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CASE COMMENTARY ON DR. RAM RAJ SINGH V. BABULAL (AIR 1982 ALL 285)

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ABSTRACT

The given case that is Dr. Ram Raj Singh v. Babulal is based on the principle known as "nuisance". The word nuisance originates from the Latin word "nocumentum" of which the French equivalent is "nuisance" which means no more than harm. Nuisance as a tort means an unlawful interference with a plaintiff's use or enjoyment of land without physically entering into one's property that is without a direct act of trespass. The interference can be in any way. It can be noise, vibrations, heat, smoke, smell, fumes, water, gas, electricity, disease-producing germs e t c.... Nuisance as tort law protects the citizens against discomfort. Nuisance can be distinguished from trespass. Trespass is a direct physical interference with the plaintiff's possession of land through some material or tangible objects. In nuisance, there is unlawful interference without entering into one's property. For example, if one plants a tree on another person's land it is trespass whereas, if one plants a tree on his land and the roots or branches from the tree grows into or over another person's land then that is a nuisance.

Essential Elements of Nuisance:

The following conditions are required for a person to get liability under the tort of nuisance:

1. The defendant must have done a wrongful act.

2. Damage must be caused to the plaintiff.

PUBLIC NUISANCE: *Public nuisance is a crime. Public nuisance or common nuisance is interference with the right of the public in general and is punishable as an offence. It is an act that interferes with the enjoyment of a right that affects a whole community. The main aim of public nuisance is to protect the public from unnecessary disturbances. An example of public nuisance is obstruction of footpaths by blocking the way to walk since the goods were left in the path where the public was required to walk making them face difficulties.*

CASE LAWS:

i)Solatu v De Held[244]*: The plaintiff was living in a house near a Roman Catholic Chapel where the defendant was a priest. Every hour in the day the chapel bell was rung which cause disturbance to the residents in that locality. The court held that ringing a bell every hour a day is a public nuisance, so the court has given an injunction against the defendant.*

PRIVATE NUISANCE: *The private nuisance affects a private person exclusively. A private nuisance is a civil wrong. It is also known as the tort of nuisance. Its remedy lies in an individual. In private nuisance, one has to prove what he has suffered from the other person who disturbed him. To constitute a tort of nuisance, the essential conditions required are that firstly, the plaintiff is occupied of the landed property and secondly, the defendant due to his acts has caused unreasonable interference with the use or enjoyment plaintiff.*

[244] (1851)61 E.R. 291

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CASE LAWS:

i) St Helen's Smelting Co. v. Tipping[245]*: The plaintiff had brought some acres of land near to defendant's copper factory. The factory used to produce harmful and poisonous gases. Due to the presence of these gases, the plants on the plaintiff's land got destroyed. The court held that even though the defendant did his business legally, he will be held liable for compensation as he had made injury to another person's land causing physical discomfort.*

FACTS

In this case, the plaintiff was a Medical Practitioner. The defendant had a brick grinding machine. The plaintiff had a consulting chamber which was constructed by him before the defendant had his brick grinding machine. The brick grinding machine is electrically accelerated, located at a distance of forty feet, in the north-eastern direction from the consulting chamber. There is a road that runs between the chamber of the plaintiff and the brick grinding machine of the defendant. The brick grinding machine has been constructed without taking permission from the Municipal Board. The brick grinding machine of the defendant produces dust, causing pollution in the atmosphere. The dust entered the plaintiff's chamber in large quantities. This causes physical inconvenience to the plaintiff and his patients who come for consultation. While grinding the brick, the dust particles in large amounts entering the chamber caused red-coating on the clothes of those who are sitting in the chamber.

ISSUE

1. Whether the brick grinding machine of the defendant had caused any practical nuisance to the plaintiff?

2. Whether the consulting chamber of the plaintiff was constructed in the year 1962 or 1965?

3. Whether any special damage or substantial injury was caused to the plaintiff?

4. whether there is a public nuisance or private nuisance?

RULE

The rule used in this case is "Public Nuisance". The term "public nuisance" has been defined in Section 268 of the I. P. C,1860. Public nuisance or common nuisance is interference with the right of the public in general and is punishable as an offence. It is an act that interferes with the enjoyment of a right that affects a whole community.

The offence done under the rule of public nuisance is punishable under Chapter XIV of I.P.C,1860. The public nuisance can also be reduced by a criminal court in the exercise of its jurisdiction under Section 133 of the Cr. P.C.,1973. Although there is a chance that a single action based on public nuisance can also cause an injury to an individual to sue against one for private nuisance. The example given in the judgement of this case is that, if night soil is heaped by the side of a public highway it can cause a nuisance to the public and the persons who pass along the highway, and also it can be a private nuisance to a person who lives in a house which is near to the place where the night soil is heaped.

ANALYSIS

In the case, the plaintiff went for a second appeal to get the court order required to stop the brick grinding machine of the defendant. The counsel of the plaintiff had mentioned that the below two courts have not given a proper meaning to the expression 'substantial injury" and 'special damage' as it is used in law. The defendant in the case did not deny that his brick grinding machine was built by him in April 1965. He argued that the brick grinding machine hasn't produced dust particles because he moistens the bricks at the time of grinding and no one questioned atmospheric pollution also his machine hasn't produced any noise.

[245] (1865) 11 HLC 642

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According to him, he had not done any nuisance. He concluded that the case has been filed against him due to ill will towards him so it won't exist.

The trial court found that the defendant established his brick grinding machine in the year 1965 without taking permission from the concerned authority. The court also pointed out that the dust from the brick grinding machine of the defendant had flown and polluted the atmosphere, which is harmful to health. Depending on the direction of the wind, the dust which flows from the brick grinding machine of the defendant entered the consulting chamber of the plaintiff. The court also found that the dust from the machine hasn't caused any substantial injury to the plaintiff or his patients. The court of appeal confirmed the points which have been founded by the trial court with a small modification in it. The trial court has refused the testimony of Dr.-Hari Shankar Prasad who was the prosecution witness whereas the lower appellate court had accepted him. He was the Medical Officer Of Health at Ghazipur, where the brick grinding machine is situated. He said that the dust produced from the brick grinding machine of the defendant entered the consulting chamber of the plaintiff in large quantities making the clothes red-coated of the persons who use to sit inside the chamber.

The learned counsel of the plaintiff pointed out that from the findings of the two courts, the assumption drawn was that the plaintiff had suffered a substantial injury due to the working of the brick grinding machine. Whereas, the learned counsel of the defendant had given that the findings, recorded by the court of appeal on the matter that there is no substantial injury and the plaintiff don't have any special damage, have no importance in the second appeal of the court. The court disagreed with the same and it compared this with *Jugal Kishor v. Ram Saran Das*[246]. The court says that in that case it was said that the question of whether certain proved facts established a nuisance was a question of law. At that point, the learned counsel of the defendant depended on the Division Bench case of the same court in *Behari Lal v. James Maclean*[247] the first court of appeal had concluded that the ads were complained of by the plaintiff, in that case, constituted an actionable nuisance. The court says it had made an injunction on behalf of the plaintiff. The Division Bench of that case had taken the facts as findings of facts only which was found by the court of appeal. It also questioned whether the facts had caused any actionable nuisance. According to this aspect, the court allowed the appeal on the behalf of the defendant of that case.

The court now points out that the owner of the property has the right to use his property as he likes and also tells that human beings are social animals. No person has the right to use his property which interferes with the same rights of the neighbours. It also says that the relations between the members of a society are based on the principle of "live and let live" and "give and take". It also points out that the right of the owner of the property to use his property must be limited to the same rights in others. The court also referred to the work of Clerk and Lindsell on "Tort" which says "The essence of nuisance is a condition or activity which unduly interferes with use or enjoyment of land"; a nuisance is an act or omission which is an interference with, disturbance or annoyance to a person in the exercise or enjoyments of a right belonging to him as a member of the public, (when it is a public nuisance), or his ownership or occupation of land or some easement, private, or other right used or enjoyed in connection with the land, (when it is a private nuisance)[248]. In this case, the court hasn't looked into public nuisance since the claim of the plaintiff was based on private nuisance. The court states that a person has the right to do anything he likes on his own property but only required that the action must be lawful. One's act becomes a

[246] AIR 1943 Lah 306

[247] AIR 1924 All 392

[248] Clerk and Lindsell ,Tort , Para 1391 (14th edn.)

