

In Re: Budda Reddi and ors.

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Court : Chennai

Decided On : Aug-10-1922

Reported in : AIR1923Mad141; (1923)44MLJ234

Appellant : In Re: Budda Reddi and ors.

Judgement :

ORDER

Krishnan, J.

1. The conviction in this case cannot be supported. The accused has been convicted under Section 430 I.P.C. which runs thus: 'Whoever commits mischief by doing any act which causes or which he knows to be likely to cause the diminution of the supply of water for agricultural purposes shall be punished with imprisonment of either description for a term which would extend to five years or with fine or with both. 'To bring the present case under Section 430, I.P.C. it is necessary to establish in the first instance that the accused's act amounts to mischief. What has been found in this case is that the accused banded up a channel carrying water to the complainant's land. In order to constitute that act an act of mischief, it is necessary under Section 425, I.P.C. which gives the definition of the term mischief, to show that in doing so, he had the intention to cause or knew that he was likely to cause wrongful loss or damage to any person. It is not sufficient to show that his act resulted in loss, but it must be shown that the loss was wrongful loss. To establish that, it must be shown that his act amounted to an

infringement of some right resting in the person to whom the loss had been caused. In the present case the finding seems to be that the portion of the channel which was bunded was running in the accused's own land. A person is entitled to do whatever he likes with his own property provided he does not infringe the rights of any one in it. It is quite open to him to fill up the channel on his own land and unless the complainant showed that he had some right to carry water to his land through the channel, there would be wrongful loss caused to him by filling up of the channel. Where the ownership of the channel is not claimed, such right could be claimed only by way of easement or by contract. Neither of these conditions is established in the present case nor is there any finding of either Court on this point. In these circumstances, I must hold following the ruling in *In re Kondichetty* (1910) 8 I. C. 128 that no actual wrongful loss has been proved and that therefore the accused's action in bunding up the channel does not constitute an offence under Section 430 I.P.C. They are acquitted and the fines if paid will be refunded.

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