

the subject matter of a civil suit before the institution of criminal proceedings, it may be advisable for the criminal to abide the civil trial; this is laid down in *Khobhari Rai v. Bhagawat Rai*(1) and relied upon by the petitioner, but the facts are far removed from those of his case.

I have considered the petition on the merits, but this Court will not ordinarily interfere, if the Court refusing to act under section 344, Criminal Procedure Code, has exercised a judicial discretion. This too is laid down in *Ram Saran Singh v. Nikhad Narain Singh*(2).

The petition is dismissed.

B.C.S.

RAMIAH  
v.  
RAMIAH.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Wallace.*

DEENADAYALU NAIDU AND TWO OTHERS

(ACCUSED), PETITIONERS,

v.

RATNA PADAYACHI (COMPLAINANT), RESPONDENT.\*

*Cattle Trespass Act (I of 1871), sec. 20—Criminal Procedure Code (V of 1898), ss. 4 (c), 29—Magistrate authorized to receive and try charges—If special authorization necessary regarding offence under sec. 20.*

Section 20 of the Cattle Trespass Act empowers any Magistrate, authorized under the Criminal Procedure Code by the District Magistrate to take cognizance of offences, to take cognizance of an offence under that section.

*Emperor v. Vishwanath Vishnu*, (1920) I.L.R., 44 Bom., 42, approved.

*Budhan Mahto v. Issur Singh*, (1907) I.L.R., 34 Calc., 926, referred to.

1926,  
December 2.

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(1) (1917) 41 I.C., 147.

(2) (1925) A.I.R. (Patna), 619.

\* Criminal Revision Case No. 157 of 1926.

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PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional Magistrate of Musiri, in Criminal Appeal No. 11 of 1925, preferred against the judgment of the Court of the Stationary Second-class Magistrate of Musiri in Calendar Case No. 214 of 1925.

The facts are shortly these: First accused was a maistri and the second and third accused were lascars in the Public Works Department. The complainant filed Criminal Case No. 214 of 1925 before the Stationary Sub-Magistrate of Musiri against them with having, under the Cattle Trespass Act, illegally seized his goats which were grazing in patta lands and with having driven them to a pound and the first accused was further charged with having vilely abused the complainant. The Sub-Magistrate held that the seizure of the goats was illegal and the accused were ordered to pay compensation under section 22 of the Act, and the first accused was also convicted under section 504, Indian Penal Code. On appeal (Criminal Appeal No. 11 of 1925) the Subdivisional Magistrate of Musiri confirmed the conviction and sentence. Against that judgment a Criminal Revision Petition was preferred in the High Court.

Section 20 of the Cattle Trespass Act runs as follows:—

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 by the Magistrate of the district.

*B. Pocker* for petitioners.

*M. Damodaran Nayudu* for respondent.

*Public Prosecutor* for the Crown.

## JUDGMENT.

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The main point argued in this revision case is whether the inclusion in section 4 (c) of the Criminal Procedure Code in the definition of "Offence" of an "act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act" renders it unnecessary for a Magistrate who is generally empowered under the Criminal Procedure Code to receive complaints of offences to be specially authorized by the District Magistrate to receive complaints under that section of the Cattle Trespass Act. Section 29 of the Criminal Procedure Code is relied on. So far as sub-section 1 is concerned, it is argued that the offence can only be tried by the Court mentioned in section 20 of the Cattle Trespass Act, that is, by the Magistrate authorized to receive and try charges without a reference by the District Magistrate. So far as sub-section (2) is concerned, it is argued that, as the offence is not punishable with imprisonment or fine as such, it has no place in the eighth column of the second schedule and therefore that that schedule does not apply. I am inclined to agree with the second contention although there are cases which have held that the compensation which may be awarded under section 22 is of the nature of a fine. But I think the first contention does not carry the petitioner so far as he wishes to go. Granted that the only Court which can try the case is a Magistrate authorized in the language of section 20 of the Cattle Trespass Act, that language appears to me to mean a Magistrate authorized to receive and try complaints generally and not merely complaints under that section. I am not clear why the vague word "charges" is used, but, had the intention of the legislature been to confine the authorization to charges under that section, I think it would have said so. It is

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true that, if "charges" means generally complaints of offences, it was not necessary to amend the definition of "offence" under the Criminal Procedure Code of 1898, because a Magistrate authorized to try offences generally would under section 20 have authority to try a complaint under that section. But the amendment was probably due to certain rulings which lay down that an act in respect of which a complaint could be laid under section 20 was not an offence—*See Pithi v. Ankappa*(1) and *Kottalanada v. Muthayya*(2). I hold then that section 20 means that any Magistrate authorized under the Criminal Procedure Code by the District Magistrate to take cognizance of offences is thereby authorized to take cognizance of an offence under this section. This is the view held in *Emperor v. Visvanath Vishnu*(3) and derives support from that in *Buihan Mahto v. Issur Singh*(4) although the point now taken based on the wording of the section was not specifically raised. There is, therefore, no lack of jurisdiction and this objection fails.

It has been further urged that a joinder of charges for offences under section 20 of the Cattle Trespass Act and section 504 of the Indian Penal Code was illegal. No objection was taken to this joinder until now. The insult complained of was so near in point of time and place that it may reasonably be held to have formed part of the same transaction. I am not prepared to hold the joinder illegal.

I therefore dismiss this petition.

B.C.S.

(1) (1888) I.L.R., 9 Mad., 102.

(3) (1920) I.L.R., 44 Bom., 42.

(2) (1886) I.L.R., 9 Mad., 374.

(4) (1907) I.L.R., 34 Cal., 926.