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private nuisance when the result of his actions not only stays on his property but also affects neighbour's property but always it is not a nuisance. After building up land there won't be the same quality of air that existed before the setting up of the building. If such a building is situated in a locality the quality of air gets decreased and the same may cause pollution up to a certain period but if the act done by the neighbouring person on his land affects and is uncomfortable, the person who gets affected has the right to sue against the act of neighbour in which that act will be an actionable nuisance. It is not sure that the industrial locality can get as much fresh air as there in the non-industrial area. In the case *Ramlal v. Mustafabad Oil and Cotton Ginning Factory*[249], after the examination of various decisions, numerous principles got formulated to establish whether the injury caused is an actionable nuisance or not. Tek Chand, J., in that case, observed that any act which causes injury to health, property, comfort, business, or public morals will be considered to be a nuisance.

After giving an idea to govern actionable nuisance, the court started looking through the facts of the case and mentioned the date on which the chamber was established. When the court had gone through the plaint, it was given that the chamber got established in the year 1962. The defendant had not made clear on the establishment, so the court had taken it as a piece of evidence that the consulting chamber was started in the year 1962. The information discovered by the below two courts about the commencement of the chamber in the year 1965 was wrong but as per the findings of the below two courts, the brick grinding machine of the defendant was established only after the commencement of the chamber. The below two courts get affected by the fact that the plaintiff hasn't considered his patients to point out whether any damage was caused to them or not due to the dust which flows out from the brick grinding machine of the plaintiff, but the plaintiff had stated that it was recorded in his register which he hasn't produced before the court. Due to this omission on him, the court concluded that the plaintiff got failure in proving that any special damage or substantial injury was caused to him on the account of the dust which had flown from the brick grinding machine. The court mentions that the term "special damage" is used in law to point out whether any damage has occurred to a party due to the denial of the damage caused to the public at large. The damage caused to the public at large due to nuisance is termed as a public nuisance in law under Section 268 I.P.C, 1860. When an act is done on public nuisance one can sue against it only if he could able to prove special damage to himself. The court mentions that in the book 'Salmond on Tort' instead of the term 'special damage' the term used is 'particular damage'. The court again returned to the findings of the below court and states that since the court of appeal held that the dust from the machine which entered the chamber in large quantity and formed a red coating on the clothes of the persons sitting there, is a public hazard and can cause injury to the health of the person, the plaintiff had achieved in proving the damage which was caused to him, particularly which means special damage has caused to him. Since the facts found by the below two courts are valid the court couldn't state that no substantial injury was caused to the plaintiff. On referring to the views of the textbook writers the court mentions that any act is known to be a private nuisance if it had caused an injury or discomfort or irritation to a person. Due to these reasons, the appeal is allowed and a permanent injunction was given to the defendant for not using the brick grinding machine.

CONCLUSION

The appeal of the plaintiff is allowed because the facts found by the below two courts show that the plaintiff has suffered special damage and substantial injury. The court had granted a permanent injunction to the defendant not to

[249] AIR 1968 Punj & Har 399

use the brick grinding machine by showing the letters *Ka, Kha, Ga,* and *Gha* in the sketch map given at the end of the plaint. The court had held the defendant to compensate the plaintiff for the nuisance caused by him.

REFERENCE

NAME OF THE BOOKS

1. Dr. R.K Bangia's, Law of Torts, revised by Dr. Narender Kumar , 22nd Edition.

2. Salmond & Heuston on Law Of Torts, 21st Edition.
3. Law of Torts by B.M.Gandhi, 4th Edition.
4. The Law Of Torts by Sir Frederick Pollock, 4th Edition.

CASE LAWS

1. Jugal Kishor v. Ram Saran Das [AIR 1943 Lah 306]
2. Behari Lal v. James Maclean [AIR 1924 All 392]
3. Ramlal v. Mustafabad Oil and Cotton Ginning Factory [AIR 1968 Punj & Har 399]

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1. https://indiankanoon.org/doc/904053/