

## Mukand Ram vs State on 21 September, 1951

### Equivalent citations: AIR1952ALL26

ORDER

Agarwala, J.

1. This is a reference by the Sessions Judge of Dehra Dun. Bal Krishna complainant alleged that his father had dedicated a bull to Lord Shiva after religious ceremonies on 13-4-1948 and that the bull became public property according to ancient usage. The bull was sent to the cattle pound on 16-8-1949 and as no one got it released within 15 days it was sold at auction on 30-8-1949 and purchased by Mukand Ram applicant for Rs. 76. After the purchase Mukