

Dulichand Vs. Emperor

Dulichand Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/481428

Court : Allahabad

Decided On : Jun-24-1929

Reported in : AIR1929All833; 121Ind.Cas.560

Appellant : Dulichand

Respondent : Emperor

Judgement :

Dalal, J.

1. 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 Bench ruling of this Court in the case of Behari Lal v. James Mac Lean Dean A.I.R. 1924 All. 392 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 Criminal Procedure Code. It was alleged that once the brick-kiln is stopped Duli Chand will have no remedy in the civil Court. If this were really the case I would have been prepared to inquire into the facts. Reference was made to para. 2, Section 133, Criminal P.C. That prevents the civil Court from questioning the order duly made by a Magistrate under Section 133 which empowers the Magistrate to pass a conditional order.

There is no such bar to the absolute order of a Magistrate being questioned in a civil Court. A similar clause does not appear in Section 140 which deals with an absolute order. The view I take of proceedings under Section 133 is that the procedure adopted by a Magistrate is more or less summary and his decision goes so far as to fix upon the party who must go to the civil Court to get a civil dispute decided. In the grounds of revision it was alleged that the provisions of Section 139-A were ignored by the Magistrate. This plea has been fully answered by the Additional Sessions Judge. Another case (one of the Lahore High Court) Gokal Chand v. Emperor [1920] 1 Lah. 163 quoted by the learned Counsel proceeded on entirely different grounds and did not lay down that a Court of revision should revise the finding of Magistrates regarding a certain building being a public nuisance. In my opinion no point of law arises here, and this application is dismissed.

2. It is requested that compliance with the order absolute may be extended to two weeks from today's date. This prayer is granted.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com