

dated the 26th of January, 1928, send the case back to that court through the District Judge for disposal according to law.

1929

MAHADEO
PRASAD
v.

KHEM RAM.

 REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

EMPEROR v. DULI CHAND.*

1929

June, 24.

Criminal Procedure Code, sections 133, 140—Public nuisance—Finding of magistrate—Revision—Civil suit to question absolute order under section 140—Maintainability.

A court of revision should not examine the evidence and interfere with a finding of fact of a magistrate that a certain construction was a public nuisance.

Although a conditional order made by a Magistrate under section 133 of the Criminal Procedure Code, cannot, by reason of the second paragraph of that section, be questioned by a civil suit, there is no such bar to the absolute order, made under section 140, being questioned in a civil court.

Dr. Kailas Nath Katju and Mr. Vishwa Mitra, for the applicant.

Messrs. Peary Lal Banerji and Girdhari Lal Agarwala, for the opposite party.

DALAL, J.—Dr. Katju desired to induce the Court to interfere with a finding of fact of the Magistrate that a particular brick-kiln started by the applicant was a public nuisance in the place where it was started. Reference was made to a Bench ruling of this Court, in the case of *Bihari Lal v. James MacLean* (1) to induce me to examine the evidence recorded by the Magistrate and pronounce independently whether the brick-kiln was a nuisance or not. The case cited was a case in second appeal where the provisions of law applicable are different from the provisions applicable to a revision under the

*Criminal Revision No. 878 of 1929, from an order of Aghor Nath Mukerji, Additional Sessions Judge of Meerut, dated the 10th of May, 1929.

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EMPEROR
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Criminal Procedure Code. It was alleged that once the brick-kiln is stopped Duli Chand will have no remedy in the civil court. If this were really the case I would have been prepared to inquire into the facts. Reference was made to the second paragraph of section 133 of the Code of Criminal Procedure. That prevents the civil court from questioning the order duly made by a Magistrate under section 133 which empowers the Magistrate to pass a conditional order. There is no such bar to the absolute order of a Magistrate being questioned in a civil court. A similar clause does not appear in section 140 which deals with an absolute order. The view I take of proceedings under section 133 is that the procedure adopted by a Magistrate is more or less summary and his decision goes so far as to fix upon the party who must go to the civil court to get a civil dispute decided. In the grounds of revision it was alleged that the provisions of section 139A were ignored by the Magistrate. This plea has been fully answered by the Additional Sessions Judge. Another case, one of the Lahore High Court, *Gokal Chand v. The Crown* (1), quoted by the learned counsel proceeded on entirely different grounds and did not lay down that a court of revision should revise the finding of Magistrates regarding a certain building being a public nuisance. In my opinion no point of law arises here, and this application is dismissed.

(1) (1919) I. L. R. 1 Lah., 133.