

**REVISIONAL CRIMINAL.***Before Skemp J.*

PRABHU RAM—Petitioner

*versus*

THE CROWN—Respondent.

1936

Feb. 7.

**Criminal Revision No. 1561 of 1935.***Punjab District Boards Act, XX of 1883, section 57—  
Continuing fine—legality of.*

The petitioner was convicted under section 57 of the Punjab District Boards Act, and sentenced to a fine of Rs.25 and a continuing fine of Rs.2 a day until the obstruction complained of was removed.

*Held.* that the continuing fine was illegal for the reasons stated.

Case-law discussed.

*Petition under section 439, Criminal Procedure Code, for revision of the order of Mr. M. R. Bhide, Sub-Divisional Magistrate, Rupar, with appellate powers, dated 19th September, 1935, affirming that of Sardar Pirthi Singh, Tahsildar, exercising the powers of Magistrate, 2nd Class, Rupar, dated 19th August, 1935, convicting the petitioner.*

MANOHAR LAL MEHRA, for Petitioner.

R. C. SONI, for District Board and MOHAMMAD AMIN MALIK, for Government Advocate, for Respondent.

SKEMP J.—Prabhu Ram, petitioner, has been convicted under section 57 of the Punjab District Boards Act and sentenced to a fine of Rs.25 and a continuing fine of Rs.2 a day until the obstruction complained of is removed. This order was passed by the *Tahsildar* of Rupar, Magistrate, 2nd Class, and confirmed on appeal by the Sub-Divisional Magistrate of Rupar.

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The complaint was made by the District Board, Ambala, that the petitioner had encroached on the public road, managed by the District Board, running from Sirhind to Rupar, thereby infringing Regulation 2 of the Board, published with Punjab Government Notification No.26010, in the *Punjab Gazette*, dated 21st August, 1931. The penalty is given in Regulation 8 in the said notification.

Prabhu Ram contended that the land in dispute, on which he had built a shop, did not belong to the District Board, and alleged that he had bought it from one Sadhu Singh by deeds, dated 29th and 30th December, 1933.

The trial and the appellate Magistrates, both of whom inspected the spot, based their convictions on the plan of the road prepared by officers of the Public Works Department in the year 1910, a blue print of which was handed to the officers of the District Board when the road was transferred from the Public Works Department to the District Board. That plan shows the road as 57 feet wide at mile-stone 15 which is close to the spot in question. The Magistrates found that the edge of the petitioner's shop was only about 24 feet from the centre of the road instead of about 28 feet as it ought to be.

In addition to the map, the Magistrates relied on applications submitted by Jati Ram and Kartar Chand in the year 1932, seeking the plot in question on lease from the District Board. Jati Ram and Kartar Chand are the sons of Prabhu Ram, petitioner.

Further in December, 1932, Jati Ram and Ram Partap (the petitioner in petition No.1577 of 1935) executed an agreement to pay rent to the District

Board for the plot of the land now in dispute and the adjacent plot in dispute in Ram Partap's case.

The petitioner's counsel urged that the Sub-Divisional Magistrate had found that the map was not reliable. I do not agree with this argument. The Sub-Divisional Magistrate's finding is based on the width of the road as drawn on the blue print which may possibly be slightly out of scale; and on a pardonable misreading of the figure at the 15th milestone. It is actually 57 feet and not 59 feet as the Magistrate thought. The Magistrate found that the width of the road at the shop of Prabhu Ram should be about 56 feet. It is shown on the plan as 57 feet. This is sufficiently accurate.

In my opinion, the plan which is signed by the Executive Engineer and Sub-Divisional Officer of the Public Works Department in the year 1910 must be presumed to be accurate under section 83 of the Evidence Act; and the measurements thereon are admissible under section 36 of the Act. The blue print is secondary evidence under section 63 (2).

It was also contended by the petitioner's counsel that the admissions of Prabhu Ram's sons did not bind him. This is correct. The legal position as to the applications of 1932 and the lease is that these are transactions whereby the right of the District Board to the land was recognized and as such are admissible under section 13 of the Evidence Act. The distinction is of little practical importance in this case.

The petitioner was, therefore, rightly convicted. But the order of a continuing fine is illegal. This has been repeatedly laid down, but as the reasons have

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never been given in detail in published judgments of this Court, it will be well to state them.

Regulation 8 of the District Board Notification No.26010, dated 21st August, 1931, runs as follows:—

“ 8. Any person who commits a breach of any of these regulations shall, on conviction by a magistrate, be punishable with fine which may extend to fifty rupees and, if the breach is a continuing breach, with further fine which may extend to five rupees for every day after the first during which such breach continues, and in default of payment of fine with simple imprisonment for a term which may extend to eight days.”

In *Queen-Empress v. Veeramal* (1). Best J. held that a further fine under the District Municipalities Act could not be imposed prospectively.

In *In re Limbaji Tulsiram* (2) a Division Bench set aside the future continuing fine imposed in a case under section 471 of the Bombay Municipal Act, which is similar to Regulation 8. and said “Clearly this necessitates a separate prosecution for a distinct offence—a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to him in his discretion to determine. The orders in the present cases are bad as being convictions and punishments for offences which the accused persons had not committed, and with which they were not and could not have been charged, at the time the sentences were passed. The effect of such orders would be to deprive

(1) (1893) I. L. R. 16 Mad. 230. (2) (1898) I. L. R. 22 Bom. 766.

the accused persons of the opportunity to deny the commission of the offence or plead extenuating circumstances, and to take away from the Magistrate, who might have afterwards to levy the fine, the discretionary power vested in him by law to determine the amount that should be inflicted after investigation of the case.”

In *Emperor v. Wazir Ahmad* (1), in a similar case, it was said in the referring order that “the order for the payment of the daily fine was illegal, inasmuch as it was an adjudication in respect of an offence which had not been committed when the order was passed. From this it would appear that the Municipal Board, if they want to have the applicant subjected to a daily fine for persisting in his omission to comply with the condition of the permission will have to wait for a reasonable time, and then institute a fresh prosecution with this object.”

In *Emperor v. Amir Hasan Khan* (2), it was said “The liability to a daily fine in the event of a continuing breach has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced, as often as the Municipal Board may consider necessary, by institution of a second prosecution, in which the questions for consideration will be, how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence, and, secondly, the appropriate amount

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of the daily fine to be imposed under the circumstances of the case, subject to the prescribed maximum of Rs.5 *per diem*."

*Ram Krishna Biswas v. Mohendra Nath* (1) and *Nilmani Ghatak v. Emperor* (2) are also in point; and the principle has been followed in the Chief Court in *Crown v. Gurditta* (3), *King-Emperor v. Miran Bakhsh* (4), and in this Court in *Mst. Aisha v. Crown* (5).

Mr. Mehra who represented the petitioner laid particular stress on the possibility that on a second prosecution an accused person though guilty might be able to plead extenuating circumstances.

For these reasons while maintaining the conviction and the fine of Rs.25, I must accept the revision so far as to set aside the order imposing a future fine of Rs.2 a day.

A. N. C.

*Revision accepted in part.*

(1) (1900) I. L. R. 27 Cal. 565.

(3) 13 P. R. (Cr.) 1903.

(2) (1910) I. L. R. 37 Cal. 671.

(4) 19 P. R. (Cr.) 1904.

(5) (1926) I. L. R. 7 Lah. 168.