**Emperor Vs. Harnarain**

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**SooperKanoon Citation** : sooperkanoon.com/458917

**Court** : Allahabad

**Decided On :** Apr-12-1919

**Reported in** : (1919)ILR61All599

**Judge** : Walsh, J.

**Appellant** : Emperor

**Respondent** : Harnarain

**Judgement** :

1. In this case I propose to follow the example of my brother Knox in the case cited to me, viz. Taj-ud-din v. Emperor (1908) 5 A.L.J., 159, and to convert the conviction into one under Section 70 of the Canal Act, No. VIII of 1873, instead of a conviction under Section 430 of the Indian Penal Code. I will just say a word or two for the guidance of the lower courts in this matter, which appears to me to be occurring rather frequently just now, possibly because of the shortage of water due to the failure of the rains. This is the converse case to the one which was referred to my brother Piggott and myself a few days ago. If the act is one which has in fact caused, or, but for prompt intervention, would have caused, diminution in the ordinary supply of water for agricultural purposes, it is an act; of mischief within the meaning of Section 430 of the Indian Penal Code which has very much more serious consequences than merely interfering with the banks of a canal and may be punished with greater severity; and if having regard to the serious nature of the consequences and to the necessity of severer measures the prosecuting authorities think it right to formulate a charge under Section 430, they must call

some evidence to prove that within the meaning of the section, the act has caused or must have been known to be likely to cause a diminution of the supply of water for agricultural purposes. That fact ought to be supported by the evidence of some reputable person who knows the facts. On the other hand, if that fact cannot be proved and it is not desired to establish the more serious aspect of the offence, then it is sufficient to prosecute under the section of the Canal Act which I have mentioned with a view to a lighter punishment.

2. Owing to the fact that there is in this case an absence of evidence directed to Section 430. I have adopted the course of altering the conviction.

3. Following the example of my brother Knox, I think the sentence of one month appropriate to the circumstances of this case. As the applicant has already served substantially that period and is now on bail, I direct that his sentence be reduced to the amount already served and that his bail be discharged. It is, however, to be understood that if these offences increase in frequency, heavier sentences as a deterrent will have to be administered.