties to come ready for hearing the case on merits. In other words he directed that the proceedings u/s 133 Cr. P.C. should continue and should not remain pending anymore. Against this order dated 10.4.83 the petitioner has now moved this Court for stay of the Criminal proceedings till the disposal of the said Title Appeal. The question is whether the Criminal proceeding should remain so stayed as prayed for by the petitioner.

2. It is clear from what has been stated above that the proceedings u/s 133 Cr. P.C. have been pending for the last 8 years. The learned Advocate Mr. Ghosh appearing for Bhagwan Das has contended before us that if the criminal proceedings are stayed further till the disposal of the title appeal then clearly there will be no end of the matter because the parties may choose to go higher up and this may take another decade with the result that the said criminal proceedings would remain undisputed for a long time to come and the criminal proceedings would thus prove to be completely in fructuous. The very purpose for which the application u/s 133 Cr. P.C. was filed would there be thus completely frustrated.

3. We have given our best consideration to the facts, circumstances and background of the case and to our mind it appears that there is much substance in the above contention raised by Mr. Ghose. Before Mr. Justice B.N. Maitra the petitioner had previously prayed for stay of the criminal proceeding till the disposal of the Title Suit filed by Bhagwan Das. That prayer had been rejected by Dr. Justice Maitra. The stay order was simply granted for a limited period i.e. till the disposal of the injunction matter. The entire Title Suit has now been disposed of. The petitioner has again moved this Court for stay of the proceeding till the disposal of the Title Appeal itself. If we allow this prayer for the petitioner the result will be that the proceeding will remain unheard for an indefinite period to the prejudice of the opposite party Bhagwan Das.

4. Mr. Ghose has taken us through Section 133 Cr. P.C. and has rightly contended that the proceedings were taken resort to because of the urgency of the matter concerned. Section 133 Cr. P.C. runs thus with its caption - "Public nuisances".

Conditional order for removal of nuisance.

(1) Whenever a District Magistrate or a sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers -

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any public place or from any river or channel which is or may be lawfully used by the public; or

(b) 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

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) 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 or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

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, or owing, possessing or controlling such building, tent structure, substance, tank, well or excavation, or owing or possessing such animal or tree, within a time to be fixed in the order -

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regularise the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure or to remove or support such trees; or

(v) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION : A "public place" includes also property belonging to the State, camping grounds and ground left unoccupied for sanitary or recreative purposes.

5. From the Section quoted above it is crystal clear that if the local Magistrate after hearing both the parties is hereafter satisfied that the building is in a dangerous condition and that it is no longer safe to allow the building to stand any more then and then only that Magistrate may pass an order of demolition in consonance with the urgency of the situation. As we have already pointed out before the matter is pending for the last 8 years and that therefore in all fairness of the matter the opposite party should at least be given an opportunity of being heard.

6. Mr. Ghose, learned advocate appearing for the opposite party has invited our attention to the case of [Suresh Prakash Vs. Krishna Swarup and Others](#), wherein it has been held that "neither injunction matters nor pendency of civil suits bar proceeding u/s 133" ..... The principle of law governing this decision is that "public interest demand that criminal justice should be swift and sure ..... civil suits should be stayed till the criminal proceeding are finished" ( [M.S. Sheriff Vs. The State of Madras and Others](#), relied upon by the decision of the Allahabad High Court reported in 1976 Cri L J referred to before). In consonance with the spirit of the aforesaid two decisions we thus hold that these two special characteristics of the said Criminal proceeding namely its call for urgency and its public character demand that no court of law and equity should unnecessarily stay such a criminal proceeding for an indefinite period unless of course justice and fairness of the case dictates otherwise.

7. The learned Advocate appearing for the petitioner has contended that the initiation of the Criminal proceeding in this case was malafide inasmuch as its sole object was to oust his client from the premises at 46, G.T. Road, Asansol. A very similar objection was advanced in connection with the case of Allahabad High Court (already referred to before) but the objection was overruled there on the ground that the matter related to the merits of the case itself and that it was for the local Magistrate to decide as to whether he would or would not pass an order of demolition of the structures. In the instant case also we prefer to restrain ourselves from making any unnecessary comments touching the merits of the case. In the overall facts and circumstances of the case we feel that the Criminal proceeding should remain stayed no longer. Let the law have its own prescribed course. We sincerely hope that the local Magistrate will not pass an order of demolition in this case unless he is satisfied that the matter is emergent and that an immense loss is going to be suffered by the public.

8. In the result as aforesaid this Revisional application stands dismissed on contest. The Rule stands discharged. Stay order stands vacated.

N.G. Chaudhuri, J.

9. I agree.