

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupees."

Gurnam Singh  
v.  
The State  
and another  
\_\_\_\_\_  
Falshaw, J.

The relevant facts in this case are that the present petitioner at the time of his conviction in the present case had six previous convictions for offences under the Act between 1957 and 1960. He was, however, treated as if this was only his second conviction simply on account of the fact that apparently on his second, third, fourth, fifth and sixth convictions for some reason or other it had not been brought to the notice of the Courts dealing with the cases that he had any previous convictions and therefore on each of these convictions he was dealt with as a first offender. In these circumstances the learned trial Magistrate felt that it would only be fair to deal with him as if this his seventh conviction was his second conviction. Such being the case it is difficult to make out any case for reducing the sentence which could be covered by the words "special and adequate reasons to the contrary to be mentioned in the judgment of the Court", and I, therefore, do not consider that it is possible for me to interfere in the matter of sentence. I accordingly dismiss the revision petition.

**B.R.T.**

REVISIONAL CIVIL

*Before D. Falshaw, J.*

**KUNDAN LAL,—Petitioner.**

*versus*

**AMAR NATH,—Respondent.**

**Civil Revision No. 477 of 1961.**

*East Punjab Urban Rent Restriction Act (III of 1949)—  
Section 13(2)(iv)—Meaning and scope of—Conduct which  
amounts to nuisance in the eyes of the landlord alone—  
Whether sufficient to eject the tenant.*

1961

Dec., 13th

*Held*, that in view of the words "such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood", it must be held that the plural was deliberately used since it would have been quite easy to use the words "any occupier of any building in the neighbourhood" and that therefore conduct which amounts to a nuisance in the eyes of the landlord alone, even if he happens to occupy premises in the neighbourhood, or even in the same building as the leased premises, is not sufficient to justify ejection under section 13(2)(iv) of the Act.

*Petition under section 15(5) of East Punjab Urban Rent Restriction Act for revision of the order of Shri A. D. Kaushal, Appellate Authority (District and Sessions Judge), Amritsar, dated the 10th July, 1961, reversing that of Shri Adish Kumar Jain, Rent Controller, Amritsar, dated the 24th February, 1961 and ordering the respondent to put the appellant (landlord) in possession of the building in dispute within a month from the date of the order.*

*Application under section 13 of Act 3 of the East Punjab Urban Rent Restriction Act, III, of 1949, regarding property No. 86/56, situated outside Lohgarh Gate, Amritsar.*

V. C. MAHAJAN, ADVOCATE, for the Petitioner.

J. K. KHOSLA, ADVOCATE, for the Respondent.

#### JUDGMENT

Falshaw, J.

FALSHAW, J.—This is a tenant's revision petition against the order of the Appellate Authority ejecting the tenant after the landlord's ejection petition had been dismissed by the Rent Controller.

The only ground of ejection with which we are concerned is that contained in section 13(2)(iv) of the East Punjab Urban Rent Restriction Act which reads—

"that the tenant has been guilty of such acts and conduct as are a nuisance to the

occupiers of buildings in the neighbourhood."

Kundan Lal  
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Falshaw, J.

The landlord's case on this point was based on the allegation that the tenant had taken unlawful possession of *Tharra* or platform adjacent to, but not forming part of the leased premises. The Rent Controller was of the opinion that it was not his business to go into that matter and he considered that if the tenant had in fact wrongly taken possession of the platform the proper course for the landlord was to institute the necessary legal proceedings for recovering possession of it. He also found that even if the tenant had taken possession of a *Tharra* which was not a part of the leased premises, this could not be a ground for eviction as it did not cause any nuisance either to the petitioner or to the occupiers of the neighbouring buildings.

The learned Appellate Authority came to the conclusion on facts that the tenant's pleas regarding his having taken possession of the platform were evasive, and that it must be held that he had taken possession of the platform not forming part of the leased premises, and that this amounted to a nuisance to the landlord justifying ejection especially when there have been some security proceedings under section 107 Criminal Procedure Code.

Regarding the latter point it is clear that on the 6th of December, 1960 the landlord had obtained an order from a Magistrate under section 107 Criminal Procedure Code for the furnishing of a bond in the sum of Rs. 1,000 with one surety for one year from the tenant Kundan Lal, but this order was held to be unjustified and set aside in appeal on the 6th of January, 1961 by an Additional Sessions Judge who found that the evidence did not justify the finding that there is any danger of breach of the peace and that the cause of the trouble was simply that the landlord wanted to evict the tenant from the leased premises.

Kundan Lal  
 v.  
 Amar Nath  
 Falshaw, J.

On behalf of the landlord reliance was placed on the decision of J. L. Kapur, J. in *Ram Chander v. Kidar Nath and others* (1), in which the learned Judge observed that it was not the intention of the East Punjab Urban Rent Restriction Act to allow the landlord to be subject to security proceedings under section 107 Criminal Procedure Code, nor was it meant to protect tenants who do not behave properly, and so where the relations between the landlord and the tenant were so strained that both of them were bound down under section 107 Criminal Procedure Code, the landlord should be allowed to take possession of the building if he applied for the ejectment of the tenant.

The facts of that case appear to be distinguishable in that in the present case at the time of the pendency of the proceedings neither party was bound down under section 107 Criminal Procedure Code and only an unsuccessful attempt had been made by the landlord to have the tenant bound down. However, apart from this, it does not seem to me that provisions of section 13(2) (iv) have been examined and discussed by the learned Judge. I must repeat the words "such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood." It seems to me that it must be held that the plural was deliberately used since it would have been quite easy to use the words "any occupier of any building in the neighbourhood" and that, therefore, conduct which amounts to a nuisance in the eyes of the landlord alone, even if he happens to occupy premises in the neighbourhood, or even in the same building as the leased premises, is not sufficient to justify ejectment under section 13(2) (iv) of the Act. In the present case the landlord merely examined one or two witnesses regarding his own dispute with the tenant and did not produce any of the neighbours to state that they were in any way affected or inconvenienced by this dispute.

On behalf of the landlord it was contended that in fact further quarrels had taken place and

(1) (1954) 56 P.L.R. 18.

that security proceedings were pending against both parties, but in dealing with the present petition I do not feel that I can take action on any subsequent events and if fresh grounds for eviction have come into existence since the decision of the present petition the landlord may, if so advised, institute fresh proceedings for ejection. The result is that I accept the present petition and restore the order of the Rent Controller dismissing the ejection petition. The parties, however, will bear their own costs.

Kundan Lal  
v.  
Amar Nath  
\_\_\_\_\_  
Falshaw, J.

**B.R.T.**

REVISIONAL CRIMINAL

*Before D. Falshaw, C.J.*

BALRAJ KUMAR,—Petitioner.

*versus*

SUDESH KUMARI,—Respondent.

**Criminal Revision No. 95-D of 1961.**

*Code of Criminal Procedure (Act V of 1898)—Section 488—Application for maintenance by the wife—In reply husband alleging that wife was living in adultery—Who should lead evidence first—Wife or husband.*

*Held*, that it cannot be set as a standard practice that, wherever in maintenance proceedings a husband raises the defence of adultery on the part of the wife, he should be made to lead his evidence first. The general principle is that it is for the wife to produce what evidence she has in support of her case and to establish that she has a good case. The wife can be permitted, if necessary, in the interest of justice, to lead further evidence in rebuttal of the evidence led by the husband in support of the allegation of adultery.

1962

Jan., 5th

*Case reported by Shri Gurbachan Singh, Additional Sessions Judge, Delhi, on 6th February, 1961.*

*(Section 438 of the Code of Criminal Procedure).*

*Petition for revision under section 435/439, Criminal Procedure Code, against the order of Shrimati Kushalya Pahwa, Lady Magistrate, Ist Class, Delhi, dated 28th*