

a thing could have been said by Ghanashyam unless Bhagwati had told him something to that effect. It is almost impossible to believe that if Kamla had mentioned to her mother that she had herself seen Vijay Pal sprinkling kerosene oil on the clothes of Kaushalya and then setting fire to the clothes. Bhagwati could still think of offering the hand of her younger daughter to the murderer of Kaushalya. It, therefore, appears that probably Bhagwati was not sure about the guilt of Vijay Pal even till the morning of June 9, 1976 though she may have some suspicion. May be the different versions in the two applications which were got typed by her were on account of the uncertainty in her mind".

2. We entirely agree with this reasoning which, more than any other argument, undermines the truth of the prosecution story. It not only throws a serious doubt on Kamla's claim to being an eye-witness of the occurrence, but also destroys the veracity of the evidence regarding the alleged extra-judicial confession.

3. We are at one with the High Court in holding that the prosecution had failed to bring home the guilt to the appellant beyond all reasonable doubt. The appeal fails and is dismissed.

Appeal dismissed.

AIR 1980 SUPREME COURT 1622
= 1980 Cr. L. J. 1075

(From: 1980 Jab L J 135)

V. R. KRISHNA IYER AND
O. CHINNAPPA REDDY, JJ.

Special Leave Petn. (Crl.) No. 2856 of
1979. D/- 29-7-1980.

Municipal Council, Ratlam, Petitioner
v. Vardhichand and others, Respondents.

Brief Facts:— Residents of a locality within limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum-dwellers moved the Magistrate under S. 133 of Cr. P. C. to require Municipality to do its duty towards the members of the public. The Magistrate gave directions to Municipality to draft a plan within six months for removing nuisance. In appeal, Sessions Court reversed the order. The High Court approved of the order of Magistrate. In further appeal, the Supreme Court also affirmed the Magistrate's order.

HX/HX/E102/80/SNV

Criminal P. C. (1974), S. 133 — Nuisance in a locality due to existence of open drains, pits and public excretion by humans for want of lavatories — Court can require Officers of Municipality to abate it by affirmative action on time-bound basis on pain of punishment under S. 133 of I. P. C. — (Constitution of India, Art. 38; Penal Code (1860), S. 188; M. P. Municipalities Act (37 of 1961), S. 123; Municipalities — Public Nuisance — Duty to abate).

Where there existed a public nuisance in a locality due to open drains, heaps of dirt, pits and public excretion by humans for want of lavatories and consequential breeding of mosquitoes, the Court could require the Municipality under S. 133 of the Cr. P. C. and in view of S. 123 of the Municipalities Act to abate the nuisance by taking affirmative action on a time-bound basis. When such order was given, the Municipality could not take the plea that notwithstanding the public nuisance financial inability validly exonerated it from statutory liability. 1980 Jab L J 135, Affirmed. (Paras 12, 16)

The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, S. 123 of the Municipalities Act has no saving clause when the Municipal Council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be. (Para 12)

S. 133 Cr. P. C. is categoric, although reads discretionary. Judicial discretion when facts for its exercise are present, has a mandatory import. Therefore, when the Magistrate has, before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The Magistrate's responsibility under S. 133 Cr. P. C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on be-

(1974), S. 133 — Nuisance to existence of open public excretion by lavatories — Court can of Municipality to abate action on time-bound punishment under S. 133 (Constitution of India, Art. 186(1), S. 188; M. P. Act (37 of 1961), S. 123. Public Nuisance — Duty

isted a public nuisance to open drains, heaps of public excretion by humans and consequential nuisances, the Court could under S. 133 of the Cr. P. C. in view of S. 123 of the Cr. P. C. to abate the nuisance by taking preventive action on a time-bound basis. An order was given. The Court could not take the plea that the public nuisance was not a public nuisance. It was validly exonerated. 1980 Jab LJ 135 (Paras 12, 16)

