

ORDER.—In this case the petitioner was convicted by a Bench of five Magistrates, one of whom had not heard all the evidence. This vitiates the conviction—*vide* section 530 of the Criminal Procedure Code, and *Hardwar Sing or Lall v. Khega Ojha*(1) [followed in *Queen-Empress v. Basappa*(2)] and *Damri Thakur v. Bhowani Sahoo*(3). The conviction and sentence are set aside, and a retrial is ordered.

Re SUBRA-  
MANIA  
ATTYAR.  
—  
AYLING, J.

## APPELLATE CRIMINAL.

*Before Mr. Justice Ayling.*

Re K. VENKAPPA AND FOUR OTHERS (ACCUSED),  
PETITIONERS.\*

1913.  
August  
15 and 18.

*Indian Penal Code (Act XLV of 1860), sec. 283—Obstruction, causing of—Whether necessary to prove any particular individual obstructed.*

Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot-passengers from passing without inconvenience.

*Held*, that it is a necessary inference that persons were obstructed and that it is not necessary to expressly prove that any specific individual was actually obstructed.

*The Queen v. Khader Moidin* (1882) I.L.R., 4 Mad., 235, not followed.

*Queen-Empress v. Virappa Chetti* (1897) I.L.R., 20 Mad., 433, commented on.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the judgment of V. PARABRAHMA SASTRI, the Head-quarters Deputy Magistrate, Kurnool Division, in Calendar Case No. 1 of 1913.

In this case, the accused were convicted of having caused obstruction to the public road by leaving a “prabha” on the road and thus of having committed an offence under section 283, Indian Penal Code.

The evidence as to the “prabha” being an obstruction was that of the Sub-Inspector of Police who stated, “the accused leaving

(1) (1893) I.L.R., 20 Calc., 370.

(2) (1895) I.L.R., 18 Mad., 394.

(3) (1896) I.L.R., 23 Calc., 195.

\* Criminal Revision Case No. 149 of 1913 (Criminal Revision Petition No. 129 of 1913).

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the "prabah" to itself on the road causes obstruction to the public. . . . The width of that road is about three yards and that of the 'prabah' about two yards . . . The "prabha" has been on the road from 5 p.m. yesterday up to now today (7 p.m.). Nobody can now pass on that road. . . . I apprehend danger in the dark nights. I cannot pass over that road now without inconveniencing myself.

*K. B. Ranganadha Ayyar* for the petitioners having argued on the facts, maintained that there was no proof that any specific person has actually been obstructed and that on the authority of *The Queen v. Khader Moidin*(1), no conviction could be had. He also quoted *Queen-Empress v. Virappa Chetti*(2).

*J. C. Adam* for the Public Prosecutor having replied on the facts contended that *The Queen v. Khader Moidin*(1), should not be applied in this case as it was proved that a foot passenger could not pass without inconvenience and the obstruction was placed in the principal street of the village and opposite the Chavadi. In *The Queen v. Khader Moidin*(1), it was not definitely proved that the fishing nets in question were an obstruction at all. *Queen-Empress v. Virappa Chetti*(2), did not definitely lay down that proof of obstruction to a particular individual was necessary. In the present case also, the Court, if it had any doubt might apply section 290, Indian Penal Code as was done in that case.

AYLING, J.

ORDER.—The petitioners have been convicted of an offence under section 283, Indian Penal Code, by leaving a "prabha" lying in a public road for 24 hours so as to cause obstruction.

The first point argued is that the abandonment of the "prabha" was due to the action of the Sub-Magistrate (prosecution witness No. 2), who stopped the procession of the accused and others accompanying it: and that therefore the accused committed no offence. It is certain that the Sub-Magistrate apprehending a breach of the peace stopped the progress of the procession. According to his own account (which there seems no reason to distrust) he simply told the accused to go and bring their elders. According to the defence version, he threatened to fire on the processionists if they persisted in going on. In neither case can it be said that the Magistrate's action justified

(1) (1882) I.L.R., 4 Mad., 235.

(2) (1897) I.L.R., 20 Mad., 433.

or excused those carrying the "prabha" in leaving it in the middle of the street in such a way as to cause obstruction even for a short time, to say nothing of 24 hours. This plea cannot be accepted.

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KAPPA.  
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It is next represented that the accused were prejudiced by the hurried nature of the trial. I find no ground for holding that this was the case.

Lastly it is argued on the authority of *The Queen v. Khader Moidin*(1), that in the absence of evidence of obstruction to any particular individual a conviction under section 283, Indian Penal Code, cannot stand. The evidence on record shows that the road at the place in question is three yards wide, while the "prabha" was two yards wide. Consequently as long as the "prabha" remained on the road no vehicle could pass, and even a foot passenger could not pass without inconvenience. This amounts to saying that the "prabha" could not fail to cause obstruction to any person who had occasion to pass along the road which is admittedly a public one: and though obstruction to any individual is not expressly proved, it is a matter of necessary inference. I very much doubt whether the ruling in the case above quoted was ever intended to apply to a case of this kind: and, if it were, with due deference to the learned Judges responsible for it, it seems to me to go too far (*cf.* Mayne's Criminal Law of India, 3rd Edition, paragraph 403). The only other Madras case quoted to me is *Queen-Empress v. Virappa Chetti*(2). That was an appeal against acquittal. The court, while expressing some doubt as to the applicability of section 283, Indian Penal Code, pointed out that the case undoubtedly fell under section 290, Indian Penal Code, and ordered a retrial.

In the present case also, there is clear evidence to support a conviction under section 290, Indian Penal Code, which renders the offender liable to exactly the same punishment as section 283.

Under these circumstances there seems to be no ground for interference, and the petition is dismissed.

(1) (1882) I.L.R., 4 Mad., 285.

(2) (1897) I.L.R., 20 Mad., 433.