

Krushna Sahu and ors. Vs. Chaitan Das

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Court : Orissa

Decided On : Jul-21-1965

Reported in : AIR1966Ori191; 1966CriLJ1044

Judge : S. Barman, J.

Acts : Cattle Trespass Act, 1871 - Sections 10 and 22

Appeal No. : Criminal Revn. No. 482 of 1963

Appellant : Krushna Sahu and ors.

Respondent : Chaitan Das

Advocate for Pet/Ap. : H. Kanungo and ;R.N. Mohanty, Advs.

Disposition : Revision allowed

Judgement :

ORDER

S. Barman, J.

1. This case arises out of an order of conviction and sentence of fine passed by the Judicial Magistrate, 1st Class Cuttack, in respect of seventeen accused petitioners under Section 22 of the Cattle Trespass Act, 1871 on the charges of alleged illegal impounding of 27 heads of cattle and 24 heads of sheep while these animals were being tended by a cowherd boy on the grazing lands of mouza Chandanpur. It is said that all the accused persons drove away the animals forcibly towards the kine house. The defence is that they had rightly impounded the animals as they damaged the Mung crop of the accused petitioners Sriram Sahu and Dhobei Sahu in their respective kiaris. The learned Magistrate convicted and sentenced the petitioners to a fine of Rs. 30 each in default to simple imprisonment for one month each; out of the fine a sum of Rs. 118 was ordered to be paid to the complainant as the sum which he and others paid for releasing the animals by way of compensation.

2. The provisions of the Cattle Trespass Act so far as material for deriding this case are these:

Chapter III

Impounding Cattle.

'10. Cattle damaging land : The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land.

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may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto, or any crop or produce thereon, and send them or cause them to be sent within twenty-four hours to the pound established for the village in which the land is situate.

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CHAPTER V.

Complaints of illegal Seizure or Detention.

'22 Compensation for illegal seizure or detention. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the, seizure or detention reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle, and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.' It is thus clear that for impounding cattle two conditions must be satisfied, namely, a cattle trespassing on such land and doing damage thereto. Mere trespass on the land without causing any damage would not justify seizure of the cattle and sending them to the pound. In other words, there must be both trespass and damage for justifying such seizure of the cattle.

3. In the present case there was undoubtedly trespass by the cattle on the land. The only question is: was there damage by the cattle to the land? The onus of proving that the animals damaged the mung crop of the accused petitioners Sriram Sahu and Dhobei Sahi as alleged lies on them. On this point the finding of the learned Magistrate after discussing the evidence is this:

'If according to D.W. 3 as soon as the animals entered Sriram shouted and ran to drive out the animals, one fails to understand-how there was any major damage to the existing crop I am therefore inclined to believe that there was no such damage, worth the name warranting seizure of such a large number of animals I, therefore come to the conclusion that Micro was no such damage, for which the animals deserved to be impounded.'

The learned Magistrate appears to be under a misconception that for impounding cattle permissible under Section 10 of the Act, major damage is necessary He appears to have overlooked the language of Section 10 itself. It is sufficient if any damage is caused by the trespass.

4. In the present case the very facts that such a large number of cattle and sheep, as many as 51 heads, had entered upon the land where the Mung crop of the accused petitioners was already there in their respective kiaris awaiting harvest, leads to a reasonable inference that such wrongful entry or trespass by such a large number of

animals in the manner they did. did damage to the crop on the land. In my opinion, damage, however minor it may be is sufficient for justifying the seizure of the cattle and sending them to the pound. It is common knowledge that in these days irresponsible owners of cattle allow these animals to trespass on other's land for the purpose of grazing. Owners of such animals must realise that such trespass by their animals on other's land does cause damage, however small it may be, They must know that they allow their animals to go astray like this at their own risk.

5. Apart from this, the sentence of fine passed by the learned Magistrate is itself illegal. It is well settled law that the Magistrate is not competent under Section 22 of the Act to pass any sentence of fine. He can only award compensation for illegal seizure of cattle. Imprisonment cannot be inflicted in default of payment of compensation awarded under the Act *Bhagarathi Naik v. Gangadhar Mohanty*, (1900) ILR 27 Cal 992 5 Cal WN 32.

6. In this view of the case the order of conviction and sentence passed by the learned Magistrate is set aside. The accused petitioners are all acquitted of the charge against them.

The Criminal Revision is allowed.

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