

CRIMINAL REVISION.

Before Graham and S. K. Ghose JJ.

CALCUTTA STEAM NAVIGATION CO., LTD.

v.

EMPEROR.*

1930

Aug. 21, 26, 28.

Public Nuisance—Code of Criminal Procedure (Act V of 1898), s. 133.

A steamer company taking up passengers (in course of plying their steamers) from boats and from places other than recognised jetties and thereby causing back-wash involving danger to the public does not by the aforesaid acts commit any public nuisance within the meaning of section 133 of the Code of Criminal Procedure of 1898.

Per S. K. Ghose J. By the amendment of the third paragraph of section 133 of the Code of Criminal Procedure, it has been made applicable to trades which are not themselves injurious, but become so by reason of the conduct of them.

CRIMINAL RULE.

The petitioners, as well as their rival company (the Ghatal Steam Navigation Co., Ltd.), were maintaining their respective steamer services between Kolaghat (of subdivision Tanluk) and Rânichak (of subdivision Ghatal) for several years. In January, 1930, the Subdivisional Magistrate of Ghatal, acting upon a police report, drew up proceedings under section 133 of the Criminal Procedure Code against the petitioners on, *inter alia*, the allegations that they were taking up passengers (*i*) from boats and (*ii*) from places other than the recognised jetties ordinarily used for the purpose and (*iii*) that, as a result of these practices, back-wash was caused endangering the members of the public who were to travel by the Ghatal Steam Navigation Co.'s steamers. The petitioners then unsuccessfully moved the District Magistrate of Midnapur for, *inter alia*, the quashing of the aforesaid proceedings of the Subdivisional Magistrate of Ghatal and, in the alternative, for transfer of the case from Ghatal. Thereafter, the petitioners obtained this Rule from the High Court.

*Criminal Revision, No. 482 of 1930, against the order of N. K. Sen, Additional District Magistrate of Midnapur, dated March 31, 1930.

Sureshchandra Talukdar and *Haridas Gupta* for the petitioners.

B. M. Sen for the Crown.

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GRAHAM J. This Rule was issued calling on the District Magistrate of Midnapur to show cause why certain proceedings drawn up against the petitioners under section 133 of the Code of Criminal Procedure should not be quashed, or such other order made as this Court might deem fit and proper upon grounds 2, 3 and 5 in the petition to this Court. The first of these grounds is that the proceedings in question are bound to cause irreparable mischief to the lawful and legitimate trade of the petitioners, and are not contemplated by the criminal law. The next ground is that the courts below have erred in law in construing section 133 of the Code of Criminal Procedure, and that upon a proper interpretation of the section they ought to have held that it has no application whatsoever to the facts and circumstances of the case. The third and last ground is that the procedure adopted by the courts below has been illegal and without jurisdiction, and has operated to the serious prejudice of the petitioners.

It appears that these proceedings have had their origin in rivalry which had arisen between two steamer companies, namely, the Calcutta Steam Navigation Co., Ltd., and the Ghatal Steam Navigation Co., Ltd. There was evidently keen competition between these companies and their agents have been vying with one another in trying to attract passengers for their respective companies. In the order which has been drawn up by the learned magistrate, three matters have been specified for the purpose of justifying the order under section 133 of the Code of Criminal Procedure. Firstly, the alleged practice of taking up passengers from boats; secondly, the allegation that the petitioner company is in the habit of taking up passengers from places other than the recognised jetties ordinarily used for the purpose; and thirdly, that, as a result of these

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practices, back-wash is caused and that this involves danger to the public. The broad question is whether, having regard to the facts and circumstances of this case, the provisions of section 133 of the Code of Criminal Procedure have been rightly applied. In my judgment that section has no application whatever to the facts and circumstances of a case such as the present. It is to be observed that Chapter X, in which this section is included, deals with public nuisances, and it would certainly be a straining of language to hold that the acts which have been described above constitute a public nuisance. The only part of the section which could be deemed to apply is the third paragraph, which is in the following words:—"that the conduct of any trade or occupation, "or the keeping of any goods or merchandise, is "injurious to the health or physical comfort of the "community, and that, in consequence, such trade "or occupation should be prohibited or regulated "or such goods or merchandise should be removed or "the keeping thereof regulated." In my opinion, this section deals only with occupations or trades which are in themselves injurious to health and has nothing whatever to do with trades which in themselves are harmless, but, in the course of which, a public nuisance might be committed. I have no doubt whatever that the section was never intended to apply to the facts and circumstances of a case such as the present.

The result, therefore, is that this Rule must be made absolute and the proceedings in question quashed. This order will not interfere with the discretion of the magistrate or prevent him from taking any other steps under any other section of the law which may be considered to be applicable.

S. K. GHOSE J. My own view is that, by the amendment of the third paragraph of section 133 of the Code of Criminal Procedure, that section has been amplified, so that its scope has been widened. It seems to me that it can no longer be said that the

section is confined to trades which are injurious in themselves; on the contrary, it applies to cases of trades which become injurious by reason of the conduct of them. It will be noticed that the words "conduct" and "regulate" occur for the first time in the amended section. But, having regard to the facts and the circumstances of the case, I agree with my learned brother that the Rule should be made absolute.

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Rule absolute.

A. K. D.