

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE SULEMANJI GULAM HUSEN.**

1896.

August 6.

Criminal Procedure Code (Act X of 1882), Sec. 133—Excavations near a public place—Magistrate's power to order the excavations to be fenced, and not to be filled up.

Under section 133 of the Criminal Procedure Code (Act X of 1882) a Magistrate has no power to order excavations adjacent to a public way or any public place to be filled up; he can only order them to be fenced.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The applicant was the owner of a piece of land at Godhra.

On the 20th April, 1896, the District Magistrate issued a notice to the applicant in the following terms:—

“ You were directed, under section 133 of the Criminal Procedure Code, to fill in the excavations made by you for taking out earth for the bricks that are being manufactured by you in Survey No. 189 within the limits of Godhra, and to bring them up to the level of the adjacent road, and to make the land one whole level, and to take such steps as would not allow water to be accumulated therein, and likewise take such steps as would not leave the possibility of any accident happening; or, in the alternative, to appear before me to show cause why the said order should not be brought into force. Upon looking into the statement made by you, &c., &c., it appears that the order already passed is just and proper. The said order is, therefore, confirmed.”

The applicant moved the High Court under its revisional jurisdiction to set aside the above order.

Gokaldas K. Parekh for the applicant.

Ráo Bahádur Vasudev J. Kirtikar, Government Pleader, for the Crown.

PER CURIAM:—The District Magistrate issued an order, purporting to be made under section 133 of the Criminal Procedure Code (Act X of 1882) requiring the applicant “ to fill in the excavations made by him for taking out earth for the bricks that were being manufactured by him in Survey No. 189 within the limits of Godhra, and to bring them up to the level of the adjacent road, and to make the land one whole level, and to take such steps

* Criminal Revision, No. 106 of 1896.

as would not allow water to accumulate therein, and likewise take such steps as would not leave the possibility of any accident happening." It is objected, on behalf of the applicant, that this order is illegal, and we think that the objection is a good one. Section 133 allows a Magistrate to order excavations adjacent to a way which is or may be lawfully used by the public, or to any public place to be fenced. Under that section, therefore, if it be assumed that the excavations are adjacent to such a way or public place, the Magistrate could only order them to be fenced; he could not order the applicant to fill them up. We reverse the order.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ramule.

*IN RE HUKUMPURIBAVA GOSAVI.**

Police—District Police Act (Bom. Act IV of 1890), Sec. 48, Cl. (a) (1)—

Construction—Procession—Order as to conduct of procession.

A District Superintendent of Police issued a notification to the following effect:—"No member of any sect can be permitted to proceed naked to the *tirth* to bathe, nor while there to bathe naked, nor to pass the streets naked on any account. If any one does this, he will be dealt with according to law."

Held that this notification was not illegal or *ultra vires*. It was not any order or command as to costume, but merely a warning to the people that an indecent exposure of the person was an offence under the law, and would be dealt with as such.

APPLICATION for revision under section 435 of the Code of Criminal Procedure (Act X of 1882).

Towards the close of 1895, on the occasion of the *Sinhast* festival at Trimbak, the District Superintendent of Police at Násik issued a proclamation to the following effect:—

* Criminal Revision, No. 136 of 1896.

(1) The Bombay District Police Act (Bombay Act IV of 1890), section 48:—

"(1) The District Superintendent or an Assistant Superintendent may, subject to any rule or order which may at any time be legally made by any Magistrate or other authority duly empowered in this behalf—

"(a) make rules for and direct the conduct of assemblies and processions and moving crowds or assemblages on or along the streets, and prescribe, in the case of processions, the routes by which, the order in which, and the times at which the same may pass."

1896.

IN RE
SULLEMANJI
GULAM
HUSEN.

1896.

August 10.