
(1930) 04 CAL CK 0009
In the Calcutta High Court

Emperor

APPELLANT

Vs

Chauthmall and Another

RESPONDENT

Date of Decision : 02-04-1930

Acts Referred:

Penal Code, 1860 (IPC) — Section 225B, 353

Citation : AIR 1930 Cal 444

Hon'ble Judges : Guha, J;C.C. Ghose, J

Bench : Full Bench

Judgement

C.C. Ghose, J.—This is an appeal by the Government of Assam and it arises out of the following circumstances.

2. On 9th March 1929, at about 10 p.m. two constables of Jorhat Town Police in the District of Sibsagar, named Phanidhar Aham and Bibhu Ram Chutia, while on duty were passing along the Trunk Bond. They saw accused 1, Chauthmall making water by the side of the read. The constable thereupon went up to the said accused and told him that he had committed an offence punishable under the Police Act and asked for his name. The accused refused to give his name and thereupon the constable, Phanidhar, gave him a piece of paper and pencil and asked him to write his name thereon. The accused having refused to do that either, the constables arrested the accused by seizing his two hands. The constables thereafter asked the accused to go with them to the thana and he having refused to go to the thana, the constables tried to tak him by force. It is said that thereupon Chauthmall called out to his friends who with the accused 2 came up, assaulted the constables and rescued accused 1 from their custody. The accused were thereafter placed on their trial before the Magistrate, First Class, Jorhat under Sections 147 (rioting), 225-B (escaping from lawful custody) and 353 (assaulting a public servant), I.P.C. The trying Magistrate by his order dated 4th July 1929, negatived the case against the accused u/s 147. He, however, was of opinion that the accused had committed the offences punishable under Sections 225-B and 353, I.P.C., and he thereupon convicted them under

those sections and sentenced them to pay certain fines. The accused then preferred an appeal to the learned Sessions Judge of the Assam Valley Districts and that officer by his judgment and order dated 23rd September acquitted both the accused, holding that making water was not included within the expression "commits nuisance by easing himself" as used in Clause 7, Section 34, Act 5 of 1861. Now, having regard to the view which we have taken it is only right and proper that we should set out herein a short extract from the judgment of the learned Sessions Judge, Mr. Patterson, dealing with this question. The Sessions Judge observes as follows:

The act in respect of which Chauthmall was arrested by the constable was that of making water by the side of the public road, and the only point that has been discussed before me on appeal is whether this was, or was not an offence u/s 34, Act 5 of 1861, Under that section, a person who "commits nuisance by easing himself" is under certain circumstances, liable to punishment, and may be arrested without a warrant by any police officer in whose view the offence is committed. The section is, however, silent as to whether, "making water," in similar circumstances is an offence or not. The question is, therefore, whether the act of making water is, or is not covered by the term "easing himself." I am definitely of opinion that it is not covered thereby. "Easing oneself" means, "evacuating the bowels," whereas "making water" means "evacuating the bladder." The two things are quite distinct, and there are obvious reasons why the former has in certain circumstances, been made a cognizable offence under the Police Act, while the latter has not been declared to be punishable and cognizable under that Act though it might be, and often is, declared so to be under bye-laws framed by the local authorities.

3. It is argued on behalf of the Local Government in this appeal that the learned Judge's construction of the expression referred to above is much too narrow and is indeed wrong in law and that such construction has occasioned a failure of justice. The accused did not appear by an advocate before us but we invited Mr. Ramendra Chandra Roy to assist us in this matter as an *amicus curiae*. Mr. Roy has contended that the learned Sessions Judge's construction is by no means to be summarily rejected and has further argued that on the evidence on record there is no case for action u/s 34, Police Act, inasmuch as there is no evidence of any obstruction, inconvenience, annoyance, risk, danger of damage, or resistance of passengers. He has, therefore, submitted that it was not lawful in the circumstances for the constables to take accused 1 into custody without a warrant. Now the expression "easing one self" means relieving nature and the expression "relieving nature" means "evacuating the bladder or bowels" : (see Fowler's Concise Oxford Dictionary); the underlying idea being that of relief or comfort to one's person or freedom from strain. , If that is so, then it is difficult to hold that "making water" is not within the ambit of the expression "easing oneself." I am not unaware that in Murray's Oxford Dictionary the expression to ease nature is put down as being absolute but equivalent to the expression to ease oneself "which again is put down as equivalent to relieve the bowels." The

word "ease" is of French origin and the word nature is of Latin origin; and going by the etymological meaning of the word "nature" it would include the bowels as well as the bladder. In an ancient book called Potter's Antiquities of Greece (1715) the expression occurs "Whosoever easeth nature in Appollo's Temple shall be indicted." Saving regard to the context in which it appears, the expression would include evacuating the bladder as well as the bowels. It is, however, not necessary for us to go into the lexicographical meaning of the expression in older days. It is sufficient to observe that the expression in modern times means what has been given in Fowler's Oxford Dictionary. We are, therefore, of opinion that the learned Sessions Judge in the view he has taken has placed an unduly narrow construction on the expression and to that extent he is wrong in law.

4. The question, however, arises whether on the evidence on record this is a fit and proper case for interference by this Court with an order of acquittal. We, have, therefore, made ourselves acquainted with the entire record and we are satisfied that in this case there is no evidence on record of any annoyance or inconvenience caused to anybody, having regard to the hour of the occurrence alleged. Therefore, on the facts, we are of opinion that this is not a fit and proper case for interference with an order of acquittal. The result therefore in that the present appeal stands dismissed on the facts, it being held that the learned Judge's constructions of the expression in Clause 7, Section 34, Act 5 of 1861 is wrong.

5. The accused who are on bail will be discharged from their bail bonds forthwith.

Guha, J.

6. I agree.