

remanded back to Respondent No. 1, for deciding the claim of the petitioner on merits expeditiously. The parties are left to bear their own costs.

(8) The petitioner is directed to appear before the Commissioner, Workmen's Compensation Act, Sonapat on 30th October, 1990, for directions.

P.C.G.

Before Harbans Singh Rai, and A. P. Chowdhri, JJ.

RAJ MAL & OTHERS,—Petitioners.

versus

JOGINDER RAM AND OTHERS,—Respondents.

Criminal Misc. No. 2630-M of 1988.

1st November, 1990.

Criminal Procedure Code, 1973—Ss. 133, 138, 139, 310 & 482—Conflicting reports on question of fact on record.—Spot inspection by Magistrate—Order passed under Ss. 133 & 138—Such order—Whether vitiated.

Held, that an order passed by a Magistrate under Ss. 133/138 of the Code is not vitiated if he personally inspects the spot for a proper appreciation of the evidence on record. (Para 5)

Petition under section 482 Cr. P.C. praying that the petition be accepted and Annexure P-2 be quashed and the respondents be restrained from obstructing the flow of water thereby restoring the order passed by Id. S.D.M. Jalandhar.

Petition under section 133 Cr. P.C.

D. Khanna, Advocate, for the Petitioners.

H. S. Giani, Advocate, for the Respondents.

JUDGMENT

A. P. Chowdhri, J.

(1) The sole significant question arising for our consideration in this petition is whether an order passed by a Magistrate under

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sections 133/138 of the Code of Criminal Procedure (hereinafter referred as the Code) is vitiated if he personally inspects the spot for a proper appreciation of the evidence on record.

(2) Briefly stated, the factual background is that the petitioners made an application to the Sub Divisional Magistrate, Jalandhar, under section 133 of the Code against the respondents stating that the drain water of their house had been flowing since times immemorial from the Eastern side towards the Western side after passing through the drain in the street in between the houses of Balasa Ram and Jogi Ram on one side and Kartara Ram and Joginder Ram respondents on the other side. The respondents had obstructed the flow of the water by blocking the street by making a *bandh* at the Southern end resulting in nuisance to the residents of the entire village. The learned Magistrate passed a conditional order on February 15, 1983, directing the respondents to remove the obstruction within a specified period and to appear in Court and show cause why the order be not made absolute. The respondents filed a written statement denying that they had obstructed the flow of the sullage water and rain water of the drain. Both the parties produced their evidence. For appreciation of the same, the learned Magistrate inspected the spot in the presence of both the parties. Thereafter he made the conditional order absolute on February 28, 1984 (Copy Annexure P-1). The respondents filed a revision against the order of the Magistrate. The same was allowed by the learned Additional Sessions Judge, Jalandhar, by order dated January 23, 1988 (copy Annexure P-2). Relying on *Kishori Lal v. Babu Saini and others* (1), it was held that the order passed by the Magistrate was vitiated as he had carried out a spot inspection which was illegal. The petitioners filed the present petition under section 482 of the Code for quashing the order passed by the learned Additional Sessions Judge. The petition came up for hearing before one of us (Harbans Singh Rai, J.). The correctness of the view in *Kishori Lal's case* (supra) as well as *Ram Dular v. State of U.P. and others* (2), which was followed in *Kishori Lal's case*, was doubted, and having regard to the importance of the question, reference was made to a larger Bench. This is how the matter has been placed before us.

(3) Mr. Khanna, learned counsel for the petitioners, contended that power to inspect the spot in order to appreciate the evidence

(1) 1985(1) C.L.R. 109.

(2) 1980 A.L.J. 570.

on record must be read in a provisions of sections 133 and 138 of the Code, especially because provision had been made in section 139 expressly empowering the Magistrate to direct local investigation to be made by a person appointed by him. If local investigation could be made by a person appointed by the Magistrate, it would be illogical to hold that the entire proceedings would be vitiated if the Magistrate himself carried out the inspection. Counsel also submitted that inspection of the spot became necessary as there were conflicting reports on a question of fact on the record. While the SHO had reported the flow of water from East to the West, the DDPO had reported that the flow was from West to the East. It was also pointed out that the inspection was carried out in the presence of both the parties and it was, therefore, open to the parties and their counsel to draw pointed attention of the learned Magistrate to anything considered material in connection with the decision of the case. There was thus no question of any prejudice to either party.

(4) The contention of the learned counsel for the respondents, on the other hand, is that *Ram Dular's case* (supra) had been consistently followed in a large number of Single Bench decisions of this Court over a long period. Reference was made to *Kishori Lal's case* (supra), *Ishar Singh v. Varinder Kaur & another* (3), *Nihal Singh & others v. Daya Nant & others* (4) and *The Grama Panchayat Bidhipur v. Prithi Pal Singh* (5). We find that in all these authorities reliance has been placed on *Ram Dular's case* (supra). The fact that *Ram Dular's case* was overruled by a subsequent Division Bench decision of the Allahabad High Court itself in *Satya Parkash v. State of U.P. and another* (6), was obviously not brought to the notice of the learned Single Judge, who rendered the aforesaid decisions. Overruling *Ram Dular's case* it was pointed out by the learned Judges of the Division Bench in *Satya Parkash's case* that section 310 of the Code, which provides for local inspection, went unnoticed in that case (*Ram Dular's case*). Section 310 falls in the Chapter General provisions as to enquiries 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

(3) 1986(2) C.L.R. 344.

(4) 1989(2) C.L.R. 131.

(5) 1990(1) C.L.R. 348.

(6) 1983(2) Crimes, 128.

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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 or 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."

Detailed reasons have been given in the Division Bench decision and we find ourselves in agreement with the same.

(5) For these reasons, we hold that an order passed by a Magistrate under Sections 133/138 of the Code is not vitiated if he personally inspects the spot for a proper appreciation of the evidence on record. The above Single Bench decisions do not contain a correct statement of law and the same are, therefore, overruled. The order of the learned Additional Sessions Judge, Jalandhar, Annexure P-2, dated January 23, 1988, is hereby quashed and it is directed that the learned Additional Sessions Judge shall readmit the revision petition on its original number and dispose of the same on merits according to law within three months from the date of receipt of records. Parties through their counsel are directed to appear before him on November 16, 1990.

P.C.G.

Before S. S. Sodhi, J.

SAROJ (SMT.),—*Petitioner.*

versus

SMT. MURTI DEVI AND OTHERS,—*Respondents.*

Civil Revision No. 3025 of 1984.

14th November, 1990.

Code of Civil Procedure, 1908 (V of 1908)—S. 115—Army Group Insurance Scheme—Rls. 9, 10 & 11—Object of Scheme to provide financial assistance to families of Army Personnel—Widow named