

**Karim Bux Vs. Rex Through Karimullah**

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**SooperKanoon Citation :** [sooperkanoon.com/464421](http://sooperkanoon.com/464421)

**Court :** Allahabad

**Decided On :** Feb-16-1950

**Reported in :** AIR1950All464

**Judge :** Raghubar Dayal, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 425 and 427

**Appeal No. :** Criminal Revn. No. 1579 of 1949

**Appellant :** Karim Bux

**Respondent :** Rex Through Karimullah

**Advocate for Def. :** Kirpa Shanker Verma, Adv.

**Advocate for Pet/Ap. :** Majeed Uddin, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**Raghubar Dayal, J.**

1. There is an open piece of land between the houses of Karim Bux applicant and Karimullah, complainant. In 1948 the applicant stored earth and other materials on this open land. When heavy rains came, water appears to have accumulated there

and to have caused damage to the wall of Karimullah, with the result that a portion of the wall fell down. It is in evidence, which is believed by the Courts below, that Karimullah asked the applicant to remove the materials, and that the applicant promised to remove but did not remove. On this fact the applicant was convicted under Section 427, Penal Code, His conviction was upheld by the Sessions Judge. He has, therefore, come to this Court in revision.

2. I am of opinion that on the facts found, no offence under Section 427, Penal Code is made out. Section 425, Penal Code is :

'Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits 'mischief'.'

I am of opinion that the section contemplates some direct act on the part of the mischief does either personally or through someone else, which leads to any of the results mentioned in the section. The mere storage of the material on the open piece of land could not have damaged the complainant's wall. The damage was really the result of the accumulation of water due to abnormal heavy rains. It cannot, therefore, be said that the applicant caused the destruction of the complainant's wall.

3. Farther, it is clear that the applicant had no intention to cause wrongful loss or damage to the complainant, What was urged by the learned counsel appearing for the State was that the applicant knew that he was likely to cause wrongful loss or damage to the complainant. It is true that the complainant (sic) apprehended, and any person might have thought, that the storage of the material might lead to some accumulation of water, which might be detrimental to the kachcha wall of the complainant's house. It does not, however, appear to me that anybody could have foreseen the heavy rains and such, accumulation of water as would of the complainant. Such a large opening is a clear indication of the abnormal rains and accumulation of water. Such an apprehension, or knowledge of such a possibility is not sufficient to amount to a knowledge in the applicant that his conduct was likely to cause the destruction of a portion of the complainant's wall. I am,

therefore, of opinion that no offence under Section 427, Penal Code is made out against the applicant.

4. I, therefore, allow this revision, set aside the order of the Court below, and acquit the applicant of the offence under Section 427, Penal Code. Fine, if paid, shall be refunded.

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