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Hardeva Vs. Lachmminarain

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Court : Rajasthan

Decided On : May-28-1952

Reported in : 1954CriLJ1005

Judge : Sharma, J.

Appellant : Hardeva

Respondent : Lachmminarain

Judgement :
ORDER

Sharma, J.

1. This is a reference by the Additional Sessions Judge, Tonk, recommending that the conviction of the accused Hardeva under Section 341, I. P. C. and sentence of Rs. 25/- fine by the Extra Magistrate, Uniara, as well as his order requiring the accused to maintain the passage through plot No. 447/2 and to remove the wall obstructing the passage be set aside.

2. Nobody appears on behalf of the accused. I have heard the learned Counsel for the complainant, who opposes the reference. Mr. R, A. Gupta on behalf of the State also says that the ground on which the reference has been made is not sound. The opinion of the learned Additional Sessions Judge Is that because the accused obstructed the carts alone, the offence of wrongful restraint is not made

out, as the said offence is committed against a person and not a vehicle. He has relied upon a ruling of a Single Judge of the Bombay High Court reported in - 'Emperor v. Rama Lala', 19 Ind Cas 177 (Bom) (A). However, the learned Counsel for the complainant as well as the learned Counsel for the State have drawn my attention to a Division Bench ruling of the Bombay High Court reported in - 'Emperor v. Lahanu Manaji' AIR 1926 Bom 118 (B). The ruling relied on by the learned Sessions Judge was considered in the last mentioned case and was distinguished.

It was held by the Division Bench that

Although there is authority for the view that all that Section 339 protects is the obstruction of any person, and that it does not cover a case where he himself is free to proceed in a direction in which he has a right to proceed, but without any impediments (such as a cart) that he may have with him, this view of personal obstruction must obviously have some limits.

Where, therefore, there was an obstruction to the complainant's proceeding with his bullocks in a direction in which he had a right to proceed with his bullocks, an offence under Section 339 was committed.

The learned Counsel for the complainant has also relied upon a ruling of Single Judge reported in - 'Gopala Reddi v. N. Lakshmi Reddi' AIR 1947 Mad 124 (C), in which it was held that

The voluntary obstruction of a cart in which a person is travelling amounts to wrongful restraint of the person who is in the vehicle. The fact that the person may be allowed to get down and then be left at liberty to proceed on his way unmolested is immaterial. If the person is prevented from proceeding at the moment of restraint the terms of Section 339 are satisfied and the offence of wrongful restraint is committed.

In - 'Mangal Singh v. Emperor' AIR 1941 Pat 384 (D) also cited on behalf of the complainant it was held that

While complainant was proceeding on the road on a turatum the accused stopped the tumtum and assaulted the complainant. In the course of this occurrence the accused wrongfully stopped the complainant for about 15 minutes. The accused were, therefore, guilty under Section 341 inasmuch as by obstructing the tumtum they prevented the complainant from proceeding on his way.

In the present case, the learned Magistrate has held on the evidence produced before him that the passage through the plot No. 447/2 on which the complainant's son was proceeding with the complainant's cart full of manure had been used for a long time as a passage for carts to the complainant's fields. The accused prevented the son of the complainant along with the cart to proceed towards the complainant's field by erecting a wall across the passage. It is clear that the complainant's son was obstructed by the accused voluntarily and prevented from proceeding in the direction in which he had a right to proceed. I think that under the circumstances of the case, the offence under Section 341 was clearly made out. I respectfully agree with the rulings of Bombay, Patna and Madras High Courts, which support the view advanced by the learned Counsel for the complainant.

So far as conviction and sentence are concerned, I see no reason to set aside the order of the learned Magistrate. It was, however, conceded by the learned Counsel for the complainant as well as the learned Government Advocate that the Magistrate had no right to order the maintenance of the passage and the demolition of the wall in the present proceedings. The order of the Magistrate so far as it relates to the maintenance of the passage and the demolition of the wall is, therefore, liable to be set aside.

3. The reference is partly accepted and the order of the Magistrate so far as it relates to the preservation of the passage and the demolition of the wall across the passage is set aside. So far as the conviction and sentence of the accused is concerned, the order of the Magistrate is maintained.

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