

of the nature of the application of 28th May, 1875, is supported by a decision of a Bench of this Court dated 22nd ult., in miscellaneous special appeal No. 64 of 1877, *Banki Behari*, appellant v. *Musammât Rahsi*, respondent.

1877

HUSAIN  
BAKSHI  
v.  
A. D. MADGI

We reverse the lower appellate Court's order of 20th June last, and, decreeing the appeal with costs, direct that the application be allowed and proceeded with.

*Appeal allowed.*

## APPELLATE CRIMINAL.

1877  
December 7.

*Before Mr. Justice Pearson and Mr. Justice Turner.*

EMPRESS OF INDIA v. SALIK.

*Act XLV of 1860 (Indian Penal Code), s. 211—False Charge.*

To constitute the offence of making a false charge, under s. 211 of the Indian Penal Code, it is enough that the false charge is made and that the charge is not pending at the time of the offender's trial. *The Queen v. Subbanna Gaundan* followed (1).

THIS was an appeal to the High Court by the Local Government against a judgment of acquittal passed by Mr. J. W. Power, Sessions Judge of Ghazipur, dated the 8th September, 1877, reversing a judgment of conviction passed by Mr. A. E. C. Casey, Assistant Magistrate of the first class, dated the 1st August, 1877.

As this case merely follows *Reg. v. Subbanna Gaundan* (1) already followed in *Empress of India v. Abul Hasan* (2), it is not reported in detail.

## CRIMINAL JURISDICTION.

1877  
December 15.

*Before Mr. Justice Spinkie.*

MUTHRA v. JAWAHIR AND OTHERS.

*Public Ferry—Act XLV of 1860 (Indian Penal Code), ss. 138, 441—Criminal Trespass—Regulation VI of 1819, s. 6—Disobedience to order duly promulgated by Public Servant—Act VIII of 1851.*

A person plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass," within the meaning of that term in s. 441 of the Indian Penal Code (3).

(1) 1 Mad. H. C. Rep. 30.

(2) I. L. R., 1 All. 497.

(3) As to "criminal trespass" on a right of fishery in a public river, see *The Empress v. Charu Nayiak*, I. L. R. 2 Cal. 354.

1877

---

 MITRA  
 v.  
 JAWAHIR.

If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Indian Penal Code.

THIS was a reference to the High Court, under s. 296 of Act X of 1872, by Mr J. H. Prinsep, Sessions Judge of Cawnpore, which arose out of the following circumstances :

The lessee of a public ferry situated on the Jumna at Barah, pargana Kaliānpur, zila Fatehpur, complained to Mr. G. S. D. Dale, Officiating Magistrate of the District, that one Jawahir and certain other persons, *mallahs*, residents of a village situated some three miles to the north-west of his ferry, where there was no authorised public ferry, were in the habit of plying boats for hire illegally, thereby diminishing the profits of his ferry. The Magistrate of the District directed his subordinate, Mr. J. H. Carter, to take up and dispose of the case. Mr. J. H. Carter being of opinion that there was no law obtaining in these Provinces by which the illegal plying of boats for hire could be punished, the Magistrate of the District referred him to Act VIII of 1851, Act XV of 1864, Circular No. 22 of 1874, dated the 19th September, 1874, published by the Public Works Department of the Local Government, and s. 447 of the Indian Penal Code. Mr. J. H. Carter thereupon charged the accused persons with an offence under s. 447 of the Indian Penal Code, and having tried them summarily acquitted them, on the ground apparently that they were not legally punishable under that section. The Magistrate of the District, with a view to obtaining the orders of the High Court, submitted the case to the Court of Session, who referred it, as stated above, to the High Court, observing that the case should, in its opinion, be governed by s. 6 of Regulation VI of 1819, and the accused were liable to punishment for disobeying any orders which might have been previously issued to them as well as for criminal trespass on the rights of the lessee, which matters, however, should form the subject of fuller inquiry, and that the Acts and circulars referred to by the Magistrate of the District, as they related to the levy of tolls on roads and bridges, floating or stationary, did not appear to it to apply.

The parties to the case were unrepresented.

SPANKIE, J.—I am not prepared to say that the Joint Magistrate has improperly acquitted the accused, who was charged with criminal trespass. This offence is defined in s. 441 of the Indian Penal Code as follows: "Whoever enters into or upon property in the possession of another, with intent to commit an offence (offence denotes a thing made punishable by the Penal Code), or to intimidate, insult, or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass." From the statement of the Officiating Magistrate of the District it would appear that the criminal trespass charged consisted in accused plying a boat for hire on the Jumna, three miles to the north-west of the public ferry at Barah, which had been leased to the complainant. Mr. Carter, the Joint Magistrate, considers that no offence as defined in s. 441 of the Penal Code was committed, and looking at the terms of the section and the admitted fact that the accused had plied the boat at a distance of *three* miles from complainant's ferry, I concur with Mr. Carter's view of the case.

1877

MUTTRA  
v.  
JAWAHIR.

S. 6, Regulation VI of 1819, prohibits all persons from employing a ferry-boat plying for hire at or in the *immediate vicinity* of public ferries without the previous sanction of the Magistrate. If, in the case of a prohibition distinctly made known to a person, he continued to ply a boat for hire at or in the immediate vicinity of a public ferry, the Magistrate doubtless is empowered by the Penal Code to punish him for his disobedience of such order.

Act VIII of 1851 enables the Government to levy tolls on public roads and bridges, and s. 6 relates to a distinct offence, defined in the section, committed against the person appointed to collect the toll at a public ferry or bridge, and also to the offence of unlawfully and extortionately demanding a higher rate of toll than that fixed by the schedule to the Act. It would hardly apply to the particular case before the Court .....  
..... The Court, as at present advised, sees no ground for interference under s. 297 of the Criminal Procedure Code.