

KUMARASWAMI SASTRI, J., considered the effect of certain orders refusing to grant various prayers, such as for the issue of a commission, the raising of an issue, or to amend the pleadings, and in the actual matter before him, which was a refusal of an application to grant inspection, he held that it would come within the same category and so would be unappealable, basing his judgment upon the test proposed in the Full Bench case. Similarly in *Official Assignee of Madras v. Ramalingappa*(1), the present learned CHIEF JUSTICE, applying the same definition, concluded that if the effect of the order in question is to allow the proceedings to go on as before it does not amount to a judgment within the clause. I think the order in this case answers to the same test and accordingly that it is not appealable. I agree therefore that the appeal should be dismissed with costs. The C.M.P. also will be dismissed but without costs.

NARASA
REDDI
v.
HAJEE TAR
MOHAMMAD
AYUB SAIT.
—
CIRGENVEN,
J.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Anantakrishna Ayyar.

NOKOLO BEHARA AND TEN OTHERS (ACCUSED NOS. 2 TO 12),
PETITIONERS.*

1927,
August 29.

Indian Penal Code (XLV of 1860), sec. 378.—Fish—Confined in ponds—Caught by baling water out—Theft—If can be subject of.

Fish, confined in ponds, and caught by baling the water from the ponds, can be the subject of theft. *Munchu Paidigadu v. Kadimchetti Tummayya*, (1914) M.W.N., 168 followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to

(1) (1926) 1.L.R., 49 Mad., 539.

* Criminal Revision Case No. 353 of 1927.

NOROLO
BEHARA,
In re.

revise the judgment of the Court of the Joint Magistrate of Berhampore in Criminal Appeal Nos. 75 to 85 of 1926 preferred against the judgment of the Court of the Second-class Magistrate of Sompeta Taluk in C.C. No. 64 of 1926.

The case came on for orders as to admission.

S. Subrahmanya Sastri for petitioners.

JUDGMENT.

Two points have been argued in this case (1) that it is not shown that the place where the accused fished was within the Government village and (2) that fish could not be subject of theft.

On the first point there is the definite finding that the place of fishing is within the limits of Manikyapur (Government) village. The evidence given by the prosecution witnesses supports that finding which is one of fact. (2) As regards the second point there is the finding that the fish were in ponds and that it was by baling the water out from the ponds that fish were caught in this case. They are confined in the ponds and could not escape from the same and go elsewhere. Such fish could be the subject of theft [MILLER, J., in *Manchu Paidigadu v. Kadimchetti Tammayya*(1)].

The petition is dismissed.

B.C.S.

(1) (1914) 22 I.C., 429; (1914) M.W.N., 168.
