Madhya Pradesh High Court
Krishna Gopal vs State Of M.P. on 1 January, 1986
Author: V Gyani
Bench: V Gyani
JUDGMENT

V.D. Gyani, J.

.....3. A brief resume of facets is necessary for decision of this revision petition. Smt. Tripathi on 26-8-82 lodged a complaint with the Distt. Magistrate, Indore, alleging that a factory Caplic was being run in House No. 23/2 Manoramaganj, Indore, manufacturing glucose saline where a boiler was installed and coal was used as fuel. It was hardly 8 ft. away from the residence of Smt. Sarla Tripathi. The emitted smoke and ash from this boiler caused a great deal of atmospheric pollution resulting in a deleterious effect on the residents of the locality. It was also alleged that the factory was being run round the clock; at times invariably boiling water used to fall in her house. She also stated in her complaint that before issuance of a No-Objection Certificate to the aforesaid factory she had already lodged her protest with the Joint Director Town and Country Planning, Indore, Development Authority, Municipal Corporation, Indore as also the Collector on 6-12-76 and in face of this objection by her the factory was permitted to be run under the very nose of all these authorities. She complained that her husband a heart patient, as a result of the running of this factory was deprived of even the minimum legitimate 8 hours sleep which he needed most. Boiling water, at times acid was being thrown and at times even filthy abuses were heard on objections being raised by the Proprietors of the factory. She prayed that the spot be inspected and the nuisance of installation of a boiler be removed.

4. A report was called from the Police Station, Palasia and on that basis a notice dt. 8-11-82 was issued to the petitioner by A.D.M., City Indore calling upon him to show-cause as to why the factory should not be ordered to be removed from the residential locality.

5. The petitioner on being served with a show-cause notice submitted his reply on 19-11-82 stating inter alia that by order dt. 21-11-76 the Joint Director Town and Country Planning issued a No-Objection Certificate to the Petitioner for starting the factory in the premises i.e. 23/2 Manoramaganj, Indore. The Municipal Corporation, Indore also permitted the same by its order dt. 15-2-77. Similarly the Chief Inspector of Boilers issued a certificate for the use of boiler on 27-1-82. It was contended by the Petitioner that even if someone was to stand with his ears fixed to the boiler still he would not be in a position to know if the boiler was working. It was in reply to Smt. Sarla Tripathi's contention that her husband could not sleep because of the working of the boiler, the Petitioner in his reply to the show-cause notice advanced a fantastic claim that even someone was to fix his ears to the boiler he would not be able to feel its working. Therefore no question of disturbance in sleep. Smt. Tripathi's contention that as a result of the emitting of smoke and ash the atmosphere was being polluted having a deleterious effect on the residents.

The petitioner contended that boilers have never been known to have any such effect, on the oilier hand it has always improved human health and the example cited was that most of the Five Star Hotels have boilers installed in them and they add to the comforts and one such boiler according to the petitioner was also installed in the local Suhag Hotel. He also contended that in all big hospitals there are boilers and still patients go for treatment to such hospitals. According to him even in the local M.Y. Hospital as many as three big boilers have been installed, in T. Choithram Hospital there are two boilers and this is all with a view to justify the installation bf boilers in a residential locality. Certain insinuations had also been made against the husband of Smt. Sarla Tripathi and it was contended that the factory was being run for the last 5 years i.e. since 1977 and none except Smt. Tripathi complained about it. The petitioner also attached a certificate dt. 14-8-78 from an obliging neighbour Officer of the Survey of India located at a distance of about 50 ft. from the factory premises stating to the effect that the officer had no appreciable trouble in having the factory nearby and lastly it was contended that as the complainant Smt. Tripathi was a teacher in a School just near Collectorate she was taking undue advantage of this nearness and at the height of it the petitioner took shelter behind the

slogan that the year was declared to be 'a production year' which required maximum production and prayed that such obstructionism in the way of production like the complainant should he properly guided. What a selfish, self-serving interpretation of the 'production year' and mockery of others' rights! Along with this reply the petitioner had filed the documents referred to above and thereafter the complainant placed on record the correspondence which she had with the Authorities. The Joint Director informed the complainant's husband by a letter that no permission as such was given for running any Industry in (he locality but this had reference to one M/s Auto Agro Industries. Thereafter the Joint Director on 3-3-79 informed one R.C. Guhas resident of No. 7 Manoramaganj, Indore in reply to his letter dt. 28-12-78 that permission to Caplic was granted for manufacturing medicines as it was in accordance will) rules and expressed his inability to do anything in the matter. A photostat copy complaining against the petitioner factory signed by many residents of the locality and addressed to all the concerned Authorities such as the Joint Director, Town and Country Planning, the Collector, the Commissioner and the Superintendent of Police is also placed on record.

