

Bafati Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/451336

Court : Allahabad

Decided On : Nov-25-1938

Reported in : AIR1939All95

Appellant : Bafati

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. This is a reference by the-learned Sessions Judge of Allahabad which I think must be accepted. A Magistrate-convicted two persons Bafati and Bachan of an offence under Section 261, Municipalities Act, because they made a hole in the side of a drain leading from the city through some fields to the river. This was a municipal drain and it is obvious that Bafati and Bachan had no right to interfere with it, but the learned Sessions Judge thinks, and I believe rightly, that any offence they may have committed was not punishable under Section 261, Municipalities Act. This Section is in the following terms:

Whoever displaces, takes up or makes an alteration in or otherwise interferes with the pavement, gutter, flags or other materials of a public street or the fences, walls or posts thereof shall be punished.

2. The place where the hole was made in the drain is certainly not in a street in any ordinary sense of that term. It is out in the fields. It was apparently argued before the Magistrate that the field came within the definition of the term 'public street' in the Municipalities Act because it had been channelled or sewered, but as the learned Judge points out, the field could not come within the meaning of the word 'street' because it is not a road, bridge, footway, lane, square, court, alley or passage which the public or any portion of the public has a right to pass along. The learned Judge repelled the argument of the Magistrate. It was argued before the learned Judge that the drain came within the meaning of the word 'gutter' in Section 261, in other words, that the word 'gutter' should be read apart from the words 'of a public street'. The learned Judge has rightly found that it cannot be read apart from the words of a public street'.

3. In this Court, it is argued further that the drain is a gutter and it is the gutter of a public street because it is used to drain away the water from a public street. Learned Counsel argues that a gutter to be the gutter of a public street need not be in that street. His point is that any drain which leads through a street and then from the street through the fields or elsewhere to take the water away from the street really appertains to the street and is strictly within the meaning of the words gutter of a street. In my judgment, this contention which is not supported by any authority is too far fetched to be accepted. It is clear that the provisions of Section 261, Municipalities Act, are intended to protect materials of a public street from damage or interference the pavements, gutter and flags are part of the materials of the street. It would be impossible in my view to hold that a drain which is not part of the street was material of the street. I accept the reference and set aside the conviction and sentences in each case. If the fine or any part of it has been paid the money shall be refunded.