Procedure Code operates on the basis of the bodies and others residing in their coffers, even under Part III of the Constitution to be respected by the State. The budgetary provision of the Municipalities is not a bar. The clause when the Municipality is financially helpless. Otherwise, a body or pachyderm may legally defile the law by urging in self-interest bankruptcy or perverting the budget. That cannot be done. (Para 12)

is categoric, although the judicial discretion is not to be exercised. These are present before him, informally, which disclose the public nuisance and, on the other hand, he considers that such a nuisance should not be in any public place which is frequented by the public, the judicial power shall be exercised. The procedural barrier of jurisdiction or nuisance is not a bar. The jurisdictional facts. The jurisdiction under S. 133 Cr. P. C. for removal of such nuisance to be fixed in the public duty implicit in the law to be exercised on be-

half of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by S. 188 I. P. C. Therefore, the Municipal Commissioner or other executive authority bound by the order under S. 133 Cr. P. C. shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the Section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of S. 133 Cr. P. C. read with the punitive temper of S. 188 I. P. C. make the prohibitory act a mandatory duty. (Para 13)

Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage system — not pompous and attractive, but in working condition and sufficient to meet the needs of the people — cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions makes this position clear. (Para 15)

Although the two Codes are of ancient vintage, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under S. 133 Cr. P. C. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution. (Para 14)

Cases Referred: Chronological Paras
AIR 1979 SC 143: (1979) 2 SCC 267: 1979 Cri LJ 59 17

Mr. Sobhag Mal Jain, Sr. Advocate (Mr. S. K. Jain, Advocate with him), for Petitioner; Mr. C. S. Chhazed, Miss Manisha Gupta and Mr. M. S. Gupta, Advocates for Respondents Nos. 1-5; Mr. S. K. Gambhir, Advocate for the State.

KRISHNA IYER, J.: — It is procedural rules', as this appeal proves, which infuse life into substantive rights, which activate them to make them effective. Here, before us, is what looks like a pedestrian quasi-criminal litigation under S. 133 Cr. P. C., where the Ratlam Municipality — the appellant — challenges the sense and soundness of the High Court's affirmation of the trial Court's order directing the construction of drainage facilities and the like, which has spiralled up to this court. The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of *locus standi* to the community orientation of public interest litigation, these issues must be considered. In that sense, the case before us between the Ratlam Municipality and the citizens of a ward, is a path-finder in the field of people's involvement in the justicing process, sans which as Prof. Sikes points out, (1) the system may 'crumble under the burden of its own insensitivity'. The key question we have to answer is whether by affirmative action a court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and on a time-bound basis. At issue is the coming of age of that branch of public law bearing on community actions and the court's power to force public bodies under public duties to implement specific plans in response to public grievances.

2. The circumstances of the case are typical and overflow the particular municipality and the solutions to the key questions emerging from the matrix of facts are capable of universal application,

(1) Melvyn P. Sikes, Administration of Injustice.

123. Duties of Council.—(1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a council to undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely:

(b) cleansing public streets, places and sewers, and all places, not being private property, which are open to the enjoyment of the public whether such places are vested in the council or not; removing noxious vegetation, and abating all public nuisances:

(c) disposing of night soil and rubbish and preparation of compost manure from night-soil and rubbish.

And yet the municipality was oblivious to this obligation towards human well-being and was directly guilty of breach of duty

and public nuisance and active neglect. The Sub-Divisional Magistrate, Raikot, was moved to take action under S. 133 Cr. P. C. to abate the nuisance by ordering the municipality to construct drain pipes with flow of water to wash the filth and stop the stench. The Magistrate found the facts proved, made the direction sought and scared by the prospect of prosecution under Section 188, Cr. P. C. for violation of the order under S. 133 Cr. P. C., the municipality rushed from court to court till, at last, years after, it reached this Court as the last refuge of lost causes. Had the municipal council and its executive officers spent half this litigative zeal on cleaning up the street and constructing the drains by rousing the people's sramdan resources and laying out the city's limited financial resources, the people's needs might have been largely met long ago. But litigation with others' funds is an intoxicant, while public service for common benefit is an inspiration; and, in a competition between the two, the former overpowers the latter. Not where a militant people's will takes over people's welfare institutions, energises the common human numbers, canalises their community consciousness, forbids the offending factories from polluting the environment, forces the affluent to contribute wealth and the indigent their work and thus transforms the area into a healthy locality vibrant with popular participation and vigilance, not neglected ghettos noisy with squabbles among the slimy slum-dwellers nor with electoral 'sound and fury signifying nothing'.