7. The Addl. District Magistrate examined Smt. Sarla Tripathi, Nathulal, Mahesh Tripathi, Mahendra Singh Gaur and also the complainant who swore an affidavit before the S.D.M. and all these witnesses with one voice complained of pollution caused by running of the factory. None of them has been cross-examined and on 3-6-83 the S.D.M. Indore City passed a final order directing the removal of the factory from the premises 23/2 Manoramaganj, Indore.

8. Thereafter feeling aggrieved by the aforesaid order Krishnagopal Kakani preferred a revision before the Sessions Judge Indorc on 17-6-83. This revision petition was decided by order dt. 30-10-84 and a modification was made only to the extent that instead of removal of the whole factory it was the boiler alone which was directed to be removed. In the meanwhile the petitioner M/s Caplic filed a Civil Suit No. 108-A/83 in the Court of Vth Civil Judge Class-II, Indore for declaration and perpetual injunction against the Joint Director, Town and Country Planning, Indore seeking a declaratory decree to the effect that the Joint Director had no right to cancel the No-Objection Certificate granted to the plaintiff petitioner. The order passed by the Joint Director on 30-3-83 intimating the Superintending Engineer, M.P.E.B., Indore about the cancellation of N.O.C. granted to the plaintiff petitioner directing disconnection of electricity to the plaintiff petitioner was arbitrary, illegal, malicious and with a further relief of injunction that the power connection granted to the plaintiff petitioner be not removed in any manner. It is painfully surprising that the Joint Director in spite of notice and even after having made appearance before the Civil Court did not pursue it and the Court has no doubt that it was in callous disregard to duty and collusive indulgence shown by him that an ex pane decree was to be passed in the aforesaid suit. So as to oblige the petitioner in perpetuating the nuisance that he had been indulging in so far.

9. In this backdrop of events Shri Bhojwani appearing for the petitioner had contended that in view of the facts, where only one complainant Smt. Sarla Tripathi has come forward to complain about the nuisance can it be said that the nuisance complained of, is a public nuisance as contemplated by Section 133 of the Cr. P.C. According to the learned Counsel inconvenience caused to the inmates of a house, can and should not be considered as a public nuisance as it is essentially private in nature for which it is not permissible to invoke Section 133, Cr. P.C. The argument advanced is inherently fallacious. It is not the intent of law that the community as a whole or a large number of complainants come forward to lodge their complaint or protest against the nuisance; that does not require any particular number of complainants. A mere reading of Section 133(1) would go to show that the jurisdiction of the Sub-Divisional Magistrate can be invoked on receiving a report of Police Officer or other information, and on taking such evidence if any, as he thinks fit. These words are important. Even on information received the Sub-Divisional Magistrate is empowered to take action in this behalf for either removal or regularising a public nuisance. Thus, the argument advanced by the learned Counsel cannot be accepted. In the case, the action was initiated on the basis of a Police Report also, which is in on record. The complaint received, was sent to the P.S., Palasia and on that basis on 18-9-82 a report was filed under Section 133, Cr. P.C. by the Station Officer P.S., Palasia followed by show-cause notice. Thus, there is no factual basis even for advancing such an argument.

10. It is also pertinent to note that the witnesses examined in this case and the evidence adduced in support of the police report unfailingly point to nature of the nuisance, the emission of smoke from the boiler and its deleterious effect on the community is amply borne out from the evidence on record. In such circumstances the requirement of Section 133, Cr. P.C. is fully satisfied. Sub-section (1)(b) reads as follows :-

"That the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated".

The words are wide in their amplitude and undoubtedly cover the present case. Manufacturing of medicines in a residential locality with the aid of installation of a boiler resulting in emission of smoke therefrom is undoubtedly injurious to health as well as the physical comfort of the community and there is no scope for any interference in this revision petition on that account. In this connection it is significant to note that the petitioner himself had undertaken on 2-1-80 to shift their industry within 4 years and that period had also lapsed long back. It is unfortunate that even after the lapse of that period the Authorities concerned failed to remove the nuisance from a residential locality. As an affidavit sworn by one of the partners Rajendra Muchal on 2-1-80 states "that we shall shift the aforesaid boiler within 4 years of period from 23/2 Manoramaganj, Indore." Primarily no such time could have been granted under the law. The period proposed was objected to by the Joint Director and thereafter on 28-1-80 the petitioner informed the Joint Director to have it removed within 2 years. Even thereafter no action was taken for its removal. There is yet another letter on record dt. 21-2-80 to the same effect and it may be noted at the cost of repetition that the Authorities had no right to grant such a time when the installation of a boiler in a residential locality and the running of an Industry itself was blatantly violative of the law. The Sub-Divisional Magistrate had also issued a notice to the Joint Director to explain the circumstances in which permission was granted to the petitioner for running the industry and it is on record that on 10-3-80 the permission was granted for a period of 2 years on a clear undertaking given by the petitioner that within this period they would remove the factory to some other place, which expired on 9-3-82 but surprisingly enough no effective action appears to have been taken thereafter for its removal.......

