

**REVISIONAL CRIMINAL.**

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*Before Din Mohammad and Ram Lall JJ.*

GHULAM SADID-UD-DIN—Petitioner,

*versus*

THE CROWN—Respondent.

1939

Oct. 30.

**Criminal Revision No. 233 of 1939.**

*Sarais Act (XXII of 1867), SS. 2 and 3 — District Magistrate — order of — calling upon keeper of the Sarai to register his Sarai under S. 3 of the Act — Whether subject to the revisional jurisdiction of the High Court — Criminal Procedure Code (Act V of 1898), S. 439.*

*Held*, that an order passed by a District Magistrate calling upon the keeper of a *Sarai* to register his *Sarai* under s. 3 of the *Sarais Act*, 1867, was not a judicial order and therefore was not subject to the revisional jurisdiction of the High Court.

*In re Horniman* (1) and *Emperor v. Devappa Ramappa Naik* (2), distinguished.

*Revision from the order of Mr. M. R. Kayani, Sessions Judge, Dera Ghazi Khan, dated 16th December, 1938, affirming that of Mr. K. H. Henderson, District Magistrate, Dera Ghazi Khan, dated 17th September, 1938, ordering the petitioner to register his Sarai under section 3 of the Sarais Act of 1867.*

MOHAMMAD DIN JAN, for M. A. MAJID, for Petitioner.

M. SLEEM, Advocate-General, for Respondent.

The order of Abdul Rashid J. referring the case to a Division Bench, dated the 21st April, 1939.

**ABDUL  
RASHID J.**

On 17th September, 1938, the District Magistrate of Dera Ghazi Khan gave a notice to *Khwaja Nizam-ud-Din* to register his *Serai* under section 3 of the

(1) 1933 A. I. R. (Bom.) 59.

(2) I. L. R. (1919) 43 Bom. 607.

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Serais Act of 1867. Against this order *Khwaja* Nizam-ud-Din preferred a petition for revision in the Court of the learned Sessions Judge. The learned Sessions Judge is of the opinion that he cannot interfere under section 435, Criminal Procedure Code, as the District Magistrate in giving notice to *Khwaja* Nizam-ud-Din to register his *Serai* was acting as the Chief Officer charged with the executive administration of a district in criminal matters. Against this order of the learned Sessions Judge, Nizam-ud-Din has preferred a petition for revision to this Court.

Under section 3 of the Serais Act "the Magistrate of the district" can call upon the keeper of any *Serai* to register his *Serai*. "The Magistrate of the district" has been defined in the Act as "the chief officer charged with the executive administration of a district in criminal matters whatever may be his designation."

Mr. Mohsin Shah, on behalf of the petitioner, urged that by virtue of section 3 (2) of the Code of Criminal Procedure "the Magistrate of the district" shall be deemed to mean "the District Magistrate," and that as the notice to Register has been given by the District Magistrate, this order is subject to revision under the provisions of the Code of Criminal Procedure. Mr. Asadullah Khan on behalf of the Crown contends that the words "the Magistrate of the district" should be replaced by the words "the District Magistrate" not only in section 3 of the Serais Act but also in the definition clause. If the words "the Magistrate of the district" in the definition clause are replaced by the words "the District Magistrate," then the "District Magistrate" will mean "the chief officer charged with the executive administration

of a district in criminal matters." The contention is that, as far as the Serais Act is concerned, even the District Magistrate would be acting as the head of the executive administration and that his order giving a notice to the keeper of the *Serai* to register the *Serai* is not subject to revision under the provisions of the Criminal Procedure Code.

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The point involved in this revision petition is one of great importance. Subject to the orders of the learned Chief Justice, I refer this petition for revision for decision to a Division Bench.

