

Anthoni Udaiyan Vs. Royappudayar

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SooperKanoon Citation : sooperkanoon.com/786039

Court : Chennai

Decided On : Apr-29-1927

Reported in : (1927)53MLJ653

Appellant : Anthoni Udaiyan

Respondent : Royappudayar

Judgement :

ORDER

Wallace, J.

1. It is first argued that the infliction of separate sentences for offences under Section 24 of the Cattle Trespass Act, and Section 323 of the Indian Penal Code, is illegal, on the ground that the force used to rescue is neither more nor less than, but the same as, the force which caused hurt. I am aware that certain learned Judges of this Court sitting singly have upheld a similar contention with reference to separate sentences for offences of rioting and causing hurt, when the force used which constitutes an ingredient of the rioting was also the force which caused the hurt. (See Criminal Revision Case No. 248 of 1924 and Criminal Revision Case No. 982 of 1926). But I am not able to accept that view. Causing hurt and using force are not the same thing and the word 'force' does not appear in the definition of 'hurt'. The use of criminal force is no doubt an ingredient of the offence of rioting and the use of force may be an ingredient in the offence of rescuing

cattle, but the force necessary to constitute these offences may fall far short of 'causing bodily pain' and if further, force is used which does cause bodily pain, then in my view, the offences which involve and are complete by mere use of criminal force have been exceeded and that excess constitutes another offence, viz., that of causing hurt, or, causing whatever more serious form of bodily hurt has been the result. The offence of causing hurt is therefore in the present case to my mind a separate offence from that of rescuing cattle, and separate sentences may legally be passed.

2. A point is raised that there has been no finding that damage was caused by the trespass of the cattle. I think both Courts have accepted P.W. I's statement that his paddy crops were grazed. If this point had been clearly taken in the Lower Courts, the finding would have been clearer. I am not prepared to interfere and I dismiss this petition.