

S.P. Trivedi vs State on 8 September, 1953

Equivalent citations: AIR1954ALL203

ORDER

Randhir Singh, J.

1. This is an application in revision against the order of a Magistrate, first class, in proceedings under Section 133, Criminal P. C.

2. A complaint was made by the District Engineer, P. W. D. Sitapur, on 11-7-1952, against the applicant to the effect that the applicant had encroached upon a piece of land 62.5 feet in length and 15 feet in breadth which formed part of the public road. It was prayed that the encroachment be ordered to be removed by the Court.

3. Notice was issued to the applicant to show cause why the obstruction should not be removed. The applicant appeared before the Magistrate and pleaded that the piece of land on which he had made the construction did not form part of the public road and that he had purchased that piece of land by means of a sale deed. Some documents were also produced by him in support of his contention that the land belonged to him and was not a part of the public way. The learned Magistrate repelled the contention of the applicant on the ground that he did not deny the existence of the public way and as such it was not necessary to ask the parties to get the matter decided by the Civil Court. He examined the evidence produced on behalf of the complainant and ordered the removal of the obstruction. The applicant then went in revision to the Sessions Judge who in a brief order dismissed the application for revision.

4. The main point canvassed on behalf of the applicant in this case is that it was imperative for the Magistrate to have come to a finding whether or not there was reliable evidence in support of the contention put forward by the applicant and to have proceeded according to the provisions of Section 139A. It appears to me that the learned Magistrate overlooked the provisions of Section 139A, Criminal P. C., which enjoins that if an order has been made under Section 133, Criminal P. C. it is the duty of the Magistrate to inquire of the person against whom the notice has been issued if he denied the existence of any right in respect of the way etc. In the present case no inquiry was made from the applicant but he filed a written statement in which he had put up his defence. A perusal of the written statement filed shows that the applicant disputed the existence of the right of way on the portion of land on which he had made the construction. In the face of this written statement the learned Magistrate should have come to a finding after an inquiry if in his opinion there was reliable evidence in support of the denial of the existence of a right of way on the land in dispute, and if he came to the conclusion that there was reliable evidence, he could not proceed with the hearing of the case further, and the only order which he could pass in those circumstances was to stay the

proceedings until the matter of the existence of such a right had been decided by a competent civil Court. If only he came to the conclusion that there was no reliable evidence he was entitled to proceed with the inquiry and subsequent order.

5. In the present case the learned Magistrate did not comply with the provisions of Section 139A, Criminal P. C. and the order passed by him cannot be upheld. The order passed by the Sub-Divisional Magistrate, Sitapur, dated 1-4-1953 is therefore set aside. The case will go back to the Magistrate who will rehear the case keeping in view the provisions of Section 139 A, Criminal P. C. and proceed according to law.