

Ram Krishna Vs. Emperor

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Court : Allahabad

Decided On : Apr-02-1935

Reported in : AIR1935All746

Appellant : Ram Krishna

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. This is a reference by the learned. Sessions Judge of Farrukhabad recommending that the order passed by a Magistrate fining the applicant, Ram Krishna, Rs. 25 under section 283, Penal Code, be set aside. The circumstances are given in the order of reference. I am however by no means satisfied that the Magistrate was wrong in holding that there had been an offence under Section 283, Penal Code. The Sessions Judge has remarked that the placing of a charpoy on a public road does not amount to a public nuisance if there is no intention of obstructing traffic. Section 283 however does not refer either to a public nuisance or to the intention of the accused. It is one of the sections in Ch. 14 of the Code which deals with, offences affecting the public health, safety, convenience, decency and morals, and the learned Judge has quoted from Dr. Gour's Penal Law of India, para. 2675:

The act contemplated may be of any kind, but it must be an act of positive commission involving as its result a public nuisance in the right sense of the term.

2. The learned commentator however goes on to say that if the act or omission has the effect mentioned in the section, that is to say, if it causes danger, obstruction or injury to any person in any public way or public lane, it constitutes a public nuisance. The section is enacted to protect persons in the exercise of their public right. In the present case the Sub-Inspector was exercising his public right to ride along the side of the road, and it was admitted that the side of the road was occupied by the charpoy of the applicant; and the circumstances were such that the Sub-Inspector was undoubtedly obstructed.

3. The Judge has also quoted the case of *Kamla Prasad v. Emperor* (1912) 17 I.C. 574. The question raised there was whether there had been an offence under Section 290, Penal Code, and it was held that placing a charpoy temporarily on the road in the bazar without any intention of obstructing traffic does not amount to the offence of causing a public nuisance. With all respect to the learned Judge who decided that case, I do not feel that I am bound to follow the authority contained in the decision. A public nuisance may undoubtedly be caused without any deliberate intention of causing it, and Section 283, and indeed Section 290, do not refer to the intention of the accused person. The obstruction may be caused by negligence and in nine cases out of ten it is so caused. The offence in the present case does not appear to have been a very serious one, but I have not been persuaded that the Magistrate was wrong in regarding it as an offence, and I therefore reject the reference. Let the papers be returned.