

*Before Justice Sir Shah Muhammad Sulaiman and  
Mr. Justice Niamat-ullah.*

1929  
June, 1A.

MAHADEO PRASAD (JUDGEMENT-DEBTOR) v. KHUBI  
RAM (DECREE-HOLDER).\*

*Civil Procedure Code, section 115—Revision of first court decision, although confirmed in appeal and although no ground for revision of appellate court decision.*

If a trial court has acted illegally or with material irregularity in the exercise of its jurisdiction, the High Court has power to interfere in revision, provided that no appeal lies to the High Court. Section 115 does not require that no appeal in the meantime should have been preferred to the court of the District Judge, or that, if an appeal is preferred, it is only the order of the District Judge which can be revised. And, when the record has been sent for, there is no force in the technical objection that the revision is described as one from the appellate order.

Mr. *Shiva Dihal Sinha* (for whom Mr. *B. S. Shastri*), for the applicant.

Mr. *Surendra Nath Gupta*, for the opposite party.

SULAIMAN and NIAMAT-ULLAH, JJ. :—This is a revision by a judgement-debtor, arising out of an auction sale. On the 19th of January, 1928, an objection under order XXI, rule 90 was filed by the judgement-debtor that the decree-holder had dishonestly misled certain bidders by false representation, that fictitious bids were offered and that the property was sold for an inadequate consideration. The learned Munsif took down the evidence of the judgement-debtor on the 25th of January, 1928, and dismissed his objection on the 26th. He did not fix any date for its hearing and issued no notice to the decree-holder and obviously did not allow any opportunity to the judgement-debtor to produce any witnesses in corroboration of his testimony. This, in our opinion, was a material irregularity in the exercise of jurisdiction which might have prejudiced the judgement-debtor.

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\*Civil Revision No. 162 of 1928.

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The judgement-debtor appealed to the District Judge, who dismissed his appeal stating that it seemed that the judgement-debtor made no attempt to establish his suggestion and did not produce any evidence or ask for time to do so, but he conceded that the house seemed to have been sold for rather a low price.

An objection is taken on behalf of the respondent that we have no power to interfere inasmuch as the revision has been filed from an order of the District Judge which does not fall under section 115. As the whole record has been sent for, we do not see any force in the technical objection that the revision is described as one from the appellate order. Nor do we think that the mere fact that the District Judge has declined to interfere in the matter precludes us from curing the irregularity.

Section 115 of the Civil Procedure Code empowers this High Court to call for the record of any case which has been decided by any subordinate court if no appeal lies thereto. This obviously includes a trial court and the appeal referred to therein means an appeal to the High Court. The present case therefore fulfils the conditions required by that section. If therefore a trial court has acted with material irregularity in the exercise of its jurisdiction, or acted illegally, the High Court has power to interfere in revision, provided that no appeal lies to the High Court. The section does not require that no appeal in the meantime should have been preferred to the court of the District Judge, or that, if preferred, it is only the order of the District Judge which can be revised.

We are satisfied that the objection of the judgement-debtor should be disposed of after giving him full opportunity to produce all his evidence. We accordingly allow this revision and setting aside the order of the Munsif,

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

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 REVISIONAL CRIMINAL.
 

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Before Mr. Justice Dalal.

EMPEROR v. DULI CHAND.\*

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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

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