

(1936) 09 CAL CK 0003
In the Calcutta High Court

Gangeya Narotham Shastri

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 16-09-1936

Acts Referred:

Citation : AIR 1937 Cal 45

Hon'ble Judges : R.C. Mitter, J;Henderson, J

Bench : Full Bench

Judgement

R.C. Mitter, J.—In this case the appellant before us has been convicted u/s 84, Port Act, and sentenced to pay a fine of Rs. 500. The subject matter of the charge is a wall which has admittedly encroached into the river Hooghly beyond the highwater mark. The proceedings were started on the basis of a report submitted by Mr. Wilcox on the 21st June 1935. He stated in that report that while surveying in that locality he noticed that the construction was in progress at the place, that is to say, the wall was being actually built and the base of the wall was below the highwater level because in the report he says that the outer wall is approximately 14 feet above the standard level of the Kidderpore Dock, the high-water level being 1509 feet above that standard level. In the said report he also stated that the owner has assured him that he would submit a plan and apply for sanction before proceeding further with the wall. The defence that was taken is that there was a wall at the place from before 1926 when the appellant purchased the house and the land and that he was merely repairing the existing wall. He says that he has committed no offence because he is not erecting for the first time a wall at a place which is below the high-water level. The question is pre-eminently a question of fact. The learned Chief Presidency Magistrate has come to the finding that there cannot be any doubt that there was an old wall there, but the old wall was being extended. We have examined the evidence in detail and it appears to us that there are certain salient facts which go to support the finding of the learned Chief Presidency Magistrate. There is evidence on the record that in the year 1923 there was no wall at the place, that in 1922 the vendor of the accused applied for sanction u/s 83, Port Act, but sanction was

refused. There is nothing to suggest that between 1923 and 1935 there was any application for sanction u/s 83, Port Act, which has been granted.

2. The wall whether a portion of it was an old wall or not was clearly an unauthorised act. If it is added to, the case clearly comes, in our opinion, within Section 84, Port Act. There is also positive oral evidence to support the finding that in 1935 the accused was making additions to the wall. After the report submitted by Mr. Wilcox on the 21st June 1935 the accused was formally asked to stop the construction. After that he wrote a letter Ex. 8 in the case which is dated the 16th July 1935 wherein he took up the position no doubt that it was no new construction but he agreed to obtain the necessary permission for the purpose of proceeding with the work. This letter was followed, up by the accused and his pleader going to the Port Office in order to enable them to put in an application for permission under the provisions of Section 83, Port Act. When that application with the necessary plan had been put in, Mr. Kelly was asked to report and he went to the place in October 1935 and took the levels. The result of his inspection is embodied in Ex. 10 which was prepared on the 25th October 1935. No doubt from these notes he prepared a plan after the institution of the proceedings. That plan is marked Ex. 11. But this plan was prepared on the figures which he had noted down on the 25th October 1935 and no suggestion has been made as to the accuracy of the map Ex.11. That plan clearly indicates the encroachment into the river-bed, a portion of which according to the finding of the learned Magistrate is undoubtedly a new construction, a finding which is well supported by the evidence which we have examined. We accordingly hold that the accused has been rightly convicted u/s 84, Port Act. We accordingly dismiss this appeal.

Henderson, J.

3. I agree and only desire to say this: The appellant failed to establish his case that the wall was originally made by his vendor and that he himself was merely repairing that wall, a story which, in fact, is a highly improbable one. But supposing it was true, in my opinion it would not make the slightest difference. When the wall itself was an illegal erection it appears to me to be no defence for the appellant to say that he was merely re-erecting part of it.