

(1918) 05 CAL CK 0005**Calcutta High Court****Case No:** None

Manik Chandra Roy

APPELLANT

Vs

Ismail Kalu

RESPONDENT

Date of Decision: May 22, 1918**Acts Referred:**

- Cattle Trespass Act, 1871 - Section 10
- Penal Code, 1860 (IPC) - Section 352

Citation: AIR 1919 Cal 98 : 50 Ind. Cas. 1006**Hon'ble Judges:** Chitty, J; Beachcroft, J**Bench:** Division Bench**Judgement**

1. In this case the petitioner, Manik Chandra Roy, was convicted by an Honorary Magistrate of Goalundo of offences u/s 24 of Act I of 1871 (Cattle Trespass Act) and Section 352, Indian Penal Code, and was sentenced to pay a fine of Rs. 25 or in default to undergo two weeks" rigorous imprisonment. He was further directed to pay Rs. 5 to the complainant as compensation. The petitioner appealed to the District Magistrate, who upheld the conviction u/s 24 of the Cattle Trespass Act but said nothing about the conviction u/s 352, Indian Penal Code, nor did the District Magistrate say anything about the order for compensation. As to the order for compensation it is clear that in the form in which it was made it was illegal. The Magistrate had be power to award compensation in addition to the fine, though he might have directed a part of the fine, if recovered, to be paid to the complainant as compensation. The petitioner applied to this Court and obtained a Rule calling on the District Magistrate and the complainant to show cause why the conviction and sentence passed on him and the order for compensation should not be set aside on the ground that the complainant was not a person authorized to seize cattle u/s 10 of the Cattle Trespass Act. It was not brought to the notice of this Court at the time of the granting of the Rule that there had been a sentence u/s 352, Indian Penal Code, which apparently had not been dealt with by the Appellate Court. As to the

question whether the complainant had a right to prefer this complaint at all depends on the interpretation put upon Section 10 of the Cattle Trespass Act and the exact position of the complainant with regard to the land and the crops upon it. It appears from the judgment that the complainant had let out the land on burga a lease to Basanta Kumar Das. It is clear, therefore, that the complainant was not the cultivator, nor does it appear that he advanced cash for cultivation of the crop on his land, nor was he the vendee or mortgagee of such crop or produce. The question arises whether he can be said to be the occupier of the land. That would depend entirely on the terms of this so-called burga lease. If it was a lease properly so-called, then the lessee would be the occupier and the complainant would not. If, on the other hand, the burgadar is to be regarded simply as the complainant's servant, the complainant might possibly be said to be the occupier of the land. It was for the complainant to satisfy the Court that he was a person entitled to seize or cause to be seized the cattle trespassing on the land u/s 10. That he did not do and, so far as one can see from the judgment, he was not called upon to do so. At the same time, the petitioner could not be properly convicted for rescuing cattle which had not been seized in accordance with the provisions of the Act. Section 24 (second part) says: "whoever rescues the cattle liable to be seized under this Act after seizure either from a pound, or from any person taking or about; to take them to a pound, such person being near at hand and acting under the powers conferred by this Act, shall, on conviction, be punished" in a certain way. This point being left undetermined, there are only two courses open to us. One would be to direct re-hearing of the appeal and possibly the taking of fresh evidence in order to determine the question. The other would be, having regard to the nature of the case, to set aside the conviction and sentence and leave the matter there. With regard to the conviction u/s 352, it does not appear to have been dealt with at all by the lower Appellate Court. It was obviously a part of the transaction relating to the seizure of the cattle and was of an extremely petty nature, it further would depend on the right of the complainant to seize the cattle inasmuch as a question of private defence of property might arise. In the circumstances we think that, the matter being of such a petty nature, no further action need be taken.

2. We accordingly set aside the conviction and the sentence and also the order of compensation and direct that the fine, if paid, be refunded.