

In Re: Subbian Servai and Five ors.

In Re: Subbian Servai and Five ors.

SooperKanoon Citation : sooperkanoon.com/801037

Court : Chennai

Decided On : Dec-15-1911

Reported in : (1913)ILR36Mad472

Judge : Ayling, J.

Appellant : In Re: Subbian Servai and Five ors.

Judgement :

ORDER

Ayling, J.

1. The accused were convicted of theft in removing fish from a Government irrigation tank. They pleaded guilty: but the District Magistrate relying on the ruling in the High Court Proceedings No. 663, dated 10th April 1880, has referred the case on the ground that the capture of fish in an ordinary irrigation tank does not amount to theft.

2. The ruling quoted, which has been followed in a later case, Subba Reddi v. Munshoor Ali Saheb I.L.R., (1901) Mad., 81, is authority for the general principle above referred to: but there is reason to doubt whether that principle is to be applied to all cases and under all circumstances or was intended to be so applied. A somewhat different view has been taken both by the Bombay and Calcutta High Courts: vide Queen-Empress v. Shaik Adam I.L.R., (1886) Bom., 193 and Maya Ram Surma v. Nichala Katani I.L.R., (1888) Calc., 402. In the former case the tank

in question was an enclosed municipal tank; but the ratio decidendi was that the fish, being unable to escape from the tank, were practically in the power and dominion of the owner so as to be capable of being the subject of theft. It has been pointed out that even in an open irrigation tank after the water has fallen to such an extent that both the supply and distribution channels are dry, the freedom of the fish is equally circumscribed and the learned Judges of the Calcutta High Court in the ruling above quoted appear to clearly recognise that under such circumstances a conviction for theft might be sustainable. It was presumably in view of these considerations that Miller, J., in the latest Madras case to which I have been referred--Re Raghunadha Mahanti Criminal Revision Case No. 580 of 1909--held that each case must be decided on the particular facts thereof, in other words that the general principle laid down in Subba Reddi v. Munshoor Ali Saheb I.L.R., (1901) Mad., 81 and the earlier case was not universally applicable. He accordingly refused to interfere with a conviction based on very similar facts to those in the present case.

3. In this view I cannot but concur: though I fully realise the desirability of a more positive exposition of the law, if it were possible, and the drawbacks inevitably attendant on a state of affairs in which an act which is lawful today may become a criminal offence to-morrow and vice versa.

4. In the present case the judgment gives no indication of the state of the tank but the District Magistrate says that the Sub-Magistrate's statement that the water was so low that the fish could not escape is probably correct. In view of this and of the fact that the accused pleaded guilty and have only been awarded small fines, I do not feel it necessary to call for further evidence or to interfere in any way with the conviction and sentence.