

Moochia Naik Vs. State

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Court : Orissa

Decided On : Dec-13-1965

Reported in : AIR1967Ori36; 1967CriLJ393

Judge : G.K. Misra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 263, 283 and 290

Appeal No. : Criminal Revn. No. 318 of 1965

Appellant : Moochia Naik

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S. Misra, Adv.

Disposition : Revision allowed

Judgement :

ORDER

G.K. Misra, J.

1. The petitioner has been convicted under Section 290, I. P. C., and sentenced to pay a fine of Rs. 30, in default to undergo simple imprisonment for 7 days. On 13-3-65 the Officer-in-charge of Gangapur P. S. in the district of Ganjam found that

the petitioner had stacked some logs on the public Danda (road) causing obstruction in the movement of the public. The petitioner admitted stacking of the logs, but claimed that the site belonged to him and was not a public place. The learned Magistrate held :

(i) The site where the logs were stacked was a paramboke.

(ii) The width of the entire paramboke site was 36 links and the logs had been stacked on a space of 10 links in width.

(iii) The public were feeling inconvenience in their movement and as such the logs caused obstruction to the public as deposed to by P. Ws. 1 and 3.

2. It may be noted that for such an offence the accused could be convicted under Section 283. I. P. C., and the residual Section 290 I. P. C., has no application. The word 'public nuisance' has been defined in Section 208, I. P. C., which says ;

'A person is guilty of public nuisance who does any act, or is guilty of an illegal omission, which causes any personal injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right '

The finding of the learned Magistrate that the site where the logs were stacked was a public place and the members of the public had occasion to use it as of right, is not challenged.

3. The only contention advanced by Mr. Misra is that the finding that there was some inconvenience to the public and that the inconvenience amounts to obstruction is contrary to law Admittedly the road is 36 links equal to 24 ft. and the logs were stacked on a place of 10 links (about 7 ft. wide). Even if the space where the logs were stacked be excluded from the total width of 36 links a balance space of 26 links remains for use of the public as Rasta. 2 bullock carts can safely pass on the residual portion thereof. There is no evidence for the prosecution that there was any obstruction or that it was likely to cause obstruction to the user of Rasta.

Every obstruction must engender inconvenience. But the converse is not true Every inconvenience need not necessarily arises out of obstruction In the facts of this case, the inconvenience, whatever it may be. cannot amount-to an obstruction within the meaning of Section 263, 1. P C. There is no finding or evidence that the stacking caused injury, danger or annoyance. It is a matter of common experience that for temporary purpose the villagers stack logs and fuels on the Danda. This is a case of that type where logs were stacked temporarily and did not cause any obstruction to the user of the public road.

4. On the aforesaid conclusion, no offence either under Section 283 or under Section 290, Indian Penal Code is committed. The accused is entitled to an acquittal.

5. In the result, the judgment of the learned Magistrate is set aside and the conviction and sentence passed on the petitioner are quashed.

The Revision is allowed. Fines, if paid, should be refunded.

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