

had the power, by virtue of section 37 of the Act, the Rent Controller had also that power and that being so the order refusing to set aside an *ex parte* order must be held to be an order under section 37. That being so, the order is clearly appealable and the Court below was in error in holding that it was not so appealable. The decision of this Court in *South Asia Industries Private, Limited's case* (1) has no applicability to the facts of the present case. In that case it was held as a fact that the order appealed against was not an order under the provisions of the Act. That being so, this appeal is allowed, the decision of the Rent Control Tribunal is set aside and the Tribunal is directed to hear and decide the appeal on merits.

Pokar Mal  
v.  
Prem Nath  
and others.  
Mahajan, J.

In the circumstances of the case, there will be no order as to costs.

The parties are directed to appear in the Tribunal on the 3rd September, 1963.

**B.R.T.**

CRIMINAL MISCELLANEOUS

*Before Mehar Singh and Jindra Lal, JJ.*

JOGINDER SINGH,—*Petitioner.*

*versus*

AMAR SINGH,—*Respondent.*

**Criminal Miscellaneous No. 910 of 1962.**

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 51—Powers of District Magistrate under—Extent of—Order of acquittal passed by Gram Panchayat—Whether can be converted into an order of conviction by District Magistrate,*

1963  
Sept., 11th

*Held*, that the District Magistrate, under section 51 of the Punjab Gram Panchayat Act, 1952 can do one of the three things (a) cancel an order, or (b) modify an order, or (c) direct retrial of a criminal case. The word 'cancel' just means that the District Magistrate obliterates or puts an end to the order made by a Gram Panchayat, and when he does that, he cannot substitute or make an alternative order for the order of the Gram Panchayat. The word 'modify' in sub-section (1) of section 51 of the Act means partial change or alteration in the order of a Gram Panchayat. It is clear that in the case of an order of acquittal, a partial change is an impractical proposition, but in the case of an order of conviction it is obviously a practical proposition. Neither under the word 'cancel' nor the word 'modify' as used in sub-section (1) of section 51, is there a power in the District Magistrate to make order on his own convicting a person, who has been acquitted by a Gram Panchayat. All that he can do, when he applies the first word of the sub-section, is to set aside the order of a Gram Panchayat and when he applies the second word to such an order to change or alter it so as to tone it down or make it less rigorous or severe, but no more. An order passed by a District Magistrate convicting a person, who had been acquitted by the Gram Panchayat is without jurisdiction and liable to be quashed.

*Case referred by Hon'ble Mr. Justice H. R. Khanna, to a larger Bench for decision on 31st May, 1963, owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Jindra Lal, on 11th September, 1963.*

*Petition under Article 227 of the Constitution of India praying that the order of Shri Anok Singh Pawar, Executive Magistrate (Exercising the powers of District Magistrate under the Gram Panchayat Act, Malerkotla, dated 9th May, 1962, reversing that of the Gram Panchayat Kakarwal dated 3rd January, 1962 and convicting the petitioner under section 323, I.P.C. and sentencing him to a fine of Rs. 20 be quashed.*

R. M. VINAYAK, ADVOCATE, for the Petitioner.

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, for the Respondent,

## ORDER

MEHAR SINGH, J.—In this petition under Article 227 of the Constitution, petitioner Joginder Singh, on a complaint by respondent Amar Singh for simple hurt caused to him by the petitioner, was acquitted by the Gram Panchayat of village Kakarwal, whereupon respondent Amar Singh moved the District Magistrate under section 51 of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), against the order of acquittal of the petitioner, and the District Magistrate on May 9, 1962, set aside that order and convicted the petitioner under section 323 of the Penal Code awarding him a sentence of fine of Rs. 20. The petitioner in this petition urges that the District Magistrate had no power under section 51 or under any other section of Punjab Act 4 of 1953 to set aside the order of acquittal made in his favour by the Gram Panchayat and to convict him as he has done.

This case first came up for hearing before Khanna, J., who on consideration of section 51 of Punjab Act 4 of 1953 was disposed to the view that the order of the District Magistrate is without jurisdiction not being within the scope of that section under which all that the District Magistrate can do is, in a proper case to direct retrial, if he is minded to interfere as has been done in the present case. However, the learned Judge has referred the case to a larger Bench because it concerns the powers of the District Magistrate under the particular section of the Act and is a matter that is likely to arise quite fairly often.

