

Emperor Vs. Lahanu Manaji

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Court : Mumbai

Decided On : Sep-23-1925

Reported in : AIR1926Bom118; (1925)27BOMLR1419

Judge : Fawcett and ;Madgavkar, JJ.

Appeal No. : Criminal Reference No. 61 of 1925

Appellant : Emperor

Respondent : Lahanu Manaji

Judgement :

Fawcett, J.

1. In this case the evidence is that the two accused prevented the complainant from using a mot to which he had yoked his bullocks on the slope to a well, which existed for that purpose. The complainant stated in his evidence that the accused obstructed him by sitting on the slope and saying that they would not allow the mot to be used. The complainant had purchased a share entitling him to the use of the mot on this well. The accused objected to his doing so, until he had paid an amount alleged to be due on account of his share of expenses on the well. The two accused were convicted and sentenced: accused No. 1 to pay a fine of Rs. 50, and accused No. 2 to pay a fine of Rs. 20.

2. The Sessions Judge, Nasik, refers the Case to us under Section 438 of the Criminal Procedure Code with a recommendation that the conviction of the two accused may be set aside, He says the case is similar to that of Emperor v. Rama Lala : (1912)15BOMLR103 . There the accused had constructed a hedge at the end of a passage, which prevented the complainant from passing along the land in his cart, but the hedge had an opening in it which permitted the complainant to pass through on foot. It was held that, as the complainant in that case was himself unobstructed, though hindered from driving a bullock cart through the passage, the accused could not be convicted of wrongful restraint under Section 339, Indian Penal Code. No doubt there is authority for the view that all that B. 339 protects is the obstruction of any person, and that it does not cover a case where he himself is free to proceed in a direction in which he has a right to proceed, but without any impediments (such as a cart) that he may have with him : see Gour's Penal Law of India, Vol. I, article 3326, at page 1547. On the other hand, this view of personal obstruction must obviously have some limits. Suppose A wants to proceed in a certain direction with a pair of boots on, and B says : ' I will not allow you to do this. You must take your boots off and go without them, if you want to proceed.' If B has no right to say that A cannot wear his boots, while proceeding, surely there is wrongful restraint falling within the definition in Section 339, Indian Penal Code, Again, supposing A has a stick or box with him, and B wrongly prevents him taking it with him, would not this be wrongful restraint And, similarly, if A is wrongly prevented from taking a bicycle with him, or riding it, on his way to a place, I can see no adequate ground for the view that there is no wrongful restraint, if B is willing to let him proceed without his bicycle. The circumstances of the case must, in my opinion, be considered, and if the obstruction to A's taking a thing with him amounts to obstructing A himself from going in a manner he has a right to go, I think there is ' wrongful restraint.' Here there is a slope which is purposely made for driving a mot. On the evidence, the complainant has a right to use that mot and the accused prevented him from doing so. The case, therefore, in my opinion, is not entirely on all fours with that of Emperor v. Rama Lala : (1912)15BOMLR103 where there was nothing to show that the complainant had a right to drive his cart past the hedge in question. I am personally averse to saying that Section 339 cannot cover cases like the present, where there was an obstruction to the

complainant's proceeding with his bullocks in a direction in which he had a right to proceed with his bullocks.

3. I would, therefore, refuse to interfere and return the record and proceedings.

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