

Bombay High Court

Vyapari Association vs The State Of Maharashtra on 9 September, 2009

Bench: R.Y. Ganoo

cwp260.09.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR.

CRIMINAL WRIT PETITION NO. 260 OF 2009

Vyapari Association,  
Vani, Distt. Yavatmal,  
through it's President  
Farooq s/o Harun Chini, Major,

Occ.- Business, R/o Vani,  
District-Yavatmal.                    ::

APPLICANT

-: Versus :-

1. The State of Maharashtra,  
through Sub Divisional Officer,  
Vani, Distt. Yavatmal
2. The Collector, Yavatmal.
3. The Superintendent of Police,  
Distt. Yavatmal.                    ::

RESPONDENT

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Shri Prakash Naidu, Advocate for the Applicant.

Mr. D. M. Kale, A. P. P. for the respondents.

CORAM: R. Y. GANOO, J.

DATED : 09TH SEPT., 2009 Oral Judgment

1. Rule was issued on 03/8/2009. I have heard learned Advocate on both sides. Petitioner is an association of merchants by name-Vyapari Association, Vani and the present petition is filed through its President. The petitioners have approached this Court for seeking an order that order dated 13/01/2009 passed by Sub Divisional Officer, Vani in case No. 1/2009 passed under Section 133 of the Criminal Procedure Code be set aside.

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2. Few facts necessary for disposal of the petition are as under:

It is noted that the Sub Divisional Officer, Vani by order dated 13/01/2009 issued orders so as to regulate the traffic in the city of Vani and imposed certain restrictions as regards entry and exit of heavy vehicles on the roads which will have used by the said heavy vehicles for entries in the town and go out of Vani and the timings within which such entries will be restricted. The said order dated 13/01/2009 also indicates that the goods can be brought in with the help of other method of transport such as light vehicles as the heavy vehicle cannot enter during hours such as between 8.00 a.m. to 9.00 p.m.

3. The petitioners have put up challenge to this order dated 13/01/2009 on the ground that none of the contents have initiated action under Section 133 of Cri. P. C. are levelled and the items for which the order under Section 133 Cri. P. C. can be passed, are not one in regard to which the present order dated 13/01/2009 and it does not fall within the parameters or circumstances set out in clauses (a) to (f) of Section 133 of the Code of Criminal Procedure.

4. Learned Advocate Mr. Naidu appearing for the petitioner submitted that if the notification/order issued by a particular Authority is not in conformity with the provisions of Section 133 Cri. P. C., the same is liable to be struck down. It is further argued by Mr. Naidu that the Sub Divisional Officer, Vani has no power to issue such an order and therefore the said order is bad in law. It was brought before this Court cwp260.09.odt 3 / 4 that the said notification should be quashed.

5. Learned A. P. P. Mr. Kale for the State has submitted that the information came to be obtained indicates that the traffic situation in the town Vani was leading to disaster consequence with reference to the health condition of the residents of Vani town in as much as provisions of the environment protection came to be followed. It was sought to be argued by the learned A. P. P. that order dated 13/01/2009 came to be passed by the concerned officer in the interest of well being of the residents of Vani and for smooth management of the traffic in the town.

He had therefore submitted that the impugned order is well within the parameters of Section 133 of Cri. Procedure Code, and therefore, the petition is liable to be rejected.

6. I have perused the text of order dated 13/01/2009 and the various clauses set out under Section 133 of Cri. P. C. Provisions of clauses (a) to (f) of Section 133 of Cri. P. C. deal with specific situation like controlling situations. Clauses (i) to (vi) of the said Section indicate the measures to be taken to stop public nuisance, i.e. to say, clauses (a) to (f) related to facts and circumstances which indicate as to what constitute to be a public nuisance and clauses (i) to (vi) indicate the steps to be taken to curb public nuisance. After having considered the impugned order, I am inclined to accept the arguments advanced by Mr. Naidu, learned Advocate for the petitioner that the text and the measures sought to be adopted by the impugned order do not fall within cwp260.09.odt 4 / 4 the parameters of clauses (a) to (f) of Section 133 of the Code of Criminal Procedure. If this is the position, then the impugned order will have to be struck down.

7. Learned A. P. P. Mr. Kale submitted that the impugned action was in the interest of public.

8. May be that the administration at Vani felt that the impugned action is required to be taken in the interest of residents of town Vani, but the manner in which the said interest is sought to be protected by passing such an order is not correct. Needless to mention that the Government Authorities are free to take appropriate steps by taking appropriate measures, of course, based on sound provisions of law.

9. In view of the aforesaid discussion, impugned order will have to be quashed and to that extent rule will have to be made absolute. Hence, the following order is passed.:

i) Order dated 13/01/2009 passed by the Sub Divisional Officer, Vani in case No. 1/2009 purported to be passed in exercise of powers under Section 133 of Code of Criminal Procedure is set aside.

ii) Rule is made absolute accordingly.

JUDGE ww1