

**IN THE COURT OF THE SESSIONS JUDGE : SONITPUR  
AT TEZPUR**

**PRESENT : Sri A. Borthakur**  
**Sessions Judge**  
**Sonitpur, Tezpur**

**CRIMINAL REVISION NO. 55 (S-3) OF 2012**

( Revision against the order, dated 24-05-2012, along with the consequential orders, dated 06-06-2012 and 10-06-2012, passed by Additional District Magistrate ( For short 'ADM'), Sonitpur, Tezpur, in connection with SRS-69/2003-04)

**Sri Prafulla Ranjan Das**  
Son of Late Mahananda Das  
Resident of Madhyapara, Ward No.15  
PS - Tezpur  
Dist – Sonitpur, Assam

.... **Petitioner**

- V E R S U S -

- 1. The State of Assam**  
Represented by Learned Public Prosecutor to the  
Govt. of Assam in the district of Sonitpur, Assam
- 2. Sri Samir Kundu**  
Son of Late Dhiren Kundu
- 3. Sri Dilip Bhowal**  
Son of Late Paresh Bhowal
- 4. Sri Prabir Roy**  
Son of Late Balaram Roy
- 5. Sri Swarup Pal**  
Son of Late Ramen Pal
- 6. Sri Nareshwar Ghosh**  
Son of Sri Noni Ghosh
- 7. Sri Tapeswar Ghosh**  
Son of Sri Ramen Ghosh

All residents of Kalitala, Madhyapara  
Mouza- Mahabhairah  
PO & PS – Tezpur  
District – Sonitpur, Assam

... **Respondents**

**ADVOCATES WHO APPEARED IN THIS CASE**

For the petitioner : **Mr. H. K. Sarmah,**  
Senior Advocate  
**Sri Gautam Choudhury,**  
**Sri Nilakshya Sarma,**  
Advocates

For the Respondents : **Sri S. K. Singh**  
Advocate

Date of Argument : 13-05-2014

Date of Judgment : 30-05-2014

**J U D G M E N T**

This revision petition u/s 397 read with 399 and 401 of the CrPC, has been preferred against the order, dated 24-05-2012, along with the consequential orders, dated 06-06-2012 and 10-06-2012, passed by the learned Additional District Magistrate ( For short 'ADM'), Sonitpur, Tezpur, passed u/s 133 of the CrPC.

REVISION PETITIONER'S CASE :

2. The revision petitioner's case, precisely, is that he is the absolute owner of a plot of land described in the schedule of the petition. The petitioner enclosed the scheduled land erecting brick boundary walls with pucca narrow drain for personal use on its southern boundary, which is the subject matter of a suit, being TS No.42/2012, pending in the Court of learned Munsiff No.1 at Tezpur. The OPs, more particularly OP Nos. 2 and 3 have broken open the south-western corner of the suit drain and boundary wall and flowed the dirty water and household garbage through the petitioner's said private drain across a public road by illegally blocking the existing public drain by erecting house and boundary wall by the OP No.2 across the whole length of the public drain in front of the land of the OP No.2. The OPs No. 2 to 7 having continued their wrongful act of dumping household and human waste on the petitioner's said private drain, the petitioner intimated those illegal activities to the various local authorities including the Deputy Commissioner and Superintendent of Police, Sonitpur, Chairman Tezpur Municipal Board etc., but to no effect. Hence, the petitioner instituted a suit against the OPs for declaration of his right, title and interest over the suit drain and boundary wall and for directing the OPs to repair and block the

suit boundary wall and drain at the south-western part of the wall and the drain. In the aforesaid suit, the petitioner came to know that the defendants-OP, herein, filed one complaint submitted by the alleged residents of the petitioner's locality that the petitioner allegedly caused blockage of a public drain causing inconvenience to them. The OPs have contended in the petition, filed for vacating the order of status quo along with the petition, for rejecting the plaint filed by the petitioner in the aforesaid suit, the defendants-OP, herein, contended that the orders, dated 24-05-2012 and 10-06-2012 were passed u/s 133 CrPC and as such, the same cannot be challenged in the Civil Court, though the fact remained that the suit was not instituted against those orders and those impugned orders passed in any proceeding by the learned Additional District Magistrate, Tezpur, were not known to the petitioner, as no notice was served upon him. Hence, it is prayed to set aside the impugned proceeding vide SRS-69/2003-04/part/2031, dated 24-05-2012 and orders, dated 06-06-2012 and 10-06-2012.

3. The relevant file No. SRS-69/2003-04 of Misc. file, as called for, is placed before the Court.

4. Heard Mr. H. K. Sarmah, the learned Senior Advocate appearing on behalf of the revision petitioner and Mr. S.K. Singh, learned Advocate for the respondents. Perused the instant case record and the connected file, mentioned above.

