

Dassu and ors. Vs. Emperor

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Court : Allahabad

Decided On : May-10-1909

Reported in : 2Ind.Cas.408

Judge : George Knox, A.C.J. and ;Griffin, J.

Appellant : Dassu and ors.

Respondent : Emperor

Judgement :

1. Ten persons have been convicted of an offence under Section 168 of Act I of 1900 (Local) and sentenced each of them to pay a fine of Rs. 3. The convictions and sentences of fine have been upheld by the lower appellate Court and the ten men have applied to this Court in revision, asking that the orders of the Courts below be quashed and they be acquitted. Section 168 of Act I of 1900 provides for the punishment of persons who without the permission of the Municipal Board, alter, obstruct or encroach upon any street, sewer, drain or water-course. In this particular case the ten men have been convicted of obstructing without the permission of the Municipal Board, Allahabad, a drain which after passing through what is known as the Katra Bazar, eventually finds its outlet upon certain land situate within the village of Rajapur. The drain in question is a pucca drain for a long part of its course, but after reaching the village of Rajapur continues its course through a channel which may or may not be a natural channel. There is evidence now upon the record that the land forming the channel is the private

property of the Maharaja of Jaypore under whom are certain zamindars. When we sent the case back to the Court below, we directed evidence to be taken upon the question whether the channel specially at the place or places said to be obstructed, was or was not a public drain within the meaning of Section 55, Clause (c) of Local Act I of 1900. The learned Magistrate who took the evidence certifies to us that the Municipal Board decided not to call any evidence in the case. The petitioners called the patwari who proved that the kuccha drain has always been recorded as the property of the zamindar. So far then as the evidence goes we must take it that the channel at the place or places where the obstruction occurred is the private property of the zamindar. But it was contended on behalf of the Municipal Board that the act of the petitioners did result in the obstruction of the pucca portion of the drain by throwing back the water and not allowing free egress. We are not prepared to accede to this contention. The Municipalities Act is a Local Act of a highly technical nature and one which touches the private rights of individuals. It has, therefore, to be most carefully construed and if the intention of the framers of the Act was to include an act done upon private property which might result in obstruction of public property at some distance from the place where the physical obstruction took place, it should have been provided for in a more particular language than has been done in Section 168. Nowhere throughout the case has the question been considered as to whether the act of the petitioners results in a nuisance. Had it been shown that the act of the petitioners resulted in a public nuisance we might have thought it unnecessary to interfere in the exercise of our revisional jurisdiction, but that point is not before us, and we are unable to hold that the channel at the place or places where the obstruction is said to have been caused came within the definition of a public drain, and we hold that the word 'public,' although it does not immediately precede the word 'drain' in Section 55, Clause (c), does extend to the words which immediately follow and that the sewers, drain, culverts etc., mentioned in the section are public sewers, public drains, public culverts, and public watercourses and that the word drain mentioned in Section 168 is a public drain. It could never have been the intention of the framers of the Act to have rendered illegal the action of private proprietors with drains on their private property. If there had been such intention it should have been properly provided for.

2. We, accordingly, set aside the convictions and direct that the fines, if paid, be refunded.

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