

Emperor Vs. Chhagan Vithal

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Court : Mumbai

Decided On : Feb-07-1927

Reported in : (1927)29BOMLR494

Judge : Fawcett and Patkar, JJ.

Appeal No. : Criminal Application for Revision No. 409 of 1926

Appellant : Emperor

Respondent : Chhagan Vithal

Judgement :

Fawcett, J.

1. The petitioner has been convicted of the offence of wrongful restraint under Section 341, Indian Penal Code, and sentenced to pay a fine of Rs. 15. The Magistrate found that the accused had put a tin projection over the complainant's compound-wall, so as to hang over his paved court-yard; that the projection was six feet and ten inches above the ground and was high enough for any one to move below it; but that it would be an obstruction, whenever the wall had to be whitewashed or repaired. He held that the case, therefore, fell under Section 341 of the Indian Penal Code. He remarks in his judgment that this projection did not exist before the complainant went away to attend a marriage, and that on his return it was there.

2. Two objections have been taken to the conviction. The first is that the complainant was absent at the time the projection was put up, and so there can be no offence under Section 341, Indian Penal Code. On this point, however, I agree with the view taken in *Arumugakadar v. Emperor* I.L.R. (1910) 34 Mad. 547 that there is nothing in Section 339, which requires the physical presence of the person obstructed at the moment of obstruction. The case of *Emperor v. Rama LaLa* : (1912)15BOMLR103 which is relied upon is on a different point, viz., whether obstruction to a person taking his cart by a path falls within the section, when no obstruction is offered to that person passing along it without his cart.

3. The second objection is that the projection does not prevent the complainant from proceeding in any direction such as referred to in Section 339, and the question is whether this section covers a person proceeding in a vertical direction, as he would have to do to be obstructed by this projection.

4. In my opinion, the section does cover the case of a person reasonably wanting to go vertically upwards, if he has a right to do this, and being prevented from so doing by a voluntary obstruction. It would, for instance, in my opinion, cover the case of a person going up a mountain, if he has a right to get to the top and is voluntarily obstructed from so doing. The path might, in parts, be at an angle of 75 degrees; what difference does it make if the angle of progression is even 90 degrees. The only real question is, has he a right to proceed in that direction.

5. Again, take the case of a house-owner wanting to get on to his roof and being obstructed from doing so. This would surely be covered by Section 339, just as it has been held to cover the converse case of a person wanting to get down from the roof of a house, and being obstructed by the accused's removal of a ladder: *Telapolu Subbadu*. (1884) 1 Weir 340

6. Suppose that there is a procession going on the other side of a wall, and its owner wants to view it by placing a ladder or steps against the wall, and then standing on the latter, but is voluntarily obstructed in so doing ; I should say the case would fall under Section 339. Even if he was absent, and the obstruction was deliberately put to prevent him doing this at the time the procession was to take place, I would still say that it is covered.

7. On the other hand, I think the section obviously does not cover cases, where there is no ordinary or special reason for person to proceed in the direction which is obstructed. To hold otherwise would be to render criminal, acts which do not really affect the 'personal liberty of the subject' to go when and where he likes, which has been said to be the object of the protection afforded by this section: *Saminada Pillai*. (1882) 1 Weir 339 It would, in fact, make a person, who merely infringes an easement, criminally as well as civilly liable, although such an infringement does not involve any obstruction to the natural or reasonable movements of any person. This would be to depart from the rule of strict construction of a penal law, which 'requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment' (Maxwell on the Interpretation of Statutes, 6th Edition, p. 465). The illustration to Section 339 refers merely to the ordinary case of a path.

8. In the present instance, the Magistrate finds that the projection does not prevent any one moving below it, but that it is an obstruction to white-washing or repairing this wall. This, in my opinion, is not equivalent to preventing any person from proceeding, &c., within the meaning of Section 339, and the facts found do not, in my opinion, bring the case under that section.

9. I would, therefore, set aside the conviction and direct the fine, if paid, to be refunded.

Patkar, J.

10. I agree. In this case the complainant went to Navsari on May 22, 1926, and returned on the 24th. In the interval, on May 23, 1926, the accused put in a tin projection over the complainant's compound wall. The complaint was filed before the Magistrate charging the accused with the offence of wrongful restraint under Section 341, Indian Penal Code, in that by virtue of this tin projection he obstructed the free movement of the complainant and also with the offence of insulting the complainant under Section 504, Indian Penal Code. The accused was acquitted of the offence under Section 504, but the accused was convicted under

Section 341 on the ground that though the projection was high enough-six feet and ten inches-for any one to move below it, the projection would still be an obstruction when the wall would be white-washed and repaired.

11. It was urged on behalf of the accused that under Section 389 the obstruction was a wrong against the person and should be so complete and successful as to prevent the person obstructed from proceeding in any direction in which he has a right to proceed, and reliance was placed on the case of Emperor v. Rama Lala : (1912)15BOMLR103 , where the accused was acquitted on the ground that though the complainant was hindered from driving his cart through the passage, he himself was unobstructed. It was also argued that as the complainant was absent, no offence under Section 341 was committed. The case of Emperor v. Rama Lala was considered in a later case of Emperor v. Lahanu : AIR1926 Bom118 , where the accused were convicted for wrongful restraint inasmuch as they obstructed the complainant from proceeding with his bullocks in a direction in which he had a right to proceed with his bullocks. Section 339 of the Indian Penal Code is primarily intended to penalise a personal obstruction. In certain conceivable cases an offence might be committed even though the complainant may not actually be present, as for instance in the case of Arumugakadar v. Emperor I.L.R. (1910) 34 Mad. 547, where, during the temporary absence of the complainant, the accused put a lock to the outer door and thereby obstructed the complainant from getting into the house. But the finding in the present case is that the accused's act did not obstruct the complainant's movement as the tin projection was six feet and ten inches high. The ordinary, normal and reasonable movements of the complainant would not in any way be interfered with by this tin projection. The obstruction to the white-washing and repairing of the wall does not amount to an obstruction of the complainant to proceed in any direction in which he has a right to proceed.

12. I, therefore, think that the conviction should be set aside, the accused should be acquitted, and the fine, if paid, should be refunded.