

Case Note: The case is regarding public nuisance; contamination of river water by industrial concern. Complaints against several persons were filed. The Court ordered prohibiting of discharge of effluents.

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IN THE HIGH COURT OF PATNA

Decided On: 28.01.1925

Deshi Sugar Mill

Vs.

Tupsi Kahar and Ors.

Hon'ble Judges:

B.K. Mullick and John Bucknill, JJ.

JUDGMENT

B.K. Bucknill, J.

1. In this matter there were two applications in criminal revisional jurisdiction. They have been substantially heard together; they both raise substantially the same point. Application No. 534 of 1924 is made by the Manager of New Sugar Mill, Siwan; Application No. 550 of 1924 is made by the Manager of Deshi Sugar Factory, Siwan. Both these sugar factories or mills are situated on the bank of the river Daha; the New Sugar Mill is a good deal (some few miles) lower down the river than the Deshi Sugar Factory and the former has only been in existence some four years; the latter is an older institution. In April of last year a petition was filed before the Sub-Divisional Officer of Siwan which is in the Sarna District by nearly a hundred persons living in the neighborhood of the river complaining that the river had been polluted by the Mills' effluents; they alleged that some cattle had died as a result, so they thought, of drinking the river water they stated that they were afraid that there might be an outbreak of disease and they prayed that action might be taken against the two Mills under the provisions of Section 133 of the Criminal Procedure Code. The Sub-Divisional Officer thought fit to refer the matter to an Honorary Magistrate for a report and this gentleman re-ported that he thought that there had been some contamination of the river by refuse matter which had been allowed to be discharged from the Mills, but that it was difficult to say from which. The Sub-Divisional Officer ordered on the 10th of May that notice should be issued on the Managers of both Mills to appear before him to show cause why they should not be prohibited under Section 133 of the Criminal Procedure Code from polluting the water of the river by discharging into it noxious and dirty water from their factories. Both parties eventually appeared and an order was passed directing the Managers under what purported to be Sub-section (1) of Section 133 of the Criminal Procedure Code to discontinue, prior to the 28th of May last, draining into the river dirty or noxious water and to abate the nuisance thus caused on that account. It was further ordered in the alternative that the applicants should move the Sub-Deputy Magistrate of Siwan to have the order set aside or modified. The applicants did appear before the Sub-Deputy

Magistrate and evidence was heard on both sides. As a result the Sub-Deputy Magistrate made the orders absolute. The applicants then moved the Sessions Judge against this order but the Sessions Judge refused to refer the matter to the High Court and rejected the application.

2. Now, it is true that certain small legal points were raised before the Sessions Judge, but they have not been seriously pressed before this Court, the applicants preferring to rely upon a more cogent argument. It was, however, pointed out that under the provisions of Section 133(1) of the Criminal Procedure Code the first paragraph regarding the removal of a nuisance from a river was, perhaps, hardly applicable to the case of the pollution of a river by an effluent from a factory. It is not now very material whether that is so or not; for it is quite clear that the second paragraph of the sub-section in question gives ample power to make an order prohibiting the discharge into a river of an effluent which might be injurious to the health of the community which has rights to the use of the water in such stream. What, however, is now urged on behalf in particular of the New Sugar Mill is that there was no evidence whatever of any real value that there had in fact been any contamination of the water of the river by any effluent from the factory; but that, on the other hand, there was overwhelming and scientific evidence on the part of the New Sugar Mill to show that that Mill discharged nothing noxious into the stream.

3. The Deshi Sugar Factory, which observing that no complaint had ever been taken against their factory, or as to the condition of the stream prior to the appearance on the bank of the New Sugar Mill, pointed out that no attempt had been made to prove that any discharge from their (the Deshi) Factory, was noxious.

4. The conclusions are clear: firstly, that if examination of the waters of the river below the New Sugar Mill showed no contamination, the Deshi Factory, which is rather higher upstream, was not a culprit any more than the new Sugar Mill. Secondly, that in law it is not admissible for a tribunal to assume the attitude that, even if a nuisance is proved but not as against any particular party complained of as causing it, an order prohibiting such nuisance can be issued against all parties against whom complaints are made. To illustrate this principle in this case: even if it had been shown (which, incidentally on the evidence does not appear to have been the case) that a nuisance existed due to contamination of the water of the river by what was a noxious effluent from the Sugar Mills, it would be necessary to prove substantially, before an order could be made against either or both of the Mills, that the effluent from either or both was noxious. Unless this is done it is obvious that a totally illegal and unjust order might be made against one or other of the Mills which may have done absolutely nothing wrong.

5. It need hardly be said that it must be recognized by every one that it is of the utmost importance that sources of public water supply must be maintained pure and free from pollution by industrial factories; but such pollution must be convincingly proved against a wrong-doer before any order can be passed against him.

6. There is no evidence which Mill contaminated the water and the evidence of contamination by effluent from Sugar Factories at all was, in my opinion, not supported by any adequate testimony.

7. [His Lordship then discussed the evidence and continued:]

8. The Civil Surgeon and the Chemist think pollution of the river (if there is any deterioration) is due to vegetable growth, little flow at certain seasons and other incidental causes. Whilst, as I have occasion to repeat, it is most important to preserve sources of water supply pure, it is necessary, if charges of pollution are to be successfully prosecuted against parties alleged to be contaminating such sources, that convincing proof of such pollution be brought home to their doors.

9. This has certainly not been done here; the complaints and evidence in support thereof do not even purport to do so against either Mill individually, nor in my opinion on the evidence do they in fact do so against either or both.

10. But there is nothing to prevent further steps being taken but the evidence should be properly prepared; samples of the effluents actually flowing from any industrial concern suspected of contaminating the river should be taken and analyzed and, if it then be found that these samples contain matter which (taking into perspective the volume of the effluent and the volume of the river) would be deleterious to the water of the river when utilized for domestic purposes, the case is clear.

11. But the matter is, it must be emphasized, one which calls for scientific enquiry and cannot be decided merely because a number of persons, in April or May when the river is very low and hardly flowing, think that the stagnation and impurity of the water, an outbreak of illness or the loss of some cattle may be due to the presence near of two sugar mills.

12. I have no hesitation in coming to the conclusion that the orders must in both these cases be quashed, firstly, because it is not competent to make orders of the kind made against two parties simply because it is thought that either (or perhaps both) may be in fault: and, secondly, because the scientific evidence (which is all that matters in these cases) in my view is at present overwhelmingly in favour of the applicants.

Mullick, J.

13. I agree.

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