3. The Magistrate, whose activist application of S. 133, Cr. P. C. for the larger purpose of making the Ratlam municipal body do its duty and abate the nuisance by affirmative action, has our appreciation. He has summed up the concrete facts which may be usefully quoted in portions:

"New Road, Ratlam, is a very important road and so many prosperous and educated persons are living on this Road. On the southern side of this Road some houses are situated and behind these houses and attached to the College boundary, the Municipality has constructed a road and this new Road touches the Government College and its boundary. Just in between the said area a dirty Nala is flowing which is just in the middle of the main road i. e. New Road. In this stream (nala) many a time dirty and filthy water of Alcohol Plant having chemical and obnoxious smell, is also released for which

and active neglect. Magistrate, Ratlam action under S. 133 to remove the nuisance by order to construct drains and to wash the fifth. The Magistrate found that the direction made the direction of the prospect of promotion 188, Cr. P. C. for order under S. 133. The municipality rushed from the last, years after, it is the last refuge of the municipal council. Officers spent half this cleaning up the street drains by rousing the resources and laying out limited financial resources might have been a. But litigation is an intoxicant, while a common benefit is an incorporeal right. A competition between the powerful and the latter people's will takes place. Institutions, energetic numbers, canalises consciousness, forbids the man polluting the environment to contribute to their work and area into a healthy popular participation. The neglected ghettos among the slimy slum electoral 'sound nothing'.

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2. A very important prosperous and living on this Road of this Road some and behind these the College boundary has constructed a road touches the Govt's boundary. Just in a dirty Nala is flowing the middle of the Road. In this stream dirty and filthy water carrying chemical and is released for which

the people of that locality and general public have to face most obnoxious smell. This Nala also produces filth which causes a bulk of mosquitoes breeding. On this very southern side of the said road a few days back municipality has also constructed a drain but it has (P) constructed it completely but left the construction in between and in some of the parts the drain has not at all been constructed. Because of this the dirty water of half constructed drain and septic tank is flowing on the open land of applicants, where due to insanitation and due to non-removing the obstructed earth the water is accumulated in the pits and it also creates dirt and bad smell and produces mosquitoes in large quantities. This water also goes to nearby houses and causes harm to them. For this very reason the applicants and the other people of that locality are unable to live and take rest in their respective houses. This is also injurious to health."

4. There are more dimensions to the environmental pollution which the magistrate points out:

“A large area of this locality is having slums where no facility of lavatories is supplied by the municipality. Many such people live in these slums who relieve their lateral dirt on the bank of drain or on the adjacent land. This way an open latrine is created by these people. This creates heavy dirt and mosquitoes. The drains constructed in other part of this Mohalla are also not proper; it does not flow the water properly and it creates the water obnoxious. The Malaria Department of the State of M. P. also pays no attention in this direction. The non-applicants have not managed the drains, Nallahs and Naliyan properly and due to incomplete construction the non-applicants have left no outlet for the rainy water. Owing to above reasons the water is accumulated on the main road, it passes through living houses, sometimes snakes and scorpions come out and thus obstruct the people to pass through this road. This also causes financial loss to the people of this area. The road constructed by Nagar-palika is on a high level and due to this, this year more water entered the houses of this locality and it caused this year more harm and loss to the houses also. This way all works done by the non-applicants i. e. construction of drain, canal and road come within the purview of public nuisance. The non-applicants have given no response to the difficulties of the applicants, and non-applicants are care-

less in their duties towards the public, for which without any reason the applicants are facing the intolerable nuisance. In this relation the people of this locality submitted their returns, notices and given their personal appearance also to the non-applicants but the non-applicants are shirking from their responsibilities and try to avoid their duty by showing other one responsible for the same, whereas all the non-applicants are responsible for the public nuisance."