#### POINT FOR DETERMINATION

5. Whether the impugned orders, dated 24-05-2012 along with the consequential orders, dated 06-06-2012 and 10-06-2012, in file No. SRS-69/2003-04 of Misc. file, passed by the learned ADM / Additional Deputy Commissioner, Sonitpur, Tezpur are liable to be set aside for the reasons mentioned in the revision petition ?

#### **THE DECISION AND THE REASONS THEREFOR**

6. It may be mentioned that Section 133 of the CrPC provides a speedy and summary remedy in case of urgency, where danger to public interest or public health etc. is concerned. Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate especially 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 considers necessary, may make a conditional order requiring the person causing such obstruction or nuisance within a time to be fixed in the order. Sub-section (2) of Section 133 provides that no such order duly made by a Magistrate shall be called in question in any Civil Court and pendency of a Civil suit does not bar a proceeding under this Section.

7. On scrutiny of the impugned documents, it appears that by **notice**, dated 24-05-2012, issued by the Additional Deputy Commissioner, Sonitpur, Tezpur, based on public complaint, the petitioner was directed to remove blockage, in the drain, situated on the boundary of his house, in public interest, immediately on receipt of notice, as the blockage caused inconvenience due to health hazard impact on the local residents. By the **public complaint**, dated 06-06-2012, addressed to the Deputy Commissioner, Sonitpur, Tezpur, twenty two residents of Ward No. 15 of Tezpur Municipal Board, Bye-Lane No.1, it was, inter-alia, alleged that due to forcible construction of a pucca wall, on a portion and depositing garbage, over the public drain, constructed and used by the local public for about 50/52 years, caused obstruction in free flowing of drain water resulting in water logging etc. in the locality to their extreme inconvenience. Thereafter, it is seen, the Additional Deputy Commissioner, Sonitpur, Tezpur after obtaining reports from the Circle Officer, Tezpur, and service of notice, on the petitioner and on being satisfied that the petitioner had not removed the blockage, despite receipt of notice and further, that the petitioner constructed an unauthorised RCC wall blocking the free flowing drain to the extreme inconvenience to the local public, directed the Deputy Director, Town and Country planning, Tezpur to demolish the illegal construction in public interest vide letter No. SRS 69/2003-2004/ PT. 2143, dated 06-06-2012. Further, the impugned note of the learned ADM / Addl. Deputy Commissioner (i/c), dated 10-06-2012, reveals that the drain was cleared, in presence of the learned Executive Magistrate and the local public. The course of action adopted by the learned ADM/ Additional Deputy Commissioner cannot be treated as mere administrative orders, when the same clearly satisfied the characteristics of action u/s 133 CrPC. The schedule of the disputed area is not specifically shown in the instant petition.

8. On perusal of the connected record of file No. SRS 69/2003-2004/ Pt. maintained in the office of the Deputy Commissioner, Sonitpur, Tezpur, it transpires that order-sheet has been maintained in respect of the alleged public grievance, but without drawing up a preliminary order, u/s 133 of the CrPC. In **CA Avarachan VS C.V Sreenivasan [ (1996) 1 SCC ( Cri) 174 ]**, the Hon'ble Supreme Court held, as follows :

“ In our opinion the omission on the part of the Sub-Divisional Magistrate to draw up a preliminary order, which is a sine qua non for initiating proceedings under Section 133 of the Code of Criminal Procedure and without following the procedure provided for by Section 138 Criminal Procedure Code, the order made by the Sub-Divisional Magistrate on 13-1-1988 is unsustainable and is vitiated.”

9. In view of the above mandate of the Hon'ble Apex Court, it is apparent that the impugned notices and orders, mentioned above, were issued / passed without following the procedure laid in Section 133 or in Chapter X (B) of the CrPC and as such, suffered from material irregularity.

10. **For the reasons, set forth above, the revision is allowed and accordingly, the impugned orders are set aside.**

11. **However, it is made clear that should the activity of the petitioner be a cause of public nuisance, the authority shall take such appropriate action as is authorized by law by following the procedure prescribed by the law.**

12. Send back the record No. SRS 69/2003-2004 of Misc. file, along with a copy of this judgment.

Given under my Hand and Seal of this Court on this the 30th day of May, 2014.

**( A. BORTHAKUR )  
SESSIONS JUDGE  
SONITPUR : TEZPUR**

Dictated and corrected by me

**(A. BORTHAKUR)  
SESSIONS JUDGE,  
SONITPUR :: TEZPUR**

Typed by me,  
on dictation :

(J.K. Muru, Steno )

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