

# ORISSA HIGH COURT

Padma Charan Behera

Vs

Rangadhar Das

Criminal Revision. No. 483 of 1949

(Ray, C.J.)

20.01.1950

## JUDGMENT

**Ray, C.J.**

1. The petitioners have been found having seized a few heads of cattle which belonged to the opposite party and impounded them. The seizure but not the detention has been adjudged illegal by the Honorary Magistrate. The Magistrate has awarded a compensation of Rs. 75 distributing the same as between the petitioners equally. Thus each petitioner has been awarded a liability to pay a sum of Rs. 15 to the complainant-opposite party. Several contentions have been raised by Mr. Dasgupta, the learned counsel for the petitioners. They are : (i) That the Magistrate had no jurisdiction to hear and dispose of the complaint; (ii) That neither in the petition of complaint nor in the evidence, the complainant made any mention of the loss or, at any rate, the items or heads of such loss, and in the absence of such allegations and proof, no compensation beyond the fines, paid to the pound-keeper, being a sum of Rs. 7/8, should have been awarded to the complainant; and lastly, (iii) that the compensation awarded is highly excessive.

2. For the first contention, reliance is placed upon Section 20, Cattle-Trespass Act (1 of 1871), which reads:

"20. Power to make complaints - Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure make a complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference to the Magistrate of the District."

Within the purview of the section, contention 1 must succeed. In the case of *Raghu Singh v. Abdul Waheb*<sup>1</sup>, it has been held that an order of compensation awarded by a Magistrate other than

one before whom a complaint of illegal seizure was made and who was not competent to entertain the same is not curable either by Section 529 or by Section 537, Criminal Procedure Code. In this view, the order passed by the Honorary Magistrate is illegal and void. The appellate Court's decision against that cannot stand on a better footing. I, therefore, quash the order as also the proceeding taken before the Honorary Magistrate.

3. I am not aware nor have I been fully advised if the Sub-Divisional Magistrate before whom the complaint was filed is a Magistrate who is authorized to receive and try the charges referred to in Section 20 of the Act without reference to the Magistrate of the District. In case the Sub-Divisional Magistrate was not entitled to entertain it, the complainant will be in tremendous difficulties. According to Section 20, he has to make his complaint within ten days from the date of the seizure. It is no longer open to him to make a complaint to a competent Magistrate within the meaning of Section 20 as the ten days' period has expired. I do not think Section 14, Limitation Act, is applicable to such cases.

4. With regard to the second contention there is no doubt some amount of conflict of authorities in the different High Courts. In cases reported in *Baijnoth Sahay v. Emperor*<sup>2</sup>, *Ramdularey v. Monohar*<sup>3</sup>, and *Boijoo v. Emperor*<sup>4</sup>, it has been consistently held that specific sum representing the loss sustained shall be claimed in the petition of complaint in lieu of compensation. A contrary view has been indicated in *Bhujharat v. Emperor*<sup>5</sup>, and *Kolandai Chetty v. Perumal Kavundan*<sup>6</sup>, I do not find any difficulty in coming to my own decision. My decision is that in the petition of complaint, or, at any rate, in the evidence adduced for the complainant the different heads on which losses have been suffered must be specifically indicated. Suppose, by illegal seizure of cattle, the owner is deprived of any amount of milk that he should have otherwise obtained, he must be entitled to be compensated against such loss. But in order to be so compensated, he must lodge it and prove it so that the accused may have the opportunity (to meet?) that case. Suppose, the accused knew what grounds were relied upon, he would have been able to show that each of the grounds on which the loss was based was without foundation. It is fundamental in administration of justice that no part shall be allowed to steal a march over the other. Every party must specifically lodge and prove his case so that his adversary gets an opportunity to meet it. I am also, at the same time, of the view that suppose the petition of complaint is silent, it would be no reason to throw away the complainant's claim for compensation for the loss, provided he alleges and proves it during the hearing and the so-called accused gets an opportunity to plead and prove in reply. In this case, there is neither such allegation nor proof though there is a general prayer in the petition for Khatikhesara. It has also been held in *Shaik Hussain v. Sanjivi*<sup>7</sup>, that the complainant may be allowed the costs of the proceeding though not the pleader's fee, if any, incurred by him. I would, therefore, hold that the petitioners will also succeed in their second contention.

5. The last contention is whether compensation awarded is excessive and if the High Court can interfere. High Court's power of interference is neither challenged nor is it challenge able. I will

refer to the case of *Emperor v. Madho*<sup>8</sup>, But it does not arise for me to settle the fair compensation as I have held that I shall set aside the order of the Magistrate and the proceeding so far as they were conducted before him.

6. Let this case go back to the Sub-Divisional Magistrate of Kendrapara. It is for him to find out whether he is a Magistrate authorised to receive and try the charges under Section 20 of the Act without any reference by the District Magistrate. I bring to his notice the provision of Section 20 of the Act. If he is a competent Magistrate to take up the case, the proceeding shall be deemed to be based upon the complaint which has been duly filed within the period of limitation prescribed in the section. He shall, and I consider it is imperative, that he should allow the parties to adduce fresh evidence as the proceeding before the Honorary Magistrate, which includes examining and recording the evidence of witnesses, is bad in law. In case he is not a Magistrate competent, it is all hopeless for the complainant. He has absolutely no remedy. I invited the parties to settle their differences, so that some amount of compensation could have been awarded to the complainant, who, I have no doubt, has suffered losses on account of the illegal seizure. The matter of illegality of seizure is also in dispute and the petitioners stand on their right to have the case retried if the case does lie before a competent Magistrate.

7. In the result the petition is allowed. The orders of the Courts below are set aside.  
Petition allowed.

#### Cases Referred.

<sup>1</sup>23 Cal 442

<sup>2</sup> AIR 1923 Pat 292: (24 Cr LJ 311)

<sup>3</sup> AIR 1930 Nag 149: (31 Cr LJ 278)

<sup>4</sup> AIR 1939 Oudh 37 : (40 Cr LJ 141)

<sup>5</sup> AIR 1935 All 925 : (37 Cr LJ 247)

<sup>6</sup> AIR 1928 Mad 369: (29 Cr. LJ 325)

<sup>7</sup> Mad 345 : (1 Weir 713)

<sup>8</sup>126 IC 497 : (AIR 1930 Oudh 250 : 31 Cr LJ 1015)