5. Litigation is traumatic and so the local people asked first for municipal remedies failing which they moved for magisterial remedies:

"At the last the applicants requested to remove all the nuisance stated in their main application and they also requested that undermentioned works must be done by the non-applicants and for which suitable orders may be issued forthwith:

1. The drains constructed by Municipality are mismanaged and incomplete, they should be managed and be completed and flow of water in the drains should be made so that the water may pass through the drain without obstruction.

2. The big pits and earthen drains which are situated near the College boundary and on the corners of the road where dirty water usually accumulates, they should be closed and the filth shall be removed therefrom.

3. The big 'Nala' which is in between the road, should be managed and covered in this way that it must not create overflow in the rainy season.

4. The Malaria Department should be ordered to sprinkle D. D. T. and act in such a manner and use such means so that the mosquitoes may be eradicated completely from the said locality."

6. The proceedings show the justness of the grievances and the indifference of the local body:

“Both the parties heard. The court was satisfied on the facts contained in their application dated 12-5-1972 and granted conditional order against non-applicants Nos. 1 and 2 u/s 133 of Cr. P. C. (Old Code). In this order all the nuisances were described (which were there in their main application) and the court directed to remove all the nuisances within 15 days and if the non-applicants have any objection or dissatisfaction against the order then they must file it on the next date of hearing in the court.”

"The applicants got examined the following witnesses in their evidence and after producing following documents they closed their evidence."

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No evidence has been produced by the non-applicants in spite of giving them so many opportunities. Both the parties heard and I have also inspected the site."

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"The non-applicant (Municipal Council) has sought six times to produce evidence but all in vain. Likewise non-applicant (Town Improvement Trust) has also produced no evidence.

The Nallah comes into picture after the construction of road and bridge. It has shown that Nallah is property of Nagarpalika according to Ex. p. 10. Many applications were submitted to remove the nuisance but without result. According to Sections 32 to 43 of the Town Improvement Trust Act, it is shown, that it has only the provisions to make plans. Many a time people tried to attract the attention of Municipal Council and the Town Improvement Trust but the non-applicants always tried to throw the responsibility on one another's shoulder.

xx xx xx
It is submitted by non-applicant (Municipality) that the said Nallah belongs to whom, it is still disputed i. e. whether it belongs to non-applicant 1 or 2. Shastri Colony is within the area of Town Improvement Trust. The Nagarpalika (non-applicant No. 1) is financially very weak. But Municipal Council is not careless towards its duties.

Non-applicant (Town Improvement Trust) argued that primary responsibility lies with the Municipal Council only. There is no drainage system.

At the end of it all, the Court recorded:

.....after considering all the facts I come to this conclusion that the said dirty Nallah is in between the main road of Ratlam City. This dirty Nallah affects the Mohalla of New Road, Shastri Colony, Volga Talkies and it is just in the heart of the city. This is the very important road and is between the Railway Station and the main city. In these mohallas, cultured and educated people are living. The Nallah which flows in between the new Road and Shastri Colony the water is not flowing rapidly and on many places there are deep pits in which the dirty water is accumulated. The Nallah is also not straight that is also the reason of accumulation of dirty water. The Nallah is not

managed properly by the non-applicants. It is unable to gush the rainy water and due to this the adjoining areas always suffer from over-flowing of the water and it causes the obstruction to the pedestrians.

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It is also proved by the evidence given by the applicants that from time to time the power Alcohol factory which is situated outside the premises of the Municipal Council and it flows its dirty and filthy water into the said Nallah, due to this also the obnoxious smell is spreading throughout the New Road or so it is the bounden duty of the Municipal Council and the Town Improvement Trust to do the needful in this respect.

