
(1900) 01 CAL CK 0014
In the Calcutta High Court

The Government of Bengal

APPELLANT

Vs

Senayat Ali and Another

RESPONDENT

Date of Decision : 22-01-1900

Acts Referred:

Citation : (1900) ILR (Cal) 317

Hon'ble Judges : Stanley, J;Prinsep, J

Bench : Division Bench

Judgement

Prinsep and Stanley, JJ.—The matters raised for our determination in this appeal relate to the construction of the sections regarding municipal ferries contained in the Bengal Municipal Act. Certain persons were travelling by sampan in a khal which flows into the Kurufali river. On that river there is a municipal ferry plying in the neighbourhood of that khal. Complaint was made to the Magistrate by some passengers in a boat going through that khal, and after entering the Kurufali river, landing them on the opposite side, that they had been stopped by the servants of the ferryman, and had been made to pay tolls under the Municipal Act as if they had crossed that river in a municipal ferry boat.

2. There was some argument before the Assistant Magistrate, who held the trial, whether the terms of Section 155 of the Municipal Act; in regard to the limits of the ferry would apply to passengers going from a distance of more than two miles through the khal into the river so as to convey them to the opposite bank. For the defence, it was contended that the passengers had entered that boat within two miles from the mouth of the khal, and were therefore within the terms of Section 155. The Assistant Magistrate, however, held, on the evidence, that the passengers had entered the boat beyond the limit of two miles; that, therefore, they would not come within the terms of the Municipal Act; and that consequently the demanding and obtaining payment. of tolls from them by the servants of the municipal ferryman and their detention until such payments were made, constituted the offence of wrongful restraint, of which he accordingly convicted the servants and sentenced them to a fine.

3. On appeal, the District Magistrate held that he was bound to follow a judgment in a precisely similar case delivered by the Sessions Judge, in which that officer had held that the crossing of the bar at the mouth of the khal, so as to enter the Kurufali river, and to land passengers on the opposite bank, constituted a breach of the Municipal Act. He accordingly set aside the conviction and sentence.

4. An appeal has been made by the Local Government against the order of acquittal.

5. Now in regard to the merits of the case, we may at once say that the ferrymen under no circumstances had authority to demand tolls from these persons who were merely passengers in an unlicensed boat. The remedy is provided by Section 156 of the Municipal Act against the person who keeps a ferry boat without license plying within the prescribed limits. The conviction and sentence were therefore proper, and must be restored.

6. But, as a part of this case, we have been asked to consider whether the Magistrate is right in adopting, as a matter of law, the precedent of a judgment of the Sessions Judge in a former case; that is to say, whether the mere crossing the bar of the khal leading into the limits of the municipal ferry would constitute a breach of the Act. We are of opinion that the view expressed by the learned Sessions Judge is erroneous. The crossing of the bar of a stream so as to enter another stream would constitute no breach of Sections 155 and 156. A "ferry," as we understand the meaning of that expression in the Bengal Municipal Act, means the exclusive right to carry passengers across the stream from one bank to the other on payment of certain prescribed tolls, and the object of Section 155 appears to us to be to prevent the crossing of passengers from one bank of the river to the opposite bank by a boat plying for hire without a license within the prescribed limits. On both grounds therefore the order of the District Magistrate on appeal setting aside the conviction and sentence is bad.

7. The order of the Assistant Magistrate is restored.