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(1879) 03 CAL CK 0004

Calcutta High Court

Case No: None

In Re: Chunder Narain

APPELLANT

Vs

RESPONDENT

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Date of Decision: March 28, 1879

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 297
- Penal Code, 1860 (IPC) - Section 447

Citation: (1879) ILR (Cal) 837

Hon'ble Judges: Mitter, J; Birch, J

Bench: Division Bench

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### Judgement

Mitter, J.

This is an application by one Chunder Narain against the order of the Assistant Commissioner of Kamroop, dated 8th August 1878, convicting him of the offence of "criminal trespass" u/s 447, Indian Penal Code, and imposing upon him a fine of Rs. 50.

2. The application is u/s 297 of the Criminal Procedure Code. The facts found by the lower Court are, that the applicant "entered into or upon property in possession of" the complainant; but it is also found that his object was to kill a deer, the pursuit of which was commenced by him from a spot outside the garden in possession of the complainant. The definition of "criminal trespass" is given in Section 441, Indian Penal Code. The conviction is therefore illegal, and must be quashed.

3. We accordingly set it aside, and direct that the fine, if realized, be refunded.

Birch, J.

4. The petitioner has been convicted of criminal trespass u/s 447 and fined Rs. 50. The case was tried summarily, but the evidence was taken down, and the finding upon that evidence was, that the act committed by the petitioner "was sufficiently

annoying to fulfil the definition of criminal trespass." From the finding it appears that there is some doubt as to where the boundary line of the grant is. The petitioner and his companion followed up a deer, of which they were in pursuit, to a tank which the tea-planter says is within his boundary, and there they killed the deer. The Assistant Commissioner infers an intention to annoy, from the fact that the petitioner had been asked by Mr. Farquharson not to come upon his tea garden to shoot. But under the circumstances disclosed in the finding, we think that the offence of criminal trespass has not been committed. We quash the proceedings and direct that the fine be refunded.