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The dirty water which flows from the lavatories and urinals of the residential houses have no outlet and due to this reason there are many pits on the southern side of the New Road and all the pits are full of dirty and stinking water. So it is quite necessary to construct an outlet for the dirty water in the said locality.

In this area many a places have no drainage system and if there is any drain it has no proper flow and water never passes through the drain properly. That causes the accumulation of water and by the time it becomes dirty and stink and then it produces mosquitoes there.

The Magistrate held in the end:

Thus after perusing the evidence I come to this conclusion and after perusing the applications submitted by the persons residing on the New Road area from time to time to draw the attention of the non-applicants to remove the nuisance, the non-applicants have taken no steps whatsoever to remove all these public nuisances.

He issued the following order which was wrongly found unjustified by the Sessions Court, but rightly upheld by the High Court:

Therefore, for the health and convenience of the people residing in that particular area all the nuisance must be removed and for that the following order is hereby passed:

(1) The Town Improvement Trust with the help of Municipal Council must prepare a permanent plan to make the proper flow in the said Nallah which is flowing in between Shastri Colony and New Road. Both the non-applicants must prepare the plan within six months and they must

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take proper action to give it a concrete form.

(2) According to para 13 a few places are described which are either having the same drains and the other area is having no drain and due to this the water stinks there; so the Municipal Council and the Town Improvement Trust must construct the proper drainage system and within their own premises where there is no drain it must be constructed immediately and all this work should be completed within six months.

(3) The Municipal Council should construct drains from the jail to the bridge behind the southern side of the houses so that the water flowing from the septic tanks and the other water flowing outside the residential houses may be channelled and it may stop stinking and it should have a proper flow so that the water may go easily towards the main Nallah. All these drains should be constructed completely within six months by the Municipal Council.

(4) The places where the pits are in existence the same should be covered with mud so that the water may not accumulate in those pits and it may not breed mosquitoes. The Municipal Council must complete this work within two months.

A notice under Section 141 of the Criminal Procedure Code (Old Code) may be issued to the non-applicants Nos. 1 and 2 so that all the works may be carried out within the stipulated period. Case is hereby finalised.

7. Now that we have a hang of the case we may discuss the merits, legal and factual. If the factual findings are good — and we do not re-evaluate them in the Supreme Court except in exceptional cases — one wonders whether our municipal bodies are functional irrelevances, banes rather than boons and 'lawless' by long neglect, not leaders of the people in local self-government. It may be a cynical obiter of pervasive veracity that municipal bodies minus the people and plus the bureaucrats are the bathetic vogue — no better than when the British were here!

8. We proceed on the footing, as we indicated even when leave to appeal was sought, that the malignant facts of municipal callousness to public health and sanitation, held proved by the Magistrate, are true. What are the legal pleas to absolve the municipality from the court's directive under S. 133, Cr. P. C.? That provision reads:

Section 133 (1). Whenever a District Magistrate or a Sub-Divisional Magistrate

or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public;

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Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

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(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

9. So the guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. "All power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist." (1) Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise.

10. If the order is defied or ignored, Section 188 I. P. C. comes into penal play:

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction and if such disobedience causes or tends

(1) Vivian Grey, Bk. VI Ch. 7, Benjamin Disraeli.

to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

11. There is no difficulty in locating who has the obligation to abate the public nuisance caused by absence of primary sanitary facilities. Section 123, which is mandatory, (we repeat), reads:

123. Duties of Council :— (1) In addition to the duties imposed upon it by or under this Act or any other enactment for the time being in force, it shall be the duty of a Council to undertake and make reasonable and adequate provision for the following matters within the limits of the Municipality, namely:—

(a)
(b) cleansing public streets, places and sewers, and all places, not being private property, which are open to the enjoyment of the public whether such places are vested in the Council or not; removing noxious vegetation, and abating all public nuisances;

(c) disposing of night-soil and rubbish and preparation of compost manure from night-soil and rubbish.

