

In Re: Nanjappan

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SooperKanoon Citation : sooperkanoon.com/809038

Court : Chennai

Decided On : Oct-27-1959

Reported in : (1960)1MLJ275

Appellant : In Re: Nanjappan

Judgement :

ORDER

Somasundaram, J.

1. The 1st accused has been convicted under Section 26 of the Madras Forest Act and sentenced to pay a fine of Rs. 10. Another accused also was charged as he was alleged to be the master of the 1st accused. The alleged master has been acquitted.

2. According to the prosecution, the 1st accused is said to have removed 100 cartloads of silt from the tank bed which is said to be poromboke land. The learned Judge finds that according to the evidence what is proved is that the 1st accused removed one cart load, because that is what the witnesses saw on the particular day. The question is whether the removal of one cart load of silt is an offence under Section 26.

3. At the outset it must be pointed out to the Magistrate that Section 26 does not create an offence. It only enables the Government to frame rules. There is no offence as such under Section 26. If the Sub-Divisional Magistrate had looked into

the Section, he would have realised this. Apparently what the accused was charged with was for having removed 100 cart loads and thereby violated Rule 13, Clause (iii) of the rules framed under Section 26 of the Act. The land is unreserved land. The rules relating to this are framed under Section 26. Under Clause (iii) of Rule 13, in unreserved waste land the public may be allowed to quarry for bona fide domestic or agricultural purposes without obtaining permission for quarrying. This being an unreserved land and the finding being that the 1st accused removed only one cart load, it is quite clear that he must have removed the same for bona fide domestic or agricultural purpose. No offence therefore is made out. The conviction and sentence are set aside and the 1st accused is acquitted. The fine, if paid, will be refunded.

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