

The Indian Law Reports

REVISIONAL CRIMINAL

Before J. S. Bedi, J.

LAJPAT RAI,—*Petitioner*

versus

DEV RAJ,—*Respondent*

Reported Criminal Revision No. 155 of 1964.

*Code of Criminal Procedure (V of 1898)—Section 133—
Nuisance caused to one neighbour—Whether covered by the
section.*

1965

July, 12th.

Held, that the nuisance to which the provisions of section 133 of the Code of Criminal Procedure, 1898, apply is the conduct of any trade or occupation, or the keeping of any goods or merchandise, which is injurious to the health or physical comfort of the community and not that of a single individual or his family.

Held, further that community does not mean only a neighbour or a single individual. It means something much larger. It does not mean the residents of a particular house but it means the public at large or the residents of a particular locality.

Case reported under Sections 435/439, Criminal Procedure Code by Shri Surinder Singh, 1st Additional Sessions Judge, Ludhiana, with his letter No. 235/R-12, dated 29th October, 1964, for revision of the order of Shri Randhir Singh, Additional District Magistrate, Ludhiana, dated 21st August, 1964 ordering that the flour mill and crushers be removed within a period of one month.

H. R. SODHI, ADVOCATE AND SURJIT SINGH DHINGRA, ADVOCATE,
for the Petitioner.

B. N. AGGARWAL, ADVOCATE, for the Respondent.

ORDER

BEDI, J.—Dev Raj, son of Ganda Ram, of Jagraon
made an application under Section 133 of the Criminal

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Procedure Code against Lajpat Rai petitioner alleging that he owned a house adjoining to the house of Lajpat Rai and having a common wall. In his house, Lajpat Rai had installed an oil crushing machine and a flour mill which he worked day and night thereby causing great nuisance to the respondent and his family. It was alleged by him that when the flour mill and the oil crusher were run by the petitioner they caused tremors to the building of the respondent, and that due to the nuisance caused by the above-said two machines, the respondent's wife and family had fallen ill. The application was resisted by Lajpat Rai who averred that he worked the machines only from 8 a.m. to 6 p.m. and that the running of the machines did not cause any nuisance to anyone.

The parties led evidence in the Court of Shri Randhir Singh, Additional District Magistrate, Ludhiana, who found force in the application and accepted the same holding that the two machines of Lajpat Rai caused tremors to the building of Dev Raj by which there was every danger of the falling of the same and that the flour mill and the oil crusher of Lajpat Rai actually caused nuisance to Dev Raj. He, therefore, ordered under section 133 of the Criminal Procedure Code that the nuisance be removed from the place within one month by his order, dated 31st August, 1964.

Lajpat Rai went up in revision in the Court of Session and the 1st Additional Sessions Judge, Shri Surinder Singh relying on *Dwarika Prasad, etc v. B. K. Roy and others* (1), and *Shaukat Hussain and another v. Sheodayal Saksaina* (2), held that the provisions of section 133 of the Code, under which the application was made, did not cover the case of Dev Raj according to which provision the injury to the health or physical comfort of the community and not that of a single individual or his family is to be prevented. The learned counsel for Dev Raj respondent relied on *Phiraya Mal v. The King Emperor of India* (3), but that case does not apply to the facts of this case as that case was under section 268 of the Penal Code, the wording of which is entirely different from section 133 of the Criminal Procedure Code. The relevant portion of section 133 of the Criminal Procedure Code runs as under:

“133. Whenever a District Magistrate, a Sub-Divisional Magistrate or an Executive Magistrate

(1) 1950 (1) CrL. L.J. 1315.

(2) 1958 CrL. L.J. 1319.

(3) 1904 P.R. 9 (Cr.).

of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit;

* * * * *

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

* * * * *

such Magistrate may make a conditional order requiring the person causing such "obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, *

* * * * *

within a time to be fixed in the order,

* * * * *

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or

* * * * *

The point which requires consideration is whether nuisance caused to one neighbour or his family would be deemed to have been caused to the community. As observed above, the learned Additional District Magistrate came to the conclusion that the working of the machines of the petitioner caused nuisance to the members of the family of Dev Raj and in fact the same prayer was made in the application itself. He has given no finding that the community or the neighbours living in the vicinity were also inconvenienced or affected by the said nuisance. 'Community' does not mean only a neighbour or a single individual. It means something much larger. It does not mean the residents of a particular house but it means the public at large or the residents of a particular locality.

For the reasons above stated and also for those given by the learned Additional Sessions Judge, I feel that the recommendation made by him should be accepted. I order accordingly, In the result, the application of Dev Raj stands dismissed and he may seek proper remedy if so advised.

R. S.

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