12. It is nothing but a collusion on the part of the Authorities who in disregard of their duty and sacrificing the larger interest of the community permitted installation of a boiler for a factory in a residential locality merely for their selfish aims.

13. With these facts on record duly proved when the very installation of the factory is itself contrary to law; there could be no ground for its being granted permission with an undertaking to remove the same: collusion and callous disregard is writ large in the whole affair.

14. Pollutants discharged from the "Chimney" knows no frontiers of localities and very often they lead to damage not only to the locality or the particular area where pollution originates but also to the neighbouring localities and adjacent areas. Breathing itself becomes a problem in case of air pollution and the Officers who are entrusted with the task to see that air pollution is not permitted in residential localities as the facts of this case have revealed can keep the law at bay and it is this callous disregard to the laws, which at times has resulted in a sort of paralysis due to the corporate crime wave. It is a travesty that such corporate crime wave and criminal behaviour on the part of such Authorities has not been made such a crime as to be punished with deterrent punishment. Unfortunately wilful and knowing violations of laws resulting in air pollution caused by auto exhaust radiation and gas pipe-line safety standards are not considered crimes under the relevant statutes even if lives are lost as a result. Such crimes require courage not routine duty, by officials to enforce the laws against such outrages and the Sub-Divisional Magistrate undoubtedly deserves a word of kudos. It should be remembered that environmental crimes dwarf other crimes against safely and property but the position of law as it stands in the matter of sentencing such environmental crimes is rather comfortable. A vagrant committing a petty theft is punished for years of imprisonment while a billion dollar price fixing executive or a partner in a concern as such the petitioner comfortably escapes the consequences of his environmental crime. The society is shocked when a single murder takes place but air, water and atmospheric pollution is merely read as

a news without slightest perturbance till people take ill, go blind or die in distress on account of pollutants that result in the filling of pockets of a few.

15. Some forms of air pollution may be more pervasive, subtle and cumulative in their effects. But that which most immediately obtrudes itself on the eyes, the nose and the ears of the average citizen is exhaust smoke from motor vehicles. It has been calculated on the basis of a survey that more than half of these on the roads inadequately consume the hydro-carbons of their fuel which both wastes scarce petrol or diesel and allows lethal gases notably carbon monoxide to escape.

16. Auto-exhaust is a great cause of environmental pollution is a common site at times the riders relish the noise to the distress and damage of others but no action as such is taken against such owners or riders of motor vehicles. Studies have revealed that these automobile emissions alone account for 70% of carbon monoxide, 50% of hydrocarbons, 35% of particulates and oxides of nitrogen in the atmosphere but air pollution in the environment caused by industrial emissions is yet another contributor. If environmental pollution is to be extirpated firstly it should not be permitted, must be prevented and if at all it takes place should be sternly dealt with. Chemical fertilisers are doubly injurious and violate nature.

17. It is a sorry state of affairs that the Joint Director, has permitted the installation and running of a factory in a residential locality. The record which was directed to be produced by this Court and eventually produced goes to show that our Town Planners have merely passion for files and papers and not the people otherwise it is inconceivable that such a factory manufacturing medicine could have been permitted in a residential locality.

18. The Sub-Divisional Magistrate while passing the order directed removal of the factory as such while the Additional Sessions Judge confined removal to the boiler.

19. This modification in the order by the Additional Sessions Judge was in fact uncalled for. The nuisance to the community at large is not by mere installation of the boiler but also by the factory itself. In such circumstances while affirming the order passed by the lower Divisional court the original order passed by the Sub-Divisional Magistrate was modified deserves to be restored and it is accordingly recorded without any modification confirming the same.

20. The petitioner during the course of hearing produced a certified copy of the Judgment dt. 18th Oct 83 it is made clear that this judgment and decree has nothing to do with the nuisance to the community and its removal in no way is affected by this decree.

21. For the foregoing reasons the revision petition deserves to be dismissed, it is accordingly dismissed. The order passed by the sub-Divisional Magistrate is confirmed. The public nuisance the factory as such the petitioner factory be immediately removed from the premises without any further loss of time. Smt. Sarla Tripathi who brought this complaint before the Sub-Divisional Magistrate incurring expenses of litigation deserves to be compensated by cost. The petitioner shall pay Rs. 1,000/- as cost to Smt. Sarla Tripathi who relentlessly prosecuted this cause of public nuisance. See R.L. & E. Kendra Dehradun v. State of U.P. AIR 1985 SC 652. The record of the Courts below be sent back immediately. The record from the office of Joint Director, Town and Country Planning be also returned.