

## REVISIONAL CRIMINAL.

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*Before Adami and Chatterji, JJ.*

GOBIND RAM MARWARI

v.

KING-EMPEROR.\*

1929.

April, 17.

*Police Act, 1861 (Act V of 1861), section 34(3)—act complained of must be to the obstruction or annoyance of residents or passengers—cart, keeping of on the roadside—no obstruction or inconvenience—conviction, whether bad.*

Before a person can be convicted under section 34, Police Act, 1861, it must be established that the act complained of was to the obstruction, inconvenience, annoyance, risk, danger or damage to the public.

Where, therefore, the facts found were that a bullock cart was kept for sometime on the side of a public road but that there was no stoppage of traffic or obstruction or annoyance actually caused,

*Held*, that no offence under section 34(3) was committed.

*Ramcharitar Kahar v. King-Emperor*(1), followed.

*Per ADAMI, J.* :—Where an obstruction or a nuisance must by its nature cause inconvenience or obstruction under the section, there would be an offence without specific proof of obstruction or annoyance.

The facts of the case material to this report are stated in the judgment of Chatterji, J.

*N. C. Ghosh*, for the petitioner.

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\*Criminal Revision no. 44 of 1929, from an order of M. A. Majid, Deputy Magistrate of the 1st Class, Monghyr, dated the 24th November, 1928, affirming the order of Babu H. L. Bose, Deputy Magistrate, 2nd class, Monghyr, dated the 9th October, 1928.

(1) (1919) 51 Ind. Cas. 340.

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*C. M. Agarwala*, Assistant Government Advocate, for the Crown.

CHATTERJI, J.—This application is directed against an order passed in appeal convicting the petitioner under section 34 of the Police Act and sentencing him to a fine of Rs. 5.

It is urged in this Court that the act complained of does not, in view of the findings arrived at, come within the purview of section 34, clause (3), of the Police Act.

It appears that a certain cart was kept by a cartman on the road in front of the petitioner's shop in Bari Bazar in the town of Monghyr for about two hours. The cartman was convicted on his plea of guilty and fined Re. 1.

The learned Appellate Court refers to the evidence of the reporting constable that there is parti land between the road and the accused Gobind's shop and that conveyances stop in this parti. He also states that the road in front is some 40 feet wide and further that only one wheel of the cart was on the metalled portion of the road and that owing to the road being sufficiently wide it did not actually cause any stoppage of traffic or obstruction; but all the same he considered that the case came within the purview of section 34, because the needless keeping of a cart on the road for such a long time must necessarily cause annoyance to the public using that road. One can understand that in the circumstances of a particular case the keeping of a cart for a length of time may cause annoyance so as to constitute an offence under clause (3) of section 34. But in the circumstances of this particular case and having regard to the findings arrived at, namely, that there was no stoppage of traffic or obstruction or annoyance actually caused, there is no justification for the conviction. It has been laid down by Das, J., in *Ramcharitar Kahar v. Emperor*<sup>(1)</sup> that before a person

(1) (1919) 51 Ind. Cas. 340.

can be convicted under section 34, it must be established that the act complained of was to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers. Although the easing by a man on a public road may constitute an offence inasmuch as it causes annoyance to the residents or passengers, the mere fact that the cart was kept in parti land by the side of the road with a width of 40 feet, cannot raise any presumption by implication that it caused annoyance to the public. In the circumstances the contention of the learned Advocate for the petitioner must succeed.

The application is allowed, the conviction set aside, and the fine, if paid, is to be refunded.

ADAMI, J.—I would only add that in my opinion the proposition set out by Das, J., in *Ramcharitar Kahar v. Emperor*<sup>(1)</sup> is too wide. Wherever an obstruction or a nuisance must by its nature cause inconvenience or obstruction under the section, I would hold that there would be an offence under it. It is not necessary in every case to produce witnesses to say that they have been obstructed or annoyed: for instance the mere act of committing a nuisance on a road by way of easing oneself is sufficient to bring the person so acting within the section. In the same way if a cart is left on the middle of a road it must be held that it was causing an obstruction though it may be that no one comes forward to say that he was actually obstructed. In the present case the finding is that there was no obstruction and that there would be no obstruction by the placing of the cart on the spot where it was found. I therefore agree with my learned brother that the accused should be acquitted.

Furthermore there is a doubt in my mind whether the petitioner who was sitting at his shop could be held responsible for the keeping of the cart on the road outside his shop as the cart did not belong to him.

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