

(1869) 03 CAL CK 0015
In the Calcutta High Court

The Queen

APPELLANT

Vs

Kabil Manji and Others

RESPONDENT

Date of Decision : 05-03-1869

Acts Referred:

Citation : (1869) 03 CAL CK 0015

Judgement

Sir Barnes Peacock, Kt., C.J.—In this case, Mr. Beaufort, the Judge of the 24-Pergunnahs, has sent up a conviction of three manjis, for having obstructed the line of navigation in the new canal, opposite Sura bazaar. The conviction was u/s 16 of Act V of 1864 of the Bengal Council. That section enacts, that any person who shall willfully cause or shall aid in causing any obstruction to any line of navigation, or who shall willfully omit to remove such obstruction after being requested so to do, shall be punished, on conviction before a Magistrate, with simple imprisonment, which may extend to one month, and shall also be liable to fine, &c. Mr. Beaufort, upon a petition being presented to him, called for the record of the proceedings, and has sent up that record to this Court, in order that it may be revised; and the Court, therefore, has revised it under the provisions of Section 404 of the Code of Criminal Procedure.

2. There does not appear to have been any summons to these persons, nor any warrant for their arrest, nor is there a record of any charge having been drawn up; but the manjis were arrested without warrant and brought before Mr. Galiffe. If there had been a summons, it must, according to the form annexed to the schedule to the Code of Criminal Procedure, have stated shortly the offence charged, and the party would have been summoned to answer it. If the parties had been arrested under a warrant, the warrant would, in like manner, have stated the offence. It is not necessary here to enquire under what authority of law these parties were arrested without warrant. I merely refer to the absence of a summons or warrant to show that there was no charge in writing which the manjis were called on to answer.

3. The record commences with the evidence of Mr. Milwrick, who says that, on

the 25th, at 3 P.M., whilst on rounds at Chingrighatta, he found three boats laden with wood tied to trees on the east side of the new canal, opposite Sura bazaar, and thus obstructing and endangering the navigation of the canal. It was flood tide, and the traffic was very great. These boats were tied by one rope by their heads to trees, the stern across stream; that he had these boats removed to Raja's Khal, and arrested the three manjis named.

4. There is nothing in that evidence to show that the manjis were willfully obstructing the navigation, and nothing to show that they were required to remove the boats, or that they continued the obstruction after they were required to remove them.

5. The record proceeds: "Kabil admits the charge; Jailal, ditto; Sukea ditto; but states that his boat was not tied to a tree but to a lagi driven into the bank."

6. The admission of the charge does not amount to any thing, unless we know what the charge was. The evidence does not show that the parties were willfully obstructing, and the admission of the charge might be, and probably was, merely that they tied their boats to the bank, and not that they willfully interrupted the navigation.

7. The finding was that the defendants "are convicted of obstructing the navigation of the Calcutta Canal, and they are then sentenced to fifteen days" jail each, under Act V of 1864, Section 16. The finding does not state that the accused willfully obstructed the navigation. There is, therefore, no charge; there is nothing in the evidence or in the admission of the prisoners, or in the finding, to show or lead us to suppose that the prisoners willfully obstructed the navigation. Mr. Galiffe appears to have considered that an obstruction, whether willfully or not, was sufficient to render the prisoners liable to imprisonment. It is not for me to say that fifteen days" imprisonment would have been too much for the offence of willfully obstructing the navigation, or of willfully continuing an obstruction after a request to remove it, if such an offence had been proved by the evidence; but it appears to me that there is nothing whatever to show that the prisoners acted willfully. The accused have already suffered six days" imprisonment, and it appears to me that the order of the Deputy Magistrate ought to be quashed. It is, accordingly, quashed, and the prisoners are to be forthwith released.