The judgment of the Division Bench was delivered by—

DIN MOHAMMAD J.—This order will dispose of Criminal Revisions Nos.233 and 280 of 1939. They have been referred to a Division Bench in the following circumstances:—

There is a shrine at Taunsa in the District of Dera Ghazi Khan and two "*Serais*" are maintained by the persons in charge of the shrine for the accommodation of pilgrims. On report made by the police to the District Magistrate he issued notices to *Hafiz Sadid-ud-Din* and *Khwaja Nizam-ud-Din* respectively under section 3 of Act XXII of 1867 (the Serais Act). The two persons mentioned above appeared before him and raised certain objections. He, however, called upon them to register their *Serais* under section 3. Against this order of the District Magistrate two petitions for revision were made to the Sessions Judge, but he declined to interfere on the ground that he had no jurisdiction to entertain the same. A further petition for revision was submitted to this Court in each case and Abdul Rashid J., who heard these petitions,

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recommended to the Hon'ble Chief Justice to refer the matter to a Division Bench.

It is contended before us that inasmuch as the order complained of was made by the District Magistrate, Dera Ghazi Khan, as such, his order can be interfered with by this Court under its revisional powers. The main ground urged in support of this contention is that sub-section (2) of section 3 of the Code of Criminal Procedure has substituted the word "District Magistrate" for the words "Magistrate of the district" wherever they appear and that consequently the words "Magistrate of the district" as used in section 3 mean the District Magistrate as contemplated by the Code of Criminal Procedure and the District Magistrate under that Code is an inferior criminal Court in relation to the High Court. In our opinion, there is no substance in this argument. It is true that sub-section (2) of section 3 has enacted that wherever the words "Magistrate of the district" occur the word "District Magistrate" will be substituted, but this does not affect the provisions of the Sarais Act in any manner. In section 2 of that Act "Magistrate of the district" means the chief officer charged with the executive administration of a district in criminal matters whatever may be his designation. Under section 3 it is the Magistrate of the district who is empowered to take action against the keeper of a *Serai*. If the words "Magistrate of the district" as occurring in the definition as well as in section 3 are replaced by the word "District Magistrate" the District Magistrate as defined in section 2 will be empowered to take action under section 3 and the District Magistrate there is described as the chief officer charged with the executive administration of a district

in criminal matters. What difference will this replacement make in the nature of the powers exercised by the District Magistrate under the Serais Act passes our comprehension.

Section 435, Criminal Procedure Code, clearly says that it is the records of any proceeding before any inferior Criminal Court which can be called for and examined. Under section 436, it is only in relation to such records that further enquiry can be ordered. Under section 438 it is only such cases as are referred to above that can be reported to the High Court for necessary action. Under section 439 it is only in the case of any proceeding, the record of which has been called for by the High Court or which has been reported for orders, or which otherwise comes to its knowledge, that the High Court can exercise any of the powers conferred on a Court of Appeal. No doubt the word "proceeding" in section 439 is not further qualified as it is in section 435, but on a well established principle of the interpretation of Statutes this word can only be interpreted in the manner in which it is used in the foregoing sections and there as stated above it is confined to the proceeding before any inferior Criminal Court. The District Magistrate as the chief officer charged with the executive administration of a district in criminal matters can under no stretch of language be treated as a Court. His functions as an executive officer are poles asunder from his functions as a judicial officer and it is only in his judicial capacity that he is in our view subject to the revisional jurisdiction of this Court.

It may be added that it is not only under this Act but under various other Acts that the District Magistrate exercises his powers as such which are not open

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to revision by this Court. This fact is conceded by the petitioner's counsel. He, however, contends that inasmuch as some sort of enquiry was made in this matter and certain objections were allowed to be raised the District Magistrate acted as a Court and his order should be treated as judicial and not as executive. We are not disposed to agree. The authorities relied on are not relevant to the case. In *re Horniman* (1) it was held that a Magistrate acting under section 113 of the Railways Act exercised a judicial function and in *Emperor v. Devappa Ramappa Naik* (2) a Division Bench came to the conclusion that the order passed by a Magistrate under paragraph 1 of section 2 of the Workmen's Breach of Contract Act, 1859, was open to revision by the High Court. The present case bears no analogy to them. There the law contemplated that the powers to be exercised were judicial and here quite the contrary has been laid down in the definition of the word "District Magistrate."

We accordingly hold that the order of the District Magistrate calling upon the petitioners to register their *Sarais* under section 3 was not a judicial order and is consequently not subject to the revisional jurisdiction of this Court and dismiss these petitions.

A. N. K.

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(1) 1933 A. I. R. (Bom) 59.

(2) I. L. R. (1919) 43 Bom. 607.