

(1978) 02 AHC CK 0013
In the Allahabad High Court
Case No : Criminal Revision No. 1060 of 1973

Raj Narain and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-02-1978

Acts Referred:

Cattle Trespass Act, 1871 — Section 24
Criminal Procedure Code, 1973 (CrPC) — Section 190(1)
Penal Code, 1860 (IPC) — Section 382

Citation : (1978) ACR 211

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Advocate : R. Dwivedi, for the Appellant;

Judgement

H.N. Kapoor, J.—This revision is directed against the order dated 25-7-1972 passed by the Judicial Magistrate, Robertsganj u/s 190(1)(c) Code of Criminal Procedure summoning the applicant u/s 382 IPC. Cr. Revision No. 68 of 1972 was filed against this order which was dismissed by the First Temporary Civil and Sessions Judge, Mirzapur. This second revision was then filed under the Old Code of Criminal Procedure on 20-9-1977. I had heard this revision ex-parte and dictated an order. Before that order could be signed, Dr. Dwivedi, learned Counsel for the applicant appeared and moved an application for being heard. It was, therefore, ordered that the judgment dictated by me may not be signed.

2. Dr. Dwivedi has now been heard. Sri D.N. Misra, learned Deputy Government Advocate is also present.

3. Two points arise for decision in this case. Firstly, that it was merely an offence u/s 24 of the Cattle Trespass Act according to the first information report as well as according to the protest petition. Cognizance could have been taken by the District Magistrate or the Sub-Divisional Magistrate only and not by the Judicial Officer under the G. O. No. P-8690/ II-C-54/61 dated September 29, 1967 relating to separation of Judiciary from the Executive. The second point which

arises for decision is that the Judicial Magistrate was only a Magistrate of the First Class and he could have taken cognizance of an offence u/s 382, IPC. u/s 190(a) and (b) Code of Criminal Procedure only and not u/s 190(1)(c) Code of Criminal Procedure as there is nothing to show that he was specially authorised to take cognizance u/s 190(1)(c) Code of Criminal Procedure. In support of this contention, reliance was placed on the decision of Baqar Ali v. State of U.P. 1976 ACC 196. The point appeared to be of some general importance. I had, therefore, sent for all the earlier notifications issued from time to time by the State Government. Notification No. 5465/VI-209/48 dated October 30, 1948 was only to the effect that in supersession of the earlier notifications, all the Judicial Magistrates in the United Provinces were to exercise powers of Magistrate First Class.

4. For the purpose of this case, learned Deputy Government Advocate conceded that the offence is covered by Section 24 of the Cattle Trespass Act only. In that case it was certainly not proper for the learned Magistrate to bring it u/s 382 IPC in order to take cognizance of the same. Cognizance of the offence u/s 24 of the Cattle Trespass Act could have been taken by the Executive Magistrates only at that time under the separation of Judiciary from the Executive Order. The special circumstances of this case are that the police had submitted the final report and it was only on the basis of the protest petition that the learned Magistrate had summoned the accused u/s 382 IPC. The proper procedure was that the complainant should have filed a complaint u/s 24 of the Cattle Trespass Act before the competent Magistrate at that time. Under the circumstance, there is no doubt that the learned Magistrate exceeded his jurisdiction by taking cognizance u/s 382 IPC when the case was covered by Section 24 of the Cattle Trespass Act only.

5. In the result the revision is allowed and the orders of the Magistrate dated 25-7-1972 summoning the accused and the First Temporary Civil and Sessions Judge dated 26-5-1973 in revision No. 68 of 1972 are set aside.