

In Re: Veerasami Naicken

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SooperKanoon Citation : sooperkanoon.com/790995

Court : Chennai

Decided On : Mar-19-1930

Reported in : AIR1931Mad18

Appellant : In Re: Veerasami Naicken

Judgement :

Pandalai, J.

1. The petitioner was convicted by 'the Stationary Sub-Magistrate of Tiruvalur of offences under Sections 457 and 380 and sentenced to imprisonment till the rising of the Court and a fine of Rs. 50. This conviction and sentence were confirmed on appeal by the Sub-divisional Magistrate. The facts found against the petitioner are that on 21st January 1929 P.W. 3 took a cow belonging to the petitioner because it trespassed into his property, and took it to the village pound and secured it there and got a receipt for it from the village Munsif, P.W. 1. The next morning the pound was found broken open and the cow was found with the petitioner. His mother said that he had broken into the pound and taken the cow inadvertently and offered to pay the fee. Both the Courts found that he had done so. On his behalf it is argued that the act of the petitioner does not amount to theft but only to an offence under Section 24, Cattle Trespass Act. ' For this, reliance is placed ' upon a decision reported in In re: Pacha Sahib 1 Weir 716, where on similar facts it was held that a person who had removed bulls from a cattle pound and returned them to the true owner, could not be found guilty of theft because there was no dishonest intent. I

am not able to agree with that view. A person who removes cattle from a pound where they are secured, without paying the legitimate fee, has undoubtedly the dishonest intention of saving himself the fee, and it makes no difference whether the man who so removed, is the owner himself as in this case, or a stranger as it was in the case cited. The truth is that this is a case where the same act falls under two different penal enactments. No doubt the petitioner might have been convicted under Section 24, Cattle Trespass Act. But his act amounted to theft and was therefore punishable under the Penal Code also; and where that is the case, the offender may be punished under the one or the other, but not under both the penal enactments: see Section 26, General Clauses Act. This was so held quite recently by a Bench of which I was a member along with the learned Chief Justice in which an act which fell under the special provisions relating to electoral offences under the Local Boards Act was also punishable under the Penal Code, and it was held that the offender could be punished under the Penal Code although the conditions necessary for the purpose of his prosecution under the Local Boards Act were not present. The petition is dismissed.