

Benode Behari Bagchi Vs. C.W.T. Hook

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SooperKanoon Citation : sooperkanoon.com/879527

Court : Kolkata

Decided On : May-10-1921

Reported in : 62Ind.Cas.328

Judge : Teunon and ;Suhrawardy, JJ.

Appellant : Benode Behari Bagchi

Respondent : C.W.T. Hook

Judgement :

1. In this case the petitioner before us has been convicted under Section 84 of the Calcutta Port Act, III of 1890, and sentenced to pay a fine of 200 rupees.
2. It appears that at a point in the Hoogly river known as Hangman's Point, about six miles below Calcutta, there has been found what is spoken of as a bandh or what might perhaps be more appropriately sailed a stage, jetty or platform. It is below the high water mark, extending into the bed of the river for a distance of 8 feet and along the bank of the river for a distance of 150 fact. it is not suggested that for the making of this erection the assent of the Local Government was first obtained and it is not disputed that the bandh in question is within the limits of the Port. The plea of the accused was simply a plea of not guilty. But he has adduced evidence to show that this jetty or platform was in existence for some 12 or 13 years and all that be has done is to raise the height of it sometime in Bysack last year. The Magistrate appears to be of opinion that the whole of this stage or

platform is the work of the accused, in as much as it appears to be new. But taking the accused's own defense the Magistrate has found him guilty of the offence of which he has been convicted. On behalf of the petitioner it has been argued before us that merely to add to or raise the height of a preexisting stage, jetty, platform or bandh is not to make or erect or fix an erection within the meaning of Section 83. We are unable to accede to this contention. The addition that has been made, on the case of the defence, to the pre-existing bandh must be in itself regarded as an erection and we must hold that the accused has been properly convicted and sentenced.

3. But the accused has further been directed by the Magistrate to remove this encroachment upon the bed of the river, that is, this stage or platform or bandh, as it has been called, within a month from the date of the order. On behalf of the opposite party it is conceded that this order cannot be supported and that the proper action for the Commissioners to take is to remove this erection under the provisions of the first Clause to Section 84. We, therefore, set aside this portion of the Magistrate's order and to that extent and to that extent only we make this Rule absolute.