

**REVISIONAL CRIMINAL.**

*Before Din Mohammad J.*

MOHAMMAD ASHRAF—Petitioner

*versus*

THE CROWN AND OTHERS—Respondents.

1936

Sept. 24.

Criminal Revision No. 933 of 1936.

*Criminal Procedure Code, Act V of 1898, sections 133, 142 — Orders under section 142 — whether limited by the matters enumerated in section 133.*

*Held*, that section 142, Criminal Procedure Code, is not an independent section, but is controlled in its effects by section 133. A case of an imminent breach of the peace, not being one of the matters dealt with in that section, a Magistrate acting under section 142 has no jurisdiction to pass an order of injunction on that account. The imminent danger or injury of a serious kind apprehended to the public must emanate naturally from the matters specified in section 133, Criminal Procedure Code.

*Revision of the order of Mr. D. Dhawan, Sessions Judge, Amritsar, dated 26th May, 1936, affirming that of Mr. C. L. Coates, Magistrate, 1st Class, Batala, District Gurdaspur, dated 31st January, 1936, ordering that the four entrances of the reti chhalla be left open for public use.*

BASHIR AHMAD, for Petitioner.

NAZIR HUSSAIN, for the Crown.

DIN MOHAMMAD J.—A case under section 133, Criminal Procedure Code, was pending in the Court of the Magistrate, 1st Class, Batala, and during the pendency of that case the Magistrate passed an order under section 142, Criminal Procedure Code, in the following terms:—

“ All the four entrances, at present closed, on the four sides of the *reti chhalla*, be opened and left for public use without let or hindrance of any description

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whatsoever, the entrances on the north and west, being temporarily closed by means of wire and stakes, to be opened to-day, by the removal of the wire, and the stakes to be removed within seven days; the entrances on the south and east being closed by means of bricks are to be opened within seven days."

This order appears to have been necessitated by an apprehension of a breach of the peace on account of the obstruction caused by the persons proceeded against in a public way. Mirza Mohammad Ashraf, Nazim Jaidad Sadr Anjuman Ahmadia, Qadian, presented a petition to the Sessions Judge, Gurdaspur, objecting to the legality of this order. The petition was, under the orders of this Court, transferred to the Court of Session at Amritsar, and the Sessions Judge, agreeing with the Magistrate, has dismissed it.

After hearing counsel on both sides, I am of opinion that the order of the Magistrate is illegal and cannot, therefore, be maintained. The material portion of sub-section (1) of section 142, Criminal Procedure Code, reads as follows:—

"If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may \* \* \* issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter."

It would thus appear that section 142, Criminal Procedure Code, is not an independent section, but is controlled in its effects by section 133, Criminal Procedure Code. Now, a reference to section 133, Criminal Procedure Code, shows that the section is confined to certain matters which are specifically mentioned

therein and cannot be brought into play to govern or control other matters which are quite extraneous to it. The matters dealt with by this section are as follows :—

(a) Unlawful obstruction or nuisance in any way, river or channel, or public place;

(b) The conduct of any trade or occupation which is *injurious* to the health or physical comfort of the community;

(c) The construction of any building or the disposal of any substance, as is likely to occasion conflagration or explosion;

(d) The removal, repair or support of any building, tent or structure, or the removal or support of any tree, which is in such a condition that it is likely to fall and thereby cause *injury* to persons living or carrying on business in the neighbourhood or passing by;

(e) The fencing of any tank, well or excavation adjacent to any public way or public place so as to prevent *danger* arising to the public; and

(f) The destruction, confining or disposal otherwise of any dangerous animal.

It would be obvious from this analysis of section 133 that it is nowhere contemplated by the section that it would govern cases where an imminent breach of the peace is apprehended. The "serious injury" or the "imminent danger" contemplated by section 142, Criminal Procedure Code, refers to the injury or danger emanating from those things themselves which are specified in section 133 and consequently section 142 is limited in its scope. An order under section 142 could, therefore, be passed only if an injury or danger arising naturally from the matters specified in

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section 133, Criminal Procedure Code, was apprehended and not otherwise. Such "serious injury" or "imminent danger" is non-existent in this case. Reference in this connection may also be made to Form XIX of Schedule V to the Criminal Procedure Code.

I am, accordingly, constrained to hold that the order was *ultra vires* of the Magistrate and I have no option but to set it aside.

P. S.

*Revision accepted.*

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**FULL BENCH.**

*Before Monroe, Bhide and Din Mohammad JJ.*

1937  
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 Feb. 26.

B. C. G. A. (PUNJAB) LIMITED, KHANEWAL  
 (ASSEESSEE) Petitioner  
*versus*  
 COMMISSIONER OF INCOME-TAX, PUNJAB—  
 Respondent.

**Civil Reference No. 1 of 1937.**

*Indian Income-tax Act, XI of 1922, sections 10, 13 — Account kept on mercantile system — Interest included in the account, but subsequently taken to suspense account — whether excluded from computation of profits — Indian Partnership Act, IX of 1932, section 4 — Partnership — explained — Assessee carrying on several trades — One resulting in losses and closed down long before the account year — whether assessee can claim a set-off on account of such losses against profits in the other businesses — Bad debt — what is — Findings thereon by tax department — whether interfered with by High Court.*

*Held*, that under section 13 of the Income-tax Act, if an assessee has been regularly following what is known as the mercantile system of account under which entries are made in the accounts on the date, not of receipt or expenditure of money, but on the date of transaction, irrespective of the date