

Queen-empress Vs. Virappachetti

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Court : Chennai

Decided On : Dec-17-1896

Reported in : (1897)ILR20Mad433

Judge : Arthur J.H. Collins, C.J. and ;Benson, J.

Appellant : Queen-empress

Respondent : Virappachetti

Judgement :

1. The Second-Class Magistrate has acquitted the accused in these two cases of an offence under Section 283, Indian Penal Code, on the ground that the encroachment, if such there be, does not cause any 'danger, obstruction or annoyance' to the public.
2. It may be that Section 283 is inapplicable in the absence of evidence that danger, obstruction or injury was caused to any particular person, but the acts of the accused clearly fell within the definition of a 'public nuisance' in Section 268, Indian Penal Code, and was, therefore, punishable under Section 290.
3. The public is entitled to the use of the full width of the public street, however wide it may be. Whoever appropriates any part of the street by building over it infringes the right of the public quoad the part built over. The act must necessarily cause obstruction to persons who may have occasion to use their public right over the part encroached upon.

4. The Second-Class Magistrate has not decided whether the land built over was in fact part of the public street or was their own private land as pleaded by the accused. We, therefore, set aside the acquittals in both cases, and direct that the accused be re-tried and charges against them be disposed of according to law.

5. Ordered accordingly.

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