

In Re: Raman

In Re: Raman

SooperKanoon Citation : sooperkanoon.com/807762

Court : Chennai

Decided On : Dec-10-1957

Reported in : 1958CriLJ779; (1958)IMLJ245

Judge : Somasundaram, J.

Appellant : In Re: Raman

Advocate for Pet/Ap. : Mr. Gopalaswami

Judgement :

ORDER

Somasundaram, J.

1. Crl. R. C. No. 141 of 1957 is by the accused against his conviction for an offence under Section 24 of the Cattle Trespass Act. Crl Ap. No. 264 of 1957 is by the State against the acquittal of the accused for an offence under Section 332, IPC with which he was also charged. On 28-8-1956, the Forest Guard P.W. 1 in the beat of Gudiyatam range and the forest watcher P.W. 2 working with P.W. H saw at about 12 noon some goats grazing in the reserved forest.

There were about 67 goats grazing and two persons were grazing them They rounded up the goats for the purpose of taking them to the pound. The two servants shouted and the accused who presumably was the owner of the goats rushed with a knife in his hand and threatened the two officers with severe penalty

if they took the goats to the pound. It is alleged that the accused caught hold of the neck of P.W. 1 and pushed him down and threatened to cut him with the knife.

P.W. 1 sustained undoubtedly minor injuries which were noticed by P.W. 6 the doctor who examined him the next day at 11 a. m. on a requisition from P.W. 5 the Sub-Inspector of Police. P.W. 1 gave a complaint to P.W. 3, the Range Officer, Gudiyatam the same night setting out substantially the allegations mentioned above. Subsequently also he appears to have given a complaint to P.W. 4 the cattle pound keeper.

The complaint given to P.W. 3 was forwarded by him in due course to the police for investigation and the police after investigation filed a charge-sheet against the accused for an offence under Section 332, IPC and also for an offence under Section 24 of the Cattle Trespass Act. The Additional First Class Magistrate who tried the case acquitted the accused of the offence under Section 332, IPC but convicted him of the offence under Section 24 of the Cattle Trespass Act.

It is against this conviction that the revision has been preferred and subsequent to the admission of this revision it transpires both from the records and the statement made by the Public Prosecutor that the Public Prosecutor was asked as to whether the State was filing an appeal against the acquittal. Thereafter according to the usual practice the records are forwarded to the Public Prosecutor who goes into the whole question and gives his opinion to the Government.

Apparently on the opinion furnished by the Public Prosecutor the Government instructed the Public Prosecutor to file the appeal against acquittal. Instructions were received by the Public Prosecutor on 26th March, 1957. The judgment of the lower Court was on 6-11-1956. The time for filing an appeal against the acquittal is three months. There is no doubt that this appeal was filed beyond time. At the time of filing the appeal, a petition to excuse the delay was filed supported by an affidavit of one of the Clerks in the office of the Public Prosecutor. The delay in filing the appeal was excused by the admission Court without notice to the respondent. Both the revision and the appeal have been posted together and have come up before me for final hearing and disposal.

2. So far as the revision is concerned, the question of law raised by Mr. Gopalaswami appearing for the petitioner is that the conviction under Section 24 of the Cattle Trespass Act is unsustainable in view of the provision namely that under the Section it is only when cattle are seized under the Cattle Trespass Act that Section 24 would apply. Sections 10 and 11 provide for the circumstances under which cattle under the Act can be seized. In terms Section 11 cannot be applied because Section 11 says that 'persons in charge of public roads, pleasure-grounds, plantations, canals... and police officers, may seize, or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, etc....'

The forest cannot be said to be a plantation within the meaning of Section 11. Nor has any damage as such been proved in the case. But as pointed out by the learned Public Prosecutor, under Section 57 of the Madras Forest Act, 1882, 'cattle-trespassing in a reserved forest or on lands on which the grazing of cattle has been prohibited by rules made under Section 26, or which has been closed under Section 27, shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle Trespass Act, 1871, and may be seized and impounded as such by any Forest Officer or police officer'

Section 11 of the Cattle Trespass Act is therefore attracted by the provisions of this section and any cattle trespassing in a reserved forest will be deemed to be cattle doing damage to a public plantation within the meaning of Section 11 of the Cattle Trespass Act and may be seized and impounded by any Forest Officer. If, therefore, cattle trespassing in a reserved forest falls within the provisions of Section 11 of the Cattle Trespass Act, it is not disputed that Section 24 will apply to the same as Section 24 itself clearly emphasises the fact that whoever forcibly opposes the seizure of cattle liable to be seized under the Act may be convicted by a Magistrate.

3. Another contention raised by Mr. Gopalaswami is that under Section 58 that

The Government may, by notification in the Official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act... there shall be fixed, in all or any of the areas to which this Act applies for each head of cattle impounded under

Section 57 of this Act such fine as they think fit, but not exceeding the following....

The Officer can only levy the fine and cannot convict him. But a reading of the fines in that section will clearly show that the section is intended to levy a fine by the keeper of the pound. Section 12 does not deal with animals mentioned in Section 58. It seems to me that Section 58 of the Madras Forest Act does not apply to the facts of this case. The Forest Officer can seize the cattle and send them to the pound which would be dealt with according to the rates mentioned in Section 58 or in Section 12 as the case may be. The contention of Mr. Gopalaswami therefore fails and the conviction is justified. The fine cannot be said to be excessive and here-fore is not reduced. The Criminal revision is dismissed.

4. As regards the acquittal, initially no appeal was filed by the State. But because the acquittal came to the notice of a ridge who felt that it was wrong consistent with the practice of this Court, the judgment was forwarded to the Public Prosecutor to ascertain whether an appeal is instituted by the State. Thereupon the Public Prosecutor goes into the merits and advises the Government and on the advice the appeal is or is not filed as the case may be.

Here obviously the Public Prosecutor has advised an appeal to be filed. The State Government thereupon instructed the Public Prosecutor to file an appeal. This is how the appeal came to be filed. The judgment of the Court against which the appeal is said was on 6-11-1956 and the appeal was filed on 12-4-1957, which is far beyond the period of limitation prescribed under the Limitation Act. The only reason given is, as already stated, that 'the judgment was forwarded by the High Court to the Public Prosecutor on 15-3-1957 to ascertain whether the Public Prosecutor is filing an appeal against the acquittal of the accused under Section 332, IPC and the papers were forwarded to the Government with, the opinion of the Public Prosecutor.

They were received back only on 26th March, 1957. The Court when it came up for admission excused the delay without giving notice to the respondent. As pointed out in *Krishnaswami Panikondar v. Ramaswami Chattier*, ILR 41 Mad 412 : A.I.R. 1917 PC 179 (A), the delay should not be excused without giving notice to the respondent because after the period of limitation the respondent acquires a

valuable right and it cannot be deprived without notice to him. In the above case their Lordships of the Privy Council point out:..in terms it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice. If must, therefore, in common fairness be regarded as a tacit term of an order like the present that though unqualified in expression it should be open to reconsideration at the instance of the party prejudicially affected; and this view is sanctioned by the practice of the Courts in India.

In that particular case the delay was excused in the first instance without notice to the other side At the time of the final hearing of the appeal the point was raised and the Bench which heard the appeal went into the question and found that there was no justifiable ground for excusing the delay and therefore dismissed the appeal. Their Lordships of the Privy Council upheld that practice and held that it was open to the respondent to raise this question at the time of the final hearing of the appeal if the delay was excused without notice to him.

Similarly the question of excusing the delay without notice to the respondent is raised before me at the time of the final hearing of the appeal. If it was open to the respondent to raise this question I am bound to consider the grounds urged by learned Public Prosecutor for excusing the delay. It seems to me that this is not a fit case in which the respondent should be deprived of the valuable right accrued to him without a proper reason urged for it. The reasons given by the Public Prosecutor are what I have stated earlier.

I do not think that the circumstance of filing an appeal after the attention of the Public Prosecutor is drawn to it in Court is in the present case can be said to be a ground for depriving the valuable right accrued to the accused. I uphold the contention of the respondent that it was open to him to raise this plea namely that in the circumstances it was not justifiable ground to excuse the delay. The delay is therefore not excused. The appeal is dismissed for that reason. In this view, it is unnecessary to go into the merits of this appeal.

5. Both the appeal and the revision are dismissed.

