

## CRIMINAL REVISION.

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*Before Edgley J.*

1938

Dec. 20.

PASHU PATI KARMAKAR

v.

EMPEROR.\*

*Embankment—Water-course, if includes a river—Bengal Embankment Act (Ben. II of 1882), ss. 3, 76, cl. (b).*

The definition of "water-course" in s. 3 of the Bengal Embankment Act, 1882, is not exhaustive and it includes a river.

*Emperor v. Lakshmi Narain Auddy* (1) followed.

Unauthorised obstruction of a river is punishable under s. 76, cl. (b), of the Bengal Embankment Act, 1882.

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This Rule was issued on the application of the petitioner, who was convicted under s. 76, cl. (b) of the Bengal Embankment Act, 1882. The case for the prosecution was that the tract of land between the Peâli river and Peâli left bank embankment was included in the prohibitory notification under s. 6 of the Bengal Embankment Act, 1882. The petitioner, without the previous permission of the Collector of the district, constructed a hut on the prohibited area and thereby disturbed and caused a deterioration of the stream of the Peâli river and committed an offence under s. 76, cl. (b) of the Act.

The defence of the petitioner was that the hut was in existence before the notification under s. 6 of the Act came into force and that the new construction was on the old site and did not materially affect the course

\*Criminal Revision, No. 1045 of 1938, against the order of S. M. Bhaumik, Magistrate, First Class, Alipore, dated Aug. 16, 1938, confirming the order of U. N. Ghatak, Magistrate, Second Class, Alipore, dated June 27, 1938.

of the stream and that the petitioner committed no offence under the Act. The petitioner was convicted by the trial Magistrate under s. 76, cl. (b) of the Act and was fined Rs. 50. The petitioner's appeal to the lower appellate Court was dismissed. Thereafter the petitioner obtained this Rule.

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*Suresh Chandra Talukdar* for the petitioner. The conviction is clearly illegal. Section 76, cl. (b), of the Act has no application to the obstruction of a river. Section 76, cl. (b), speaks only of a water-course which is defined in s. 3 of the Act. Section 78 of the Act refers to a river or water-course. The present prosecution admittedly relates to the alleged obstruction of a river. Hence the prosecution under s. 76, cl. (b), which refers only to water-courses, is clearly misconceived on the admitted facts of the case.

[*Ray Chaudhuri* for the Crown. The case of *Emperor v. Lakshmi Narain Auddy* (1) is exactly in point.]

I know that. But I submit that the whole scheme of the Act shows that s. 76, cl. (b), of the Act only covers cases of water-courses and not rivers. I submit also that the construction of a hut *per se* on one's own land is no offence. It is a violent presumption that the erection of the hut could be said to deteriorate a water-course. It would be straining the criminal law.

*Anil Chandra Ray Chaudhuri* for the Crown was not called upon.

EDGLEY J. In this case the petitioner has been convicted under s. 76 (b) of the Bengal Embankment Act II of 1882. It appears that he constructed a hut on the space between the river Peâli and the embankment of this river and thereby obstructed the course of the river within the meaning of s. 76 (b) of the Act.

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It is contended by the learned advocate appearing for the petitioner that s. 76 (b) cannot apply in a case in which the course of a river has been obstructed, and he maintains that this part of the section is only intended to apply to water-courses such as those mentioned in the definition of the expression "water-course" in s. 3 of the Act. This definition is, however, not exhaustive. With regard to this matter, I agree with the view held by M. C. Ghose J. in the case of *Emperor v. Lakshmi Narain Auddy* (1). In that case the learned Judge observes :—

The definition of "water-course" in the Embankment Act includes a line of drainage weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water. It is to be noted that the definition is not exhaustive. It only mentions certain items by the word "includes". In ordinary language, every river is a water-course.

In this connection it is significant that the definition of the term "water-course" in the Oxford English Dictionary is "a stream of water, a river, or a brook; "also an artificial channel for the conveyance of "water". I am, therefore, of opinion that s. 76 (b) of the Act clearly applies in a case such as this, in which there has been a diversion or obstruction of a river. Having regard to the findings contained in the judgment of the Court below, I consider that the conviction of the petitioner is quite proper and it will, therefore, be maintained.

The Rule is accordingly discharged.

*Rule discharged.*

N. C. C.