

Dula Mia Vs. Dacca Municipality

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Court : Kolkata

Decided On : Jun-28-1943

Reported in : AIR1944Cal160

Appellant : Dula Mia

Respondent : Dacca Municipality

Judgement :

ORDER

Henderson, J.

1. The petitioners are two boatmen. They have been convicted for violating the provisions of Section 198, Bengal Municipal Act. The prosecution is at the instance of the Dacca. Municipality. Their complaint is due to the fact that the activities of the two petitioners and other persons seriously interfered with the profits of the two lessees of the Municipal Commissioners. The section prohibits the keeping of ferry boats within two miles of a municipal ferry without the sanction of the commissioners. It is not disputed that neither of the petitioners has obtained such sanction. The prosecution, therefore, had to establish, firstly that the boats of the petitioners are ferry boats, and secondly, that they were kept within two miles, of the municipal ferry.

2. On the first point Mr.Dutta contended that there is no evidence that the boats in question are ferryboats. The term 'ferry, has not been defined in the Act. Mr.Dutta

argued that it connotes (1) carrying persons from a fixed point from one bank of a river to a fixed point on the other and (2) charging a fixed toll. Accepting this definition as sound I am satisfied that there was evidence upon which the Magistrate could find that the boats in question are ferry boats.

3. It remains to consider whether there was evidence that the petitioners kept them within two miles of the municipal ferry. The judgment of the learned Magistrate on this point is not very clear. Mr.Chatterjee appearing on behalf of the Crown conceded that the evidence only amounts to this that there was mere casual mooring in connexion with setting down and picking up passengers in the course of plying the boats. I should find it difficult to say, for example, that a mote bus plying on a definite route is kept at every stop where passengers are picked up or set down rather than in the garage to which it is returned at the end of the day. Mr.Chatterjee, however, contended that 'keeping' is a wider term than and includes 'plying.'

4. In this connexion he relied upon the case in *Government of Bengal v. Senayat Ali* (1900) 27 Cal. 317. That case involved the construction of Section 155 and 156 of Act 3 of 1884. I must confess that I am glad that I have not been called upon to construe the former section. I should find it difficult to say whether the words 'within a distance of two miles, etc.' qualify the word 'keep' or the words 'for the purpose of plying for hire.' If I have understood the judgment correctly the learned Judges adopted the latter construction. At any rate, the decision does not help in the construction of the present section, which is differently worded. In my judgment it is impossible to say that the word 'keeping' is wider than and includes the word 'plying.' They are really totally different things. I have been through the record and I am satisfied that there is no evidence where the petitioners kept the boats within the meaning of the section. The rules are accordingly made absolute. The convictions and sentences are set aside and the fines, if paid, will be refunded.