12. The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under S. 123 of the Act. This 'alibi' made us issue notice to the State which is now represented by counsel, Shri Gambhir, before us. The plea of the municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, S. 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be.

13. Section 133, Cr. P. C. is categorical, although reads discretionary. Judicial dis-

cretion when facts for its exercise are present, has a mandatory import. Therefore, when the Sub-Divisional Magistrate, Ratlam, has, before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The Magistrate's responsibility under S. 133 Cr. P. C. is to order removal of such nuisance within a time to be fixed in the order. This is a

public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by S. 188, I. P. C. Therefore, the Municipal Commissioner or other executive authority bound by the order under S. 133, Cr. P. C. shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the Section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of S. 133, Cr. P. C. read with the punitive temper of S. 188, I. P. C. makes the prohibitory act a mandatory duty.

14. Although these two Codes are of ancient vintage, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under S. 133, Cr. P. C. In the exercise of such power, the judiciary must be informed by the broader principle of access to justice necessitated by the conditions of developing countries and obligated by Art. 38 of the Constitution. This brings Indian public law, in its processual branch, in line with the statement of Prof. Kojima: (2) "the urgent need is to focus on the ordinary man — one might say the little man.....". "Access to Justice" by Cap-

(2) Access to Justice Vol. 1, A World Survey, ed. by M. Cappelletti and B. Garth, p. 68.

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Vol. 1, A World
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 cept of "procedural justice" The
 new attitude to procedural justice reflects
 what professor Adolf Homburger has called
 "a radical change in the hierarchy of
 values served by civil procedure"; the
 paramount concern is increasingly with
 "social justice," i. e., with finding proce-
 dures which are conducive to the pursuit
 and protection of the rights of ordinary
 people. While the implications of this
 change are dramatic — for instance, in-
 sofar as the role of the adjudicator is con-
 cerned — it is worth emphasizing at the
 outset that the core values of the more
 traditional procedural justice must be re-
 tained. "Access to justice" must encompass
 both forms of procedural justice".

15. Public nuisance, because of pollut-
 ants being discharged by big factories to
 the detriment of the poorer sections, is a
 challenge to the social justice component
 of the rule of law. Likewise, the grievous
 failure of local authorities to provide the
 basic amenity of public conveniences drives
 the miserable slum-dwellers to ease in
 the streets, on the sly for a time, and
 openly thereafter, because under Nature's
 pressure, bashfulness becomes a luxury
 and dignity a difficult art. A responsible
 municipal council constituted for the pre-
 cise purpose of preserving public health
 and providing better finances cannot run
 away from its principal duty by pleading
 financial inability. Decency and dignity
 are non-negotiable facets of human rights
 and are a first charge on local self-
 governing bodies. Similarly, providing
 drainage systems — not pompous and at-
 tractive, but in working condition and
 sufficient to meet the needs of the people
 — cannot be evaded if the municipality is
 to justify its existence. A bare study of
 the statutory provisions makes this posi-
 tion clear.

16. In this view, the Magistrate's ap-
 proach appears to be impeccable although
 in places he seems to have been influenc-
 ed by the fact that "cultured and educat-
 ed people" live in this area and "New
 Road, Ratlam is a very important road and
 so many prosperous and educated persons
 are living on this road". In India 'one man
 one value' is the democracy of remedies
 and rich or poor the law will call to order
 where people's rights are violated. What
 should also have been emphasised was

(3) Ibid pp. 68-69.

