

(1938) 12 MAD CK 0021
In the Madras High Court

Vadavalli Narasimha Rao and Others

APPELLANT

Vs

V. Ayyanna Rao

RESPONDENT

Date of Decision : 07-12-1938

Acts Referred:

Penal Code, 1860 (IPC) — Section 430

Citation : AIR 1939 Mad 794 : (1939) 49 LW 298 : (1939) 1 MLJ 445

Hon'ble Judges : Stodart, J;Burn, J

Bench : Full Bench

Judgement

Burn, J.—The petitioners were convicted by the Stationary Sub-Magistrate, Ellore, of an offence u/s 430, Indian Penal Code, and

sentenced to pay a fine of Rs. 50 each. On appeal the Sub-Divisional Magistrate, Ellore, confirmed the conviction but reduced the fine to Rs. 25

each. This revision petition is preferred by the accused, who contend that the conviction u/s 430, Indian Penal Code, was wrong.

2. The facts are simple. The accused hold lands under a tank which receives its supply from a channel called the Dendulur channel. The

complainant in this case was the holder of land irrigated from another tank which also receives its supply from the same channel, but the supply

channel to the accused's tank takes off from the main channel at a point higher up than the supply channel of the complainant's tank. In these

circumstances on the 2nd August, 1937, the accused put a bund across the main channel just below the point at which the supply channel to their

tank takes off, and thereby diverted all the water flowing in the main channel to their tank, preventing any water from going down to the

complainant's tank. The bund was kept in position for at least a month and a half. There is evidence that the complainant's paddy crop which had

been transplanted by that time withered over an extent of 15 acres and the rest of the crop was slightly affected. The accused set up a mamool by

which they were entitled to bund up the main channel whenever it was "necessary" to take water to their tank, or, in other words, whenever it

pleased then to do so. The learned Sub-Magistrate found that by putting up this cross-bund the supply of water to the complainant's tank was

diminished and that the complainant had incurred a loss which was estimated at about 150 bags of paddy. He also held that the accused had not

established their right to put up the cross-bund in the main channel. The learned Sub-Divisional Magistrate confirmed these findings but considered

that the extent of the damage to the complainant's lands appeared to be exaggerated. On this ground he reduced the fines.

3. It is urged for the accused that their act does not amount to an offence u/s 430, Indian Penal Code, because they used the water for agricultural

purposes and there was no diminution of the supply available for agricultural purposes. Reliance is placed upon a judgment of mine in Crl. R.C.

No. 568 of 1937 (not reported). In that case I held that the bunding up of the channel was on the findings an act of mischief because the utility of

the channel as such was thereby destroyed. I have held that it was not on the findings possible to hold that an offence u/s 430, Indian Penal Code,

had been committed, because the act of bunding up the channel did not and could not cause any diminution of the supply of water for agricultural

purposes and the quantity of water available for agricultural purposes was unaffected. I therefore altered the conviction to one u/s 426. That

decision, in my opinion, was wrong. It was not brought to my notice that a Full Bench of this Court so long ago as 1876 Ramakrishna Chetti v.

Palaniyandi Kudantbar I.L.R.(1876) 1 Mad. 262 (F.B.) held that it is no part of the definition of the offence of causing a diminution of water-

supply for agricultural purposes that the act of the accused should be an act of wanton waste. The principle upon which my judgment in the

Revision Case referred to was based, was that unless water was wasted, the offence would not be one u/s 430. But in the light of the judgment in

Ramakrishna Chetti v. Palaniyandi Kudanibar I.L.R.(1876) 1 Mad. 262 (F.B.) it is clear that that was wrong. It is sufficient for the purposes of

Section 430 that the supply of water available for a particular person or class of persons should be diminished by the act of the accused. There is

no doubt about the fact that the act of the accused in throwing a bund across the main supply channel was an act of mischief, since that completely destroyed the channel, from the complainant's point of view, rendering it useless as a supply channel. This has been held by myself in the case of *Vadlapatla Nariah v. Chelsani Narasayya* (1933) M.W.N. 427 and there are many other cases in which the same proposition has been stated. It is too obvious to need any authority.

4. The learned Counsel for the accused relies on the case of *Vattu Karan* (1881) 1 Weir 507 in which it was held that a diversion of the water of a channel not exclusively appropriated to the use of another did not constitute an offence u/s 430, Indian Penal Code. But that case is clearly distinguishable because it appears from the judgment that there was no evidence of loss having been sustained by the complainant nor was it the intent of the defendants to cause loss. A case tending in the opposite direction is reported on the same page of the 1st Vol. of Weir's Ruling p. 507, the case of *Ayyanna Gowd*. In that case the second class Magistrate convicted the accused u/s 430, Indian Penal Code, for opening without permission the sluice of a channel in order to take water to his field. The case was referred by the District Magistrate to the High Court on the ground that the accused had not effected any such change in the situation of the water as diminished its utility. He therefore requested the High Court to quash the conviction. The High Court after calling for a report on the point whether the accused was entitled to receive the water he took and whether in taking it he diminished the quantity of water to which another person was entitled, found that the accused was not entitled to the water he took and that his act in diverting it had lessened the quantity which the other ryots were entitled to receive for agricultural purposes. They therefore upheld the conviction u/s 430, Indian Penal Code. That was a much stronger case than the present one because the act of opening the sluice was not in itself an act of mischief. The utility of the sluice was not impaired in any way and the only ground upon which the act was held to be an act of mischief was that it reduced the quantity of water available for the other ryots.

5. The water was used by the accused for agricultural purposes, but nevertheless the conviction u/s 430, Indian Penal Code, was confirmed. A

similar case - the case of Nalla Narayanaswami is reported on page 504 of the 1st Vol. of Weir's Rulings. The appellant there placed a dam or

obstruction across an irrigation channel and thereby diverted the water passing along the channel into his own fields, whereby the supply of water

to the fields of others entitled thereto on a lower level was diminished. The appellate Court quashed the conviction on the strength of the decision

reported in Vol. VII, M.H.C.R. Rulings p. xxxix. This Court held that that decision had been over-ruled by the Full Bench in Ramakrishna Chetti

v. Palaniyandi Kudambar I.L.R.(1876) 1 Mad. 262 (F.B.) and the acquittal was there fore set aside and the appellate Court directed to rehear the

appeal with reference to the observations in Ramakrishna Chetti v. Palaniyandi Kudambar (1876) ILR 1 Mad. 262 (F.B.) and in Criminal Revision

Case No. 479 of 1884. The learned Counsel for the accused relies strongly upon the case reported on p. xv in M.H.C.R. Rulings, Vol. IV, under

date 22nd October, 1868. In that case the accused had erected a dam across the bed of a river and the charge against them was that they knew

that their act was likely to cause an inundation over the lands of the prosecutor's village Poonavayal. The prisoners admitted the erection of the

dam but claimed to do so as of right and by long custom. It was found that this did not amount to an offence u/s 432, Indian Penal Code. This case

clearly has no direct relevance to the present one. The learned Counsel relies upon the observations of the majority of the Court on page xvii. Their

Lordships ;there stated:

In the present case the act done was the erecting of a dam which certainly did not cause the destruction of any property, etc. It was the alleged

probable consequential damage to other property which was the cause of complaint and though that would authorise increased punishment u/s 432

it would not of itself constitute mischief.

6. On this ground the convictions were held to be illegal and were quashed. We think it is clear that that case has no bearing upon the present one;

it was a case in which the complainant's grievance was that his lands had been flooded by the putting up of a dam across the river. It has no

bearing upon the question of deprivation of water by putting a bund across a supply channel. Learned Counsel for the accused relies also upon the

case of Kullappa Naicker v. Palaniammal (1919) 11 L.W. 148. That was a case in

which the accused cut open a bund and the complainant alleged that the supply of water to her fields had been thereby diminished. The findings, however, were that the accused had been in the habit of getting a permit to take water to his fields through a similar opening in the bund and that in the year in question he had applied to the village munsif for a permit and had cut the bund in anticipation of grant of the permit. On these facts the learned Judges held that the accused was justified in believing the village munsifi would grant him the permit as was done in the previous years. They therefore held that this act was done in the bona fide belief that he would obtain a permit. They also found (on p. 149) that Assuming that the bund did not belong to the complainant, by the mere diminution of water-supply, there has been no destruction or diminution in value or utility of the property on which the injurious act was committed by the accused.

7. The learned Judges then made a reference to the case reported in 4 M.H.C.R. Rulings, but the terms in which they refer to that case would seem to indicate - I say it with all respect - that the Judges had not the decision before them. They observe:

It was pointed out in 4 M.H.C.R. Rulings xv that unless the property itself was injured, the mere putting up of a dam at a particular place which resulted in depriving the complainant of the water-supply would not amount to mischief u/s 430.

8. As I have already noticed, the case in 4 M.H.C.R. Rulings xv was a case not of depriving the complainant of water-supply but of flooding his lands by the unauthorised erection of a dam.

9. The conviction in this case is well supported by the decision in Chidambaram Pillai and Others Vs. Muhammad Khan Sahib, . That was a case which is almost converse to the present case. The accused, it is stated in the head note, entered on the lands of the complainant and cut three bunds which had been erected in a channel which ran through the complainant's land with the result that the water in that channel ran down another channel off the complainant's land and was utilised by the accused for sale to ryots holding lands lower down. The conviction u/s 430, Indian Penal Code, was conferred on the ground that the supply of water available for agricultural purposes of the complainant was diminished. Reference was

made to the Full Bench decision in Ramakrishna Chetti v. Palaniyandi Kudambar ILR (1876) 1 Mad. 262 (F.B.).

10. It is not necessary in my opinion to refer to the other cases which have been quoted before us. The facts are clear that the accused did commit

mischief by putting a bund across the channel. This resulted in diminishing the supply of water which would otherwise have been available to the

complainant for agricultural purposes. All the requirements of the offence u/s 430, Indian Penal Code, are present. The convictions of the accused

are correct and the fines cannot be said to be excessive. This petition is dismissed.

Stodart, J.

11. I agree and have nothing to add.