

**In Re: Perumal and anr.**

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**Court :** Chennai

**Decided On :** Jan-06-1954

**Reported in :** AIR1955Mad299; 1955CriLJ817; (1954)IMLJ286

**Judge :** Somasundaram, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 379

**Appeal No. :** Criminal Revn. Case No. 757 and Criminal Revn. Petn. No. 706 of 1953

**Appellant :** In Re: Perumal and anr.

**Advocate for Def. :** State Prosecutor

**Advocate for Pet/Ap. :** V.A.F. Coelho, Adv.

**Judgement :**

ORDER

**Somasundaram, J.**

1. Accused 1 and 2 in C. C. No. 1822 of 1953 on the file of the third Presidency Magistrate, Saidapet, are the petitioners herein. They were convicted of the offence of theft and sentenced to one month's rigorous imprisonment each,

2. The case for the prosecution is that the first petitioner with the assistance of two others (the third accused has been acquitted by the lower Court) shot a spotted deer in the reserve forest attached to the Raj Bhavan, Guindy. On hearing the shot the forest guard, the forest watcher and other persons tried, to trace where from the shot came and they ultimately found these two accused cutting a deer at a distance of 150 yards from the reserve forest.

The third accused escaped and the petitioners alone were immediately arrested and then a charge-sheet was laid against these petitioners and the other person for offences under Sections 429 and 379, I. P. C. They were acquitted under Section 429, I. P. C., but convicted only under Section 379, I. P. C. and sentenced as aforesaid.

3. The defence, was that the first accused bought this deer from another person and that it was that deer that he was killing and that the second accused assisted, the first accused in the killing of the deer.

4. The evidence of the prosecution has been believed by the lower Court, and I see no reason to disbelieve the evidence let in this case. That evidence clearly establishes that the petitioners were involved in the shooting of this deer inside the reserved forest.

The contention raised by the advocate for the petitioners Mr. Coelho is that a deer in the reserve forest is *ferae naturae* and therefore it cannot be said to be one in the possession of In an essay on possession in the common law, (Pollock and Wright) in Part III at page 231, Wright states as follows:

'..... Trespass or theft cannot at common law be committed of living animals *ferae naturae*' unless they are tamed or confined. They may be in the park or pond of a person who has the exclusive right to take them, but they are not in his possession, unless they are either so confined or so powerless by reason of immaturity that they can be taken at pleasure with certainty.'

5. In 'Changal Halapoto v. Basarmal,' 13 Cri. L. J. 22 (A), following the decision in -- 'Bhagiram Dome v. Abar Dome,' 15 Cal. 388, it was held that fish are open and

unenclosed water are ferae naturae and that they are not capable of possession and hence cannot form the subject of theft.

The same principles will apply to animals found in reserve forests. Till they are tamed and domesticated and brought to the custody of a person, whether it be Government or any other individual, such animals cannot be said to be in the possession of the Government and if they are not in the possession of the Government, the offence of theft cannot be committed. The proper course in a case of this nature is not to proceed against the offenders for the offence of theft but to prosecute them for offences under the Forest Act which makes ample provision for such trespass and shooting of wild animals inside a forest. On the facts of this case I must agree with the contention of Mr. Coelho that the offence of theft has not been made out.

6. The conviction and sentence are therefore set aside and the petitioners are acquitted.

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