

Bacha Lal Vs. Emperor

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Court : Allahabad

Decided On : Mar-14-1917

Reported in : AIR1917All350; 40Ind.Cas.700

Judge : Edward Knox, J.

Appellant : Bacha Lal

Respondent : Emperor

Judgement :

Edward, J.

1. Bacha Lal has been convicted of an offence under Section 163 of Local Act I of 1900 and sentenced to pay a fine of Rs. 50.

2. The allegation against him is that he encroached upon a Municipal drain. What Bacha Lal appears to have done is that he made an erection on the side of the old drain. The breadth of the side of the drain on top of which the erection has been made is fourteen inches and the length of frontage is 76 feet 3 inches. Bacha Lal's defence was that he did no new work, he only repaired what was there before. The judgment is somewhat confused. I understand from it that Bacha Lal is not responsible for the whole of the erection that has been made on the top side of the drain. The learned District Magistrate says that 'the view most favourable to him which I am on the evidence able to take is that the platform extended over the wall

of the drain when he bought the property and that he only raised the front part of it some seven or eight inches over a breadth of about half a foot and a length of some 76 feet.' This he did without the permission of the Municipal Board. The action would undoubtedly amount to alteration of the drain. The offence, however, appears to have been a highly technical one and I cannot help feeling that the learned District Magistrate has taken an extreme view of the case. It is certainly not a case in which the maximum penalty prescribed by law should have been enforced. In addition to this, however, it is raised on behalf of Bacha Lal that the conviction in any case is illegal as Act I of 1900 has been repealed and that the Municipal Board that came into existence in 1916 was not empowered to grant sanction for the prosecution of an offence which had been committed before that Board came into existence. The sanction for prosecution was given under the powers conferred by the Local Act II of 1916. I have carefully considered this plea and I hold that it is not entitled to weight. Section 17 of Act I of 1900 under which the Municipal Board was incorporated had by virtue of Section 17 of Act I of 1900 the existence of a corporate body with a perpetual succession and a common seal. It was empowered to do all things necessary for its constitution and could sue and be sued in its corporate name. All the members of the Board in existence when Local Act I of 1900 was on the eve of expiring and Local Act II of 1916 came into existence would be one and the same Board and have the same powers, unless those powers had been expressly limited or altered by law. No such alteration or limitation has been pointed out to me. I allow the application so far that I reduce the fine of Rs. 50 to Rs. 5. Any portion of the fine paid in excess of Rs. 5 should be refunded.