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**(1941) 11 AHC CK 0004**

**Allahabad High Court**

**Case No:** Criminal Revision No. 738 of 1941

Ramji Lal and Others

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Nov. 26, 1941

**Acts Referred:**

- Northern India Canal and Drainage Act, 1873 - Section 3(2), 70
- Penal Code, 1860 (IPC) - Section 430

**Hon'ble Judges:** Ganga Nath, J

**Bench:** Single Bench

**Advocate:** Messrs. R.B. Jaini and M.A. Kazmi s, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

Ganga Nath, J.

This is an application in revision by Ramji Lal, Prithi, Chamela and Budh Singh against their conviction and sentences, under S. 70 of the Northern India Canal & Drainage Act (No. 8 of 1873). They have each been sentenced to pay a fine of Rs. 45 or to undergo one month's rigorous imprisonment in default.

2. The case for the prosecution was that the Applicants removed a Water-course from their own fields through which water used to pass to the fields of the complainant. It has been found by the learned trial Magistrate that the Water-course had been made by the accused on their own land and that it was with their permission that it was used by the complainant to irrigate his fields. The learned trial Magistrate has observed:

As regards S. 430 I.P.C. I find that the Water-course in question was made by the accused in their own land and the complainant utilized it with their permission. Of course he had no right to irrigate his land through that channel. The offence of mischief is defined in S. 42 r.I.P.C. and the words "wrongful loss" which appear in the definition are also defined as the loss of the property by unlawful means to which

the person losing it is legally entitled. Now it is obvious that the complainant was not entitled in any way to use that Khul and therefore the accused cannot be convicted of the offence under that Section.

It has been urged by the prosecution that " Water-course " has been defined in S. 3 (2) of the Northern India Canal & Drainage Act, and in view of the definition it is immaterial for the purposes of S. 70 whether the Water-course belongs to the accused, has been constructed by them on their own land and is used by the complainant with their permission or not. Water-course as defined in S. 3 (2) of the Act means any channel which is supplied with water from a canal, but which is not maintained at the cost of the Provincial Government, and all subsidiary works belonging to any such channel. According to the definition, a water-course, to interfere with which it would be an offence under S. 70 of the Act, may not necessarily have been constructed or maintained at the cost of the Provincial Government but does not bring every water-course under the provisions of S. 70. If it were so it would be an offence to make any alteration in the drains constructed by a person in his own field for irrigating it in a particular manner. In one year he may cultivate his field and divide it into sub-plots and irrigate them in one manner and in the next year he may, do so in another manner. According to the contention of the prosecution, it would not be possible for him to do so; and if he did so he would be guilty of an offence under S. 70. This would obviously be illogical. A water course may be made and maintained either at the expense of the Provincial Government by the Canal authorities or at the expense of a private person on the land of other persons.

3. Section 21 of the Act lays down:

Any person desiring the construction of a new Water-course may apply in writing to the Divisional Canal-Officer, stating--

(1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such Water-course to pass, a right to occupy so much of the land as will be needed for such Water-course;

(2) that he desires the said Canal-Officer, in his behalf and at his cost, to do all things necessary for acquiring such right ;

(3) that he is liable to defray all costs involved in acquiring such right and constructing such water course.

4. According to it a person may acquire a right to occupy a part of the land of another person which may be needed for a Water-course, either by a private arrangement or through the Canal Officer. In either case it would be unlawful for the owner of the land to interfere with such Water-course under S. 70 of the Act. In the present case the Water-course did not belong to the complainant. It belonged to the accused themselves, and it was with the accused's permission that the

complainant was allowed to take water through it for irrigating his fields. The complainant had not acquired any right to occupy any part of the land which was needed for the Water-course. In fact, no Water-course of the complainant existed on the land in dispute which belonged to the Applicants. The Applicants cannot, therefore, be held guilty of any " offence under S. 70 of the Act. In *Hukman v.K. E.* AIR 1921 Lah. 327, it was held:

A right to obtain the passage of water over another man's property can be secured legally by the Canal Department acting on its own authority or it can be obtained on the application of a private person to the Divisional Canal Officer under S. 21 of the Act. Such a right can also be obtained by a private agreement. But where one person merely permits another to take water on a Water-course existing on the former's land and then discontinues the permission and stops the Water-course, he is not guilty under S. 70. The Act in no way contemplates that one man has a right to the passage of water for his fields through the fields of another except that such right is derived in any of these ways from the Canal Authorities or obtained by private agreements.

5. The Applicants have not committed any offence. It is therefore ordered that the application be allowed and the conviction and sentences of the Applicants be set aside. The fine, if paid, will be refunded. Application allowed.