

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

1887
July 9.

IN THE MATTER OF THE PETITION OF UMESH CHANDRA KAR AND ANOTHER.*

*Public nuisance—Penal Code, Act XLV of 1860, ss. 268, 283, 290—
Obstruction on tidal navigable river.*

Persons placing a bamboo stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats, which passage was, however, kept closed except on the actual passage of a boat, were charged at the instance of a sub-divisional officer with causing an obstruction under s. 283 of the Penal Code.

Held, that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code.

THE accused were charged at the instance of a sub-divisional officer under s. 283 of the Penal Code with causing obstruction to the public by raising a bamboo stockade for the purpose of fishing across the whole breadth of the Bharu, a tidal navigable river, close to the ferry at Mirzapur. It was proved at the trial before the Deputy Magistrate that the stockade reached across the river from one bank to the other ; that an opening four or five cubits wide near the northern bank of the river was made for the passage of boats, but this passage was kept closed by bamboos, it being opened only when necessary to allow boats to pass through, and that only at the convenience of the people using the stockade ; that a light was placed on the stockade at night ; that the stockade had never been used in former years ; and that, although the passage was large enough for dinghies to pass freely, yet a larger cargo boat could only do so with great difficulty, and several manjhis were called, who proved that their boats had been prevented from passing freely over all parts of the river at the point. The Deputy Magistrate on the above facts held that the public were entitled to the use of the entire breadth of the river, and that the

* Criminal Motion No. 188 of 1887, against the order passed by Baboo Bhojrab Nath Palit, Deputy Magistrate of Burdwan, dated the 11th of February, and confirmed on appeal by W. Oldham, Esq., District Magistrate of Burdwan, dated the 4th of March, 1887.

accused had by placing this stockade across the river caused an obstruction, and thereby committed an offence under s. 283 of the Penal Code; he therefore sentenced them to pay a fine of Rs. 25 each, or in default to undergo imprisonment for fifteen days.

The prisoners moved before a Bench of the High Court consisting of Petheram, C.J., and Ghose, J., and obtained a rule calling upon the Crown to show cause why the conviction and sentence should not be set aside on the ground that there was no evidence of injury to any particular individual, and no complaint by any one of any such injury, and that therefore no offence, under s. 283 of the Penal Code, had been committed, inasmuch as that section contemplated an injury to some particular person.

The rule came on for hearing before the Chief Justice and Mr. Justice Beverley.

Mr. O. C. Mullick and Baboo Jashoda Nundun Paramanick in support of the rule cited *E. S. v. Ram Singh* (1) and *The Queen v. Khader Moidin* (2); as showing that it must be proved that obstruction was caused to some particular individual before a conviction could be had under s. 283.

The Deputy Legal Remembrancer (Mr. Kilby) to show cause contended that, whether or no s. 283 applied, the case fell under ss. 268 and 290 of the Penal Code.

The order of the Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows:—

This rule has been obtained for the purpose of setting aside a conviction and sentence passed upon the petitioners for committing a public nuisance by obstructing a navigable river. Now the facts which are absolutely undisputed are that there is a navigable river somewhere in Bengal across which the defendants in this case have set a bamboo dam of some kind for the purpose of catching fish. That bamboo dam seems to extend all the way across the river, but that there is a place which is opened at times, and through which boats can then proceed. This place is also kept lighted and guarded by men for the purpose

(1) 11 C. L. R., 462.

(2) I. L. R., 4 Mad., 235.

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of seeing that no accidents happen. The first question, and in fact the only question, is whether this is a public nuisance under s. 268 of the Indian Penal Code. I do not think there can be the slightest doubt about it myself, because this being a navigable river, the public have a right to navigate over the whole place, and any one who interferes with the free navigation of it without any right to do so commits a public nuisance. It is admitted that this obstruction extends over the whole width of the river with the exception of a small outlet, through which boats can pass by using considerable precaution. Under these circumstances I do not feel any doubt that this is a public nuisance. Then the only other question is whether this is an offence which can be punished by fine under the Indian Penal Code. When this rule was applied for it was moved and granted upon the ground that there was no evidence of injury to any particular individual and no complaint by any one of any such injury, and that for that reason the petitioners were liable to be punished under s. 283, which contemplates an injury to some particular person; but on looking further to s. 290 that section provides for cases in which there is no special punishment provided for a public nuisance, and it is clear that when a person is guilty of a public nuisance of any kind he may be punished under s. 290. Under these circumstances I do not think that there is the slightest doubt that this was a public nuisance under s. 268 of the Code, and as I said before, although I had some doubt whether it was punishable under s. 283, I have no doubt that it is punishable under s. 290 of the Indian Penal Code, and the fine of Rs. 25, which has been imposed in this case, is not too heavy.

We think therefore that this rule must be discharged.

Rule discharged.