

In Re: S.P. Naidu

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Court : Chennai

Decided On : Jan-05-1970

Reported in : (1970)1MLJ540

Appellant : In Re: S.P. Naidu

Advocate for Pet/Ap. : Mr. R. Vaidyanatha Iyer

Judgement :

ORDER

K.N. Mudaliyar, J.

1. This revision petition is directed against the conviction of the petitioner under Sections 3(2) and (7) of the Madras Preservation of Private Forest Act, 1949.
2. In essence, the complaint of the prosecution is that in S. No. 567 of Nelliyalam Village, the forest officials found one Ramakrishnan cutting earth and clearing the undergrowth for about a quarter acre and building the shed therein. On the evidence of P.Ws. 1 and 2 that there has been clearance of the undergrowth in the area in question (41/2 grounds), mainly the conviction is based.
3. Mr. R. Vaidyanatha Iyer, Counsel for the Petitioner assailed the conviction on the ground that the learned Sub-Magistrate has really misappreciated the evidence on record; that the learned Magistarate has further erred in interpreting the proviso to Section 3 (2) of the Act.

4. P.W. 1 states in chief-examination that one Ramakrishnan has cut the earth and was building a shed measuring 22'X 12'. The earth was cut for about 1/4 acre. His further evidence is that the shed is in the occupation of Ramakrishnan, a labourer, of the estate. P.W. 2 says that he enquired Ramakrishnan who was residing in the shed and that Ramakrishnan said that he collected the poles from the trees in S. No. 567 itself. According to this witness, the ground is levelled and the soil is disturbed by Ramakrishnan. His further evidence is that the act of removing the mud diminishes the utility of the forest and diminishes the forest. He further speaks to the fact of Ramakrishnan being an employee of the Estate and of the shed having been constructed for his occupation. On this evidence alone, the prosecution ought to have failed, for it is true the accused was under instructions directing the cutting of the trees or reeds in the area in question viz., 4 1/2 grounds in an area of 4,500 acres. I am afraid cutting trees or reeds has to be read in the context of the accused doing any act likely to denude the forest or diminish its utility as a forest. I am not in a position to interpret that the clearance of 4 grounds, although there is the cutting of trees or reeds, would be an act likely to denude the forest or its utility as a forest. There is the further protection for the accused, supplied from the proviso to Sub-section (2) of Section 3 of the Act. The proviso runs as follows:

Provided that nothing contained in this sub-section shall apply to the removal of dead or fallen trees or to any act done for the usual or customary domestic purposes or for making agricultural implements.

It is argued before me that this cutting of reeds or undergrowth was necessary for erection of a shed for the habitation of Ramakrishnan, the labourer of the Estate such an act is done for the usual or customary domestic purpose of the Estate.

5. In properly appreciating the evidence of D.Ws. 1 and 2, the learned Magistrate erred, and attached unnecessary importance to the omission of the word 'domestic*' in the evidence of D. Ws. 1 and 2 who are respectable witnesses and who could speak about the conditions and customary practices of the estate with first-hand knowledge and without any motive whatever. The mere omission of the word 'domestic' would not render their evidence unacceptable and the act of the

accused is not placed and cannot be placed beyond the pale of the phrase ' as an act done for the usual or customary domestic purposes'.

6. In interpreting the word ' domestic ' in this phrase c any act done for the usual or customary domestic purposes ', Mr. R. Vaidyanatha Iyer relied on *Smith v. Muller* (1894) 1 Q.B. 192, wherein the phrase ' used exclusively for domestic purposes ' is interpreted as to cover a boiler used to heat offices or business premises upon which the owner does not reside, and also to supply water for the purpose of cleaning the offices and for the house-hold purposes of a resident caretaker, falling within the exception in Section 4 of the Boiler Explosions Act, 1882. In support of this proposition, the Counsel for the petitioner cited the ruling the *Harrogate Corporation v. Mackay* (1907) 2 K.B. 611, wherein it is held that water supplied to and used by a medical man for washing a motor car and for other purposes in connection therewith, the motor being used by him for the purposes of his profession or business of a physician and surgeon, is water supplied for domestic purposes within the meaning of Section 12 of the Waterworks Clauses Act, 1863.

7. Reliance is then placed on the decision of the House of Lords in *Metropolitan Water Board v. Avery* L.R. (1914) A.C. 181 , where Lord Dunedin, in interpreting the expression ' domestic purposes ' found in the Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. Cl. xxi.), observed:

On the other hand, the test of the quality of the use in itself--so tersely put by Buckley, L.J., ' The test is not whether the water is consumed or used in the course of the trade, but whether the user of the water is in its nature domestic'--is not only easy of application but is automatic in checking abuse. For purposes truly domestic cannot be amplified, and when the consumption on such heads is large it is invariably attended by an increase in the rating value of the premises which brings with it an increased water rate.

8. The second error into which the learned Magistrate has fallen is that normally the border of the Estate is the venue for erecting sheds. It may be; but it need not always be so. The mere probability of erecting the shed on the borders of the Estate docs not render the evidence of D.Ws. 1 and 2 as untruthful. I accept the

evidence of D.Ws. 1 and 2 and find that no offence has been proved against the accused.

9. The revision petition is allowed. The petitioner is acquitted. Fine, if paid by him, shall be refunded.

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