the neglect of the Malaria Department of
 the State of Madhya Pradesh to eliminate
 mosquitoes, especially with open drains,
 heaps of dirt, public excretion by humans
 for want of lavatories and slums nearby,
 had created an intolerable situation for
 habitation. An order to abate the nuisance
 by taking affirmative action on a time-
 bound basis is justified in the circum-
 stances. The nature of the judicial proce-
 ss is not purely adjudicatory nor is it
 functionally that of an umpire only.
 Affirmative action to make the remedy
 effective is of the essence of the right
 which otherwise becomes sterile. There-
 fore, the court, armed with the provisions
 of the two Codes and justified by the ob-
 ligation under S. 123 of the Act, must
 adventure into positive directions as it
 has done in the present case. Section 133
 Cr. P. C. authorises the prescription of a
 time-limit for carrying out the order. The
 same provision spells out the power to
 give specific directives. We see no reason
 to disagree with the order of the Magis-
 trate.

17. The High Court has taken a cor-
 rect view and followed the observations
 of this Court in *Govind Singh v. Shanti
 Sarup* (1979) 2 SCC 267 at p. 269 : (AIR
 1979 SC 143) where it has been observed:
 "We are of the opinion that in a matter
 of this nature where what is involved is
 not merely the right of a private indi-
 vidual but the health, safety and con-
 venience of the public at large, the safer
 course would be to accept the view of the
 learned Magistrate, who saw for himself
 the hazard resulting from the working of
 the bakery."

18. We agree with the High Court in
 rejecting the plea that the time specified
 in the order is unworkable. The learned
 judges have rightly said:

"It is unfortunate that such contentions
 are raised in 1979 when these proceedings
 have been pending since 1972. If in seven
 year's time the Municipal Council intend-
 ed to remedy such a small matter there
 would have been no difficulty at all. Apart
 from it, so far as the directions are con-
 cerned, the learned Magistrate, it appears,
 was reasonable. So far as direction No. 1
 is concerned, the learned Magistrate only
 expected the Municipal Council and the
 Town Improvement Trust to evolve a plan
 and to start planning about it within six
 months; the learned Magistrate has right-
 ly not fixed the time limit within which
 that plan will be completed. Nothing
 more reasonable could be said about
 direction No. 1".

19. A strange plea was put forward by the Municipal Council before the High Court which was justly repelled, viz., that the owners of houses had gone to that locality on their own choice with eyes open and, therefore, could not complain if human excreta was flowing, dirt was stinking, mosquitoes were multiplying and health was held hostage. A public body constituted for the principal statutory duty of ensuring sanitation and health cannot outrage the court by such an ugly plea. Luckily, no such contention was advanced before us. The request for further time for implementation of the Magistrate's order was turned down by the High Court since no specific time-limit was accepted by the municipality for fulfilment of the directions. A doleful statement about the financial difficulties of the municipality and the assurance that construction of drains would be taken up as soon as possible had no meaning. The High Court observed:

"Such assurances, it appears, are of no avail as unfortunately these proceedings for petty little things like clearing of dirty water, closing the pits and repairing of drains have taken more than seven years and if these seven years are not sufficient to do the needful, one could understand that by granting some more time it could not be done."

The High Court was also right in rejecting the Additional Sessions Judge's recommendation to quash the Magistrate's order on the impression that Section 133, Cr. P. C. did not provide for enforcement of civic rights. Wherever there is a public nuisance, the presence of S. 133, Cr. P. C. must be felt and any contrary opinion is contrary to the law. In short, we have no hesitation in upholding the High Court's view of the law and affirmation of the Magistrate's order.

20. Before us the major endeavour of the municipal council was to persuade us to be pragmatic and not to force impracticable orders on it since it had no wherewithal to execute the order. Of course, we agree that law is realistic and not idealistic and what cannot be performed under given circumstances cannot be prescribed as a norm to be carried out. From that angle it may well be that while upholding the order of the Magistrate, we may be inclined to tailor the direction to make it workable. But first things first and we cannot consent to a value judgment where people's health is a low priority. Nevertheless, we are willing to revise

the order into a workable formula the implementation of which would be watched by the court.

21. Three proposals have been put forward before us in regard to the estimated cost of the scheme as directed by the Magistrate. The Magistrate had not adverted to the actual cost of the scheme nor the reasonable time that would be taken to execute it. As stated earlier, it is necessary to ascertain how far the scheme is feasible and how heavy the cost is likely to be. The Court must go further to frame a scheme and then fix time-limits and even oversee the actual execution of the scheme in compliance with the court's order.

22. Three schemes placed before us, together with tentative estimates of the costs, have been looked into by us. Judges are laymen and cannot put on expert airs. That was why we allowed the municipality and the respondents to produce before us schemes prepared by expert engineers so that we may modify the directions issued by the Magistrate suitably. Scheme 'A' is stated to cost an estimated amount of Rs. 1,016 crores. The State Government has revised this proposal and brought down the cost. In our view, what is important is to see that the worst aspects of the insanitary conditions are eliminated, not that a showy scheme beyond the means of the municipality must be undertaken and half done. From that angle we approve scheme 'C' which costs only around Rs. 6 lakhs. We fix a time limit of one year for completing execution of the work according to that scheme. We further direct that the work shall be begun within two months from to-day and the Magistrate shall inspect the progress of the work every three months broadly to be satisfied that the order is being implemented bona fide. Breaches will be visited with the penalty of S. 188, I. P. C.

23. We make the further supplementary directions which we specifically enjoin upon the municipal authority and the State Government to carry out.

1. We direct the Ratlam Municipal Council (R1) to take immediate action, within its statutory powers, to stop the effluents from the Alcohol Plant flowing into the street. The State Government also shall take action to stop the pollution. The Sub-Divisional Magistrate will also use his power under S. 133, I. P. C., to abate the nuisance so caused. Industries cannot make profit at the expense of

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public health. Why has the Magistrate not pursued this aspect?

2. The Municipal Council shall, within six months from to-day, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The Health Officer of the Municipality will furnish a report, at the end of the six-monthly term, that the work has been completed. We need hardly say that the local people will be trained in using and keeping these toilets in clean condition. Conscious co-operation of the consumers is too important to be neglected by representative bodies.

3. The State Government will give special instructions to the Malaria Eradication Wing to stop mosquito breeding in Ward 12. The Sub-Divisional Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.

4. The municipality will not merely construct the drains but also fill up cess-pools and other pits of filth and use its sanitary staff to keep the place free from accumulations of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.

5. We have no hesitation in holding that if these directions are not complied with the Sub-Divisional Magistrate will prosecute the officers responsible. Indeed, this court will also consider action to punish for contempt in case of report by the Sub-Divisional Magistrate of wilful breach by any officer.

24. We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfil its obligations under this order. The State will realise that Art. 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties. The municipality also will slim its budget on low priority items and elitist projects to use the savings on sanitation and public health. It is not our intention that the ward which has woken up to its rights alone need be afforded these elementary facilities. We expect all the wards to be benefited without litigation. The pressure of the judicial process, expensive and dilatory, is neither necessary nor desirable if responsible bodies are

responsive to duties. Cappelletti holds good for India when he observes: (4).

"Our judicial system has been aptly described as follows:

Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice of time, money and talent.

This "beautiful" system is frequently a luxury, it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims."

Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Dont's the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal.

25. We dismiss this petition subject to the earlier mentioned modifications.

Petition dismissed.

(4) Access to Justice — A World Survey, Vol. 1, ed. M. Cappelletti and B. Garth, p. 123-124.

AIR 1980 SUPREME COURT 1631*

(From: Allahabad)

S. MURTAZA FAZAL ALI AND

A. D. KOSHAL, JJ.

Criminal Appeals Nos. 74 and 206 of 1974, D/- 25-1-1979.

Abdul Hamid and others, etc., Appellants v. State of U. P., Respondent.

Penal Code (45 of 1860), Ss. 399, 402 — Sentence — Accused an old man of 70 years — Sentence reduced to period already served.

*[Note:— No Law Point discussed — Hence Judgment not reported.—Ed.]

DW/EW/A896/79/RSK