

Arman Shaik and ors. Vs. NaimuddIn Shaik

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SooperKanoon Citation : sooperkanoon.com/871054

Court : Kolkata

Decided On : Nov-19-1935

Reported in : AIR1936Cal157

Appellant : Arman Shaik and ors.

Respondent : NaimuddIn Shaik

Judgement :

ORDER

Jack, J.

1. In this case a rule was issued on the District Magistrate and the opposite party to show cause why an order convicting the petitioners under Sub-section 143 and 427, Penal Code, and fining one Rs. 100 and the other petitioners Rs. 50 each should not be set aside.

2. The prosecution case is that the petitioners and others forcibly cut and took away unripe paddy from the complainant's land and thereby committed mischief to the extent of Rs. 1,200. The finding is that the petitioners had been put in symbolical possession by a civil Court and that they had been trying to oust the complainant and one Musobdi from the land. These were the persons who actually grew the crop and the petitioners came there and cut away the unripe crop while the complainant left the locality in order to institute a suit to restrain the petitioners from cutting away the standing crop from the land.

3. It is contended on behalf of the petitioners that they had been put into actual physical possession by a civil Court of the land with the standing crop and were therefore entitled to cut the crop. On a reference to the statement of the complainant it appears that the complainant admits that the petitioners were put into possession by a civil Court. There appears to be nothing on the record in support of the theory that they were merely put into symbolical possession. In the circumstances, having been put into possession of the land and the crop by a civil Court, they were perfectly entitled to cut the paddy whether it was ripe or unripe.

4. The deposition of the Assistant Sub-Inspector in another case against the petitioners had been shown to me in which he states that only ripe paddy was cut and that the unripe paddy was not cut. The proceedings under Section 144 which followed this case also show that all the paddy was not reaped. There appears to be therefore some doubt whether the Courts below were right in accepting the complainant's statement that the paddy which was cut was unripe. The petitioners apparently were put into possession under Order 21, Rule 95 and that being the case, they were entitled to cut the crop, and their convictions under Sub-section 143 and 427 cannot be supported.

5. This rule is, accordingly, made absolute and the convictions and the sentences are set aside. The fine, if paid, will be refunded.