

not be appointed by the Deputy Commissioner and the same trouble repeated. Apart from this a pradhan may be ejected, but the rent of the landlord is lost in case the pradhan has no property from which it can be realised. I would, therefore, invite the attention of the Government and the legislature to the situation which is likely to arise in consequence of our holding that the genuine pradhans are not saleable, in the hope that more effective means may be devised for recovery of rent payable by the *pradhans* to the landlord. So far as the merits of the cases are concerned, I think the conclusion to which I have reached is the only possible conclusion on a consideration of the different provisions of the Act and of the *satwalipis* which are conclusive.

I would, therefore, allow these four appeals, set aside the order of the learned Judicial Commissioner (Mr. Najabat Husain) in these cases and restore that of the learned Deputy Collector, and hold that the *pradhans* in these cases are not saleable. The appellants will be entitled to their costs in this Court as well as in the court of the Judicial Commissioner. The costs, which have been incurred in all the ten appeals jointly, will be apportioned according to the value of the appeals in each case.

SAUNDERS, J.—I agree.

*Appeals allowed.*

## REVISIONAL CRIMINAL.

*Before James and Verma, JJ.*

KHAJA ABDUL GHANI

*v.*

KING-EMPEROR\*

*Bengal Ferries Act, 1885 (Act 1 of 1885), sections 16 and 28—lessor of ferry whether responsible for carrying passengers in contravention of the provisions of section 16 of the Act.*

1936.

DEBNATH  
MAHATA

*v.*  
JAGDISH  
CHANDRA  
DEO  
DHARAL  
DEB.

KHAJA  
MOHAMAD  
NOOR, J.

1936.

April, 28,  
29.

\* Criminal Revision no. 100 of 1936, against an order of A. Mukherjee, Esq., I.C.S., Sessions Judge of Purnea, dated the 23rd January, 1936, confirming the order of Babu Ram Janam Singh, Magistrate, First Class, Kishengunj, dated the 25th of November, 1935.

1936.

KHAJA  
ABDUL  
GHANI  
v.  
KING-  
EMPEROR.

*Held*, that the person who actually conveys passengers in contravention of the provisions of section 16 of the Bengal Ferries Act is responsible and liable to be punished under section 28 of the Act. The persons really liable under the Act are the farmers, the thikadars, ghatwalas or whatever they may be called and not the lessor who does not actually convey the passengers for hire.

*Jeobaran Singh v. Ramkishun Lal*(1), distinguished.

The case was in the first instance heard by Macpherson, J. who referred it to a Division Bench.

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

*S. N. Sahay* (and *J. Rahman*), for the petitioners.

*Manohar Lal* (and *R. K. L. Nandkeolyar*), for the opposite party.

JAMES, J.—The petitioners who are the proprietors of Chota Salkhi village in Purnea district have been each fined fifty rupees under section 28 of the Bengal Ferries Act. It appears that up to the beginning of 1928 there were two ferries across the Mahananda river, one of which was the ferry of the petitioners, while the other which belonged to Raja P. C. Lal Chaudhuri had fallen into disuse. Raja P. C. Lal Chaudhuri's ferry was acquired by the District Board; and by a Government notification of the 25th of June 1928 it was declared to be a public ferry. It appears that nothing was done for some years, until at the end of 1932 the District Board caused notice to be issued on the petitioners to discontinue the working of their ferry while the Board at the same time made arrangements for boats to convey passengers across their own ferry. The petitioners on receipt of the notice from the District Board objected that their ferry was not within two miles of the District Board Ferry, and continued to work their ferry. This led to a prosecution which resulted in conviction under section 28 of the Bengal

(1) (1926) 96 Ind. Cas. 522.

Ferries Act, though the conviction was ultimately set aside in revision on the ground that the limits of the District Board's ferry had not been defined. The matter was then again allowed to rest for two years until in August, 1935, the present prosecution was instituted. The petitioners objected that the limits of the District Board had not been notified under the Act and that their own ferry was actually not within two miles of the District Board ferry. On these points the finding of the lower court is against the contention of the petitioners, the finding being that the petitioners' ferry is within two miles of the District Board ferry, and that it has not been satisfactorily shown that the limits of the ferry at the time of the notification of 1928 were different from the present limits.

1936.

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KHAJA  
ABDUL  
GHANI  
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EMPEROR.

JAMES, J.

The person who is liable under sections 16 and 28 of the Bengal Ferries Act is the person who conveys passengers for hire. The complainant on behalf of the District Board named as accused in the magistrate's court the proprietors of Chota Salki village, with the lessees of the ghat and the boatmen. The magistrate, regarding the lessees and the boatmen as mere underlings or servants of the proprietors, acquitted them, while he convicted the proprietors who had leased out the ferry. There appears to be nothing in the evidence to indicate that any of these zamindars had actually conveyed passengers for hire or collected tolls from passengers so conveyed; and it appears that the persons really liable under the Act are the lessees or farmers of the ghat who collected tolls and conveyed passengers across the river by means of their hired boatmen. Mr. Manohar Lal on behalf of the District Board suggests that the proprietors who leased out the right to ferry should be regarded as the persons who conveyed passengers for hire within the meaning of section 16 of the Ferries Act, relying on the decision in *Jeobaran Singh v. Ramkishun Lal*<sup>(1)</sup>. In that case the persons convicted were the owners of

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(1) (1926) 96 Ind. Cas. 522.

1936.

KHAJA  
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GHANI  
v.  
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EMPEROR.  
JAMES, J.

the steamers which were disturbing the complainant's right of ferry; and Adami, J. in coming to this decision followed a decision of the Calcutta High Court wherein it was pointed out that the person who maintained a ferry in contravention of section 16 was the farmer, and not the mere servants of the farmer. There is nothing in either of these decisions which would support the view that the person liable to punishment under section 28 read with section 16 of the Ferries Act is the person who leased out the ferry right. The person made responsible by the Act is the person who conveys passengers for hire; that is to say the farmer, the thikadar, ghatwala or whatever he may be called. In the present case the farmers have been acquitted, and we have only the lessors before us. They have not conveyed passengers for hire; and so they are not liable to punishment under section 28 of the Ferries Act. Their convictions and sentences must be set aside and their fines if paid must be refunded.

It would be well if this dispute could now be settled. The District Board by the manner in which they have dealt with their ferry after acquisition, have given the petitioners cause to suppose that the right under section 16 of the Bengal Ferries Act would not be enforced possibly because the District Board did not desire to be met with a claim to compensation under section 17 of the Act. The matter should now be settled and it should be made clear whether the petitioners are to close their ferry and receive compensation under section 17 of the Bengal Ferries Act; or whether the claim of a monopoly is to be waived, and the petitioners are to continue to enjoy their right of ferry.

VARMA, J.—I agree.

*Rule made absolute.*