

APPELLATE CRIMINAL.

Before Mr. Justice Chevis, Acting Chief Justice and Mr. Justice Dundas.

THE CROWN—*Appellant,*

versus

PAKHAR SINGH—*Respondent.*

Criminal Appeal No. 332 of 1920.

Canal and Drainage Act, VIII of 1873, section 70 (4)—“authorized distribution”—whether it includes the internal distribution made by a village community.

One P. S. mortgaged 14 *bighas* of his land to B. S. According to arrangement in the village every man was allowed to use the water from the canal for a period of one *ghari* (24 minutes) for every seven *bighas* of land. B. S. wanted to take his turn but P. S. prevented him. The former then presented a complaint and P. S. was convicted by a Magistrate of an offence under section 70 (4) of the Canal and Drainage Act. On appeal the District Magistrate acquitted P. S. holding that the distribution of water with which P. S. interfered was not an “authorized distribution” within the meaning of section 70 (4) of the Act. The Government appealed to the High Court from the order of acquittal. It was admitted that the Canal authorities distribute the water between the different villages, but that the internal distribution in any village was left to the proprietary body of that village and was accepted by the authorities.

Held, that the internal distribution in the village was not an “authorized distribution” within the meaning of section 70 (4) of the Canal and Drainage Act, as it had never been formally approved or sanctioned by any Canal authority, the latter having merely accepted the distribution made by the villagers.

The facts are sufficiently stated in the judgment.

Mehrab Singh, Public Prosecutor, for the Crown—
The sole point in this case is as to what meaning is to be attached to the words “authorized distribution” in section 70 (4) of the Canal Act. There is no doubt that “authorized distribution” means a distribution made by some authority. According to the Dictionary the word “authorize” means to give authority, warrant or legal power, to establish by authority, by usage or by public opinion, to justify. This shows very clearly that the narrow meaning

attached to the word by the District Magistrate is not warranted. In this case the villagers have been taking turns of water all along according to the distribution made by the village community and by usage which has never been objected to by the Canal authorities. The Canal papers have been prepared, rates levied and realised in accordance with this distribution.

The Canal Officers set apart a certain amount of water for this particular village and delegated their authority to the village community to distribute it among themselves. This would be an implied authority practically as effective as express authority.

The Respondent appeared in person but was not heard.

Appeal from the order of Lieutenant-Colonel J. C. Ooldstream, District Magistrate, Ludhiana, dated the 17th February 1920, reversing that of Pandit Bishan Das, Deputy Collector and Magistrate, 2nd Class, Jagraon, District Ludhiana, dated the 3th October 1919, and acquitting the respondent.

The judgment of the Court was delivered by—

CHEVIS, C. J.—This is an appeal by Government against an order of acquittal. The facts are as follows :—Pakhar Singh mortgaged 14 *bighas* of his land to Budh Singh. According to the arrangement which is in force in the village to which the parties belong, every man is allowed to use the water from the canal for a period of one *ghari* (= 24 minutes) for every seven *bighas* of land. Pakhar Singh's original turn lasted for six *gharis* but in consequence of his having mortgaged 14 *bighas* to Budh Singh he had to give up two *gharis* of his turn to Budh Singh. When Pakhar Singh had used the water for four *gharis*, Budh Singh wanted to take his turn, but Pakhar Singh would not agree and drove Budh Singh away. Pakhar Singh's defence is that he only mortgaged the land but did not give up his rights of irrigating the remaining land for the full period of six *gharis*. This defence was overruled by the Magistrate who held that the right to use the water went with the land, so the Magistrate convicted Pakhar Singh under section 70 (4) of the Canal and Drainage Act,

1920

THE CROWN
v.
PAKHAR SINGH.

1920

THE CROWN
 *
 PAKHAR SINGH.

VIII of 1873, and sentenced him to a fine of Rs. 10 or in default one week's rigorous imprisonment. Pakhar Singh appealed to the District Magistrate who agreed with the Magistrate on the merits, but held that the distribution of water with which Pakhar Singh interfered was not an "authorized distribution" within the meaning of section 70 (4).

We are informed by *Sardar* Mehtab Singh, who appears in this Court on behalf of the Crown, that the Canal authorities distribute the water between the different villages, deciding how long each village is to have the use of the water, but that the internal distribution in any village is left to be settled by the proprietary body of that village. The question is whether the distribution made by the villagers themselves is an authorised "distribution" within the meaning of section 70 (4). It is, as the learned District Magistrate describes it, a *waribandi*, based merely on mutual agreement between the persons who use the water. No doubt the Canal authorities are quite content to leave it to the villagers to settle the internal distribution themselves, and so long as the arrangement works smoothly there is no need for the Canal authorities to interfere. But still we find ourselves unable to hold that such distribution can be properly described as an "authorized distribution." By the words "authorized distribution" we understand, as does the District Magistrate, a distribution made by some authority, and we cannot regard a distribution made simply by the proprietary body as an "authorized distribution" within the meaning of section 70 (4).

It has been argued before us that it is merely a case of the revenue authorities delegating their own authority to the villagers, and that the arrangements made by the villagers are confirmed by the revenue authorities inasmuch as the latter realise water rates in accordance with the distribution and thereby ratify the arrangements made by the villagers. No doubt the Canal authorities are quite willing to accept the arrangements made by the villagers and to levy the water rates accordingly, but the mere fact that they accept the distribution made by the villagers does not, in our opinion, make that distribution an "authorized distribution" within

the meaning of the Act. It is urged that if the Canal authorities are driven to make the internal distribution within each of the villages, this will entail a tremendous amount of extra trouble and labour, but we are unable to see why each village should not be called on to submit a scheme for its own distribution which can be sanctioned by the Canal officer concerned. In other words, the villages can still continue to make their own arrangements as before, but when the arrangement has once been made in the village it can be put up before a Canal officer for sanction. When that officer has once sanctioned the proposed arrangement, the distribution, though actually arranged by the village proprietors, will become a distribution sanctioned by the Canal officer and will then have his authority. In the present case we are unable to find that the distribution made by the villagers has ever been submitted to any Canal officer for approval or sanction. All that appears is that so long as no trouble arises the Canal authorities are content to leave it to the villagers to make their own arrangements. We think it would be straining the law to hold that a distribution made by the village proprietors is an "authorized distribution" within the meaning of section 70 (4). We, therefore, agree with the finding of the learned District Magistrate and dismiss the appeal.

1920

THE CROWN
v.
PAKHAR SINGH.

A. N. C.

Appeal dismissed.