

In Re: Sathirnalán and ors.

In Re: Sathirnalán and ors.

SooperKanoon Citation : sooperkanoon.com/804488

Court : Chennai

Decided On : Dec-19-1947

Reported in : AIR1948Mad467; (1948)1MLJ428

Appellant : In Re: Sathirnalán and ors.

Judgement :

ORDER

Govinda Menon, J.

1. This is an application to revise the appellate Order of the Sub-Divisional Magistrate, Ramnad, confirming the conviction and sentence of the petitioners herein, by the Stationary Sub-Magistrate, Srivilliputtur of an offence under Section 24 of the Cattle Trespass Act and sentencing each of the petitioners to pay a fine of Rs. 50 and in default to undergo simple imprisonment for six weeks each.

2. Within the ambit of the Zamindary of Seithur in the Ramnad District, there lies a forest by name Sembarambu to which the provisions of the Madras Forest Act have been applied by the Provincial Government and rules to regulate the management of this Forest were promulgated and published in pages 105 to 108 of the Madras Forest Manual, Volume II. The prosecution case is that on the 30th May, 1946, a Forest Range Officer belonging to the Seithur estate when he was inspecting the forest with his watchers P. Ws. 1 and 2, found a herd of cows grazing in a coupe of the forest which is closed for grazing cattle. Under the orders

of P.W. 3, P.Ws. 1 and 2 herded the cattle together and were driving them to the cattle pound when the petitioners came to the scene, abused P.W. 1 for driving the cattle to the pound and in spite of the intervention of P.W. 3 to pacify them, prevented P. Ws. 1 and 2 from taking the herd to the pound. The petitioners then prevented P. Ws. 1 and 2 and others from going near the herd, rescued the cows from the watchers and drove them to a village.

3. For this offence, they were charge-sheeted under Rules 6, 8 and 11 of the rules framed under Sections 26 and 32 of the Madras Forest Act of 1882 as well as under Section 24 of the Cattle Trespass Act. The trial Court found that the petitioners were not guilty of any offence under the rules framed under the Forest Act, but convicted and sentenced them of an offence under Section 24 of the Cattle Trespass Act which conviction and sentence were confirmed on appeal by the Sub-Divisional Magistrate, Ramnad.

4. The question for consideration is whether Section 24 of the Cattle Trespass Act applies to the facts of this case. Mr. K.S. Champakesa Aiyangar for the petitioners contends that P.W. 3, the Forest Officer of the Seithur Zamindar who ordered the seizure of the cattle by his watchers P. Ws. 1 and 2 and others does not come within the definition of a Forest Officer as defined under the Madras Forest Act and therefore the seizure of the cattle under his order is illegal. He further contends that in accordance with the rules framed for the management of this forest published in volume II of the Madras Forest Manual, the prohibition against permitting the cattle to trespass or graze in the forest is contained in Clause 6 and any violation of that Clause is punishable under Rule 11 and not under the Cattle Trespass Act. Since the trial Court has found that a breach or infringement of Rule 6 has not taken place in this case, the conviction under Section 24 of the Cattle Trespass Act is illegal.

5. I would have agreed with this contention but for the fact that Section 24 is specifically charged and both the lower Courts have considered the evidence in the case, in the light of that charge. Section 10 of the Cattle Trespass Act, Act I of 1871 lays down that the cultivator or occupier of any land may seize or cause to be seized any cattle trespassing on such land, etc. etc. It cannot for a moment be

disputed that though this part of the Seithur Zamindari is for some purposes treated as a reserve forest by the application of Sections 26 and 32 of the Madras Forest Act, still, the Zamindar is the owner and occupier of the same. The forest has not been taken over by the Government as a reserve forest to which all the provisions of the Madras Forest Act are extended. It is only for certain purposes that the provisions of the Madras Forest Act are made applicable to a private forest as can be done by virtue of the power conferred under Sections 26 and 32 of the Act. I do not find any difficulty in holding that the Zamindar is the occupier of the land. The question then arises whether the herding together of the cattle and driving them off to a pound for the purpose of impounding were done by the occupier of land or caused to be done by him. It has been held that a person in exclusive possession of land is the occupier of the land and he is entitled to seize the cattle trespassing on the land in his possession. See *Emperor v. Saudagar* (1915) 32 I.C. 655. A watchman watching the crops on the land of even an occupier, is entitled to seize the cattle trespassing on land under his charge when he is given general instructions to seize them while so trespassing-*Dusadh v. Sarathi* Dusadh A.I.R. 1922 Pat. 317 states that he was the Range Officer appointed by the Zamindar for the forest in the Zamindari and therefore it is to be inferred that he is in charge of the forest under the occupier who is the Zamindar. The argument of Mr. Champakesa Aiyangar, if pushed to its logical limit, would lead to the anomaly that where cattle is found grazing on land in the occupation of its owner or occupier nobody but the actual owner or occupier is entitled to seize the cattle and take them to the pound. According to him, any servant or manager ought not to intervene and the owner or occupier himself must physically undertake upon himself the task of driving the cattle to the pound. Such an argument carries with it its own refutation.

6. If the seizure by P.W. 3 of the cattle is an authorised one the offence under Section 24 of the Cattle Trespass Act is complete. In this case, the petitioners rescued the cattle which have been lawfully seized by P.W. 3 and the watchmen under him, and therefore they have committed an offence punishable under Section 24.

7. In view of my conclusion above stated, the other question raised by Mr. Champakesa Aiyangar, that P.W. 3 is not a forest officer within the meaning of the term in the Madras Forest Act and as such, not entitled to seize the cattle does not arise. As the manager if not as a forest officer of the forest under the Zamindar, P.W. 3 is entitled to seize the cattle grazing in the prohibited area and the rescue of such cattle from a person who has lawfully seized the same is an offence to which, as stated, the provisions of the Cattle Trespass Act apply. I am therefore of opinion that the conviction is right and in view of the fact that no actual physical violence was used in the rescue of the cattle, I consider that a fine of Rs. 10 on each of the accused is sufficient to meet the ends of justice. The sentences are reduced accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com