

State Vs. Harish Chandra

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Court : Kolkata

Decided On : Nov-28-1951

Reported in : AIR1952Cal576,56CWN163

Judge : K.C. Chunder, J.

Acts : Bengal Highways Act, 1925 - Section 5

Appeal No. : Criminal Ref. No. 76 of 1951

Appellant : State

Respondent : Harish Chandra

Advocate for Def. : Kishore Mukherji, Adv.

Advocate for Pet/Ap. : Shambhu Nath Banerji, Adv.

Judgement :

ORDER

K.C. Chunder, J.

1. This is a reference made by the Sessions Judge of Midnapur against a sentence of daily fine imposed upon one Harish Chandra Mahanty under section 5 of the Bengal Highways Act, 1925, for violation of Rule 31(2) of that Act. The substantive offence committed is obstruction on or near a public highway. The

magistrate imposed a fine for the obstruction. Upto this portion the learned Magistrate's order is correct. Then he proceeded to direct the accused

'to remove forthwith the obstruction and the unauthorised structure failing which the accused shall pay a daily fine of Re. 1/- for every day during which the breach is continued after this conviction.....,....'

This part of the order imposing a daily fine, not in accordance with section 5 of the Act. Section 5 runs thus:

'In making any rule under this Act, the Provincial Government may direct that abreach thereof shall be punishable with a fine which may extend to ten rupees, and when the breach is a continuing one, with a further fine not exceeding one rupee for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.'

This section only empowers the Magistrate to inflict a daily fine of not exceeding Re. 1/- per day when it is proved that the accused had persisted in the offence after the first conviction. The wording of the Act is very clear. Therefore what is necessary is that the learned Magistrate must have before him a specific charge of continuance in the offence for a specific number of days which must be proved to his satisfaction and then for such specific act of continuance the accused may be fined at he discretion of the Magistrate but the highest amount of the fine will be Re. 1/- per day of such proved continuance. This sort of fine in anticipation as has been imposed by the learn-ad Magistrate is not justified by the section itself.

2. Under the circumstances, the order imposing the daily fine is set aside and the referent is accepted. If any daily fine has been paid the same will be refunded. D.H. Reference accepted.