

Emperor Vs. Dhondya Dudhya

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SooperKanoon Citation : sooperkanoon.com/350466

Court : Mumbai

Decided On : May-07-1919

Reported in : (1919)ILR43Bom888

Judge : Macleod and ;Pratt, JJ.

Appellant : Emperor

Respondent : Dhondya Dudhya

Judgement :

Macleod, J.

1. This is a report by the District Magistrate of Belgaum under Section 438 of the Criminal. Procedure Code of the case of the accused Dhondya bin Dudhya a boy aged nine years who has been convicted by the Cantonment Magistrate of Belgaum after a summary trial of an offence under Section 130 of the Indian Railways Act of 1890.

2. The District Magistrate considers that, as the act which the boy committed, viz., putting a nail on a railway line, amounted to an offence under Section 126(a) of the Indian Railways Act, the case was triable only by a Court of Session.

3. We think it clear that Section 130 enacts an offence distinct from the offences in Sections 126 to 129. A minor who is entitled to the benefit of Section 82 or Section

83 of the Indian Penal Code does not commit an offence when he is guilty of any of the acts or omissions referred to in Sections 126 to 129. It is Section 130 which by excluding the operation of these exceptions creates the offence.

4. No doubt if the accused had been charged with an offence under Section 126(a) the Magistrate should have committed the case to the Court of Session and left the accused to establish his defence under Section 83 of the Indian Penal Code.

5. But the accused was not prosecuted under Section 126(a). The summary register shows that he was prosecuted under Section 130 read with Section 126(a) of the Indian Railways Act. The prosecution therefore conceded that though the accused had committed the act described in Section 126(a) he had not attained sufficient maturity of understanding to judge the nature and consequences of the conduct and elected to proceed under Section 130,

6. The offence with which the accused was charged was therefore under Section 130 and this offence the Magistrate had jurisdiction to try: Schedule II, Criminal Procedure Code; and to try summarily: Section 260, Criminal Procedure Code.

7. There is therefore no occasion for our interference and we direct the record and proceedings to be returned to the District Magistrate.