The question raised by the petitioner has to be answered in relation to section 5 of the Act, subsection (1) of which is in these terms—

“The District Magistrate, if satisfied, that a failure of justice has occurred, may, on

Joginder Singh,  
 v.  
 Amar Singh,  
 \_\_\_\_\_  
 Mehar Singh, J.

his own motion or on an application of the party aggrieved by order in writing after notice to the accused, or the complainant as the case may be,

cancel, or

modify any order in a judicial proceeding made by a Panchayat, or

Direct the retrial of any criminal case by the same or any other Panchayat of competent jurisdiction or by a Court of competent jurisdiction subordinate to him.”

It is obvious that the District Magistrate under this section can do one of the three things (a) cancel an order, or (b) modify an order, or (c) direct retrial of a criminal case. It is apparent that the word ‘cancel’ just means that the District Magistrate obliterates or puts an end to the order made by a Gram Panchayat, and it is equally apparent that when he does that he cannot substitute or make an alternative order for the order of the Gram Panchayat. In so far as the word ‘modify’ is concerned, again its ordinary and dictionary meaning has to be taken. This word, however, appeared in section 18(2)1 of the Criminal Procedure Code of 1872 whereby a Sessions Judge was given power to ‘confirm, modify, or annul’ a sentence passed by an Assistant Sessions Judge. In *Imperatrix v. Rama Prema* (1), the learned Judges held that the word ‘modify’ in that provision did not include power of enhancing the sentence. In other words, the learned Judges were of the view that while a sentence passed by an Assistant Sessions Judge may be modified by the Sessions Judge by reduction, it was not modifying it when it was enhanced. The ordinary dictionary meaning of the word in the Shorter Oxford Dictionary

---

(1) I.L.R. 4 Bombay 239.

is—'to limit, restrain; to make less severe, rigorous; to tone down; to make a partial change in', and in Webster the meaning given to the word is 'to limit; also to mitigate; assuage; to reduce in extent or degree; to moderate; qualify; lower; to change somewhat the form or qualities of; to alter the same'. It is thus evident that the ordinary meaning of this word which has to be applied in the present case with reference to its use in sub-section (1) of section 51 of the Act is partial change or alteration in the order of a Gram Panchayat. It is clear that in the case of order of acquittal, a partial change is an impractical proposition, but in the case of an order of conviction it is obviously a practical proposition. Neither under the word 'cancel' nor the word 'modify' as used in sub-section (1) of section 51 is there a power in the District Magistrate to make order on his own convicting a person who has been acquitted by a Gram Panchayat. All that he can do, when he applies the first word of the sub-section, is to set aside the order of a Gram Panchayat and when he applies the second word to such an order to change or alter it so as to tone it down or make it less rigorous or severe, but no more. So the approach that Khanna, J., was making to the case on consideration of the meanings of these words is correct, and the order of the District Magistrate in this case is not supported by the provisions of sub-section (1) of section 51 of Punjab Act 4 of 1953. It is in substance an order without jurisdiction.

In consequence, the order of the District Magistrate in this case is quashed, with a direction under Article 227 that if, after considering the case, he is of the opinion within the meaning and scope of sub-section (1) of section 51 of Act 4 of 1953 that this is a proper case in which retrial should be had, he may then proceed to make an order for retrial in accordance with that provision.

Joginder Singh,  
v.  
Amar Singh,  
Mehar Singh, J.

Joginder Singh, In spite of service respondent Amar Singh has not  
 v. appeared, but on behalf of the State learned counsel  
 Amar Singh, has appeared and he has not been able to support the  
 Mehar Singh, J. order of the District Magistrate by any cogent and ac-  
 ceptable argument. In the circumstances, there is no  
 order in regard to costs. The parties present are  
 directed to appear in the Court of the District Magis-  
 trate on September 30, 1963.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C. J. and A. N. Grover, J.

ARYA PRATINIDHI SABHA PUNJAB,—Appellant

versus

LAL CHAND AND ANOTHER,—Respondents

Letters Patent Appeal No. 68 of 1962.

1963  
 Sept., 16th.

*Punjab Village Common Lands (Regulation) Act, 1953 (I of 1954)—S. 18—Suit by an individual for removal of obstruction in a thoroughfare—Whether maintainable—Special damage—Whether necessary to be proved—Special damage—meaning of.*

*Held*, that merely because a village thoroughfare vests in the Panchayat, even though in the fullest sense of that word, a person, who is entitled to the use of that thoroughfare is debarred from maintaining a suit if he can prove that there is hinderance or obstruction to his right to use that thoroughfare which by itself would constitute a kind of special damage or that he has suffered some other kind of special damage which would entitle him under the law to a relief.

*Held*, that no action can be maintained by an individual against another for obstruction to a public highway without proof of special damage. This rule is founded on adequate reasons of public policy that a man who may have committed some public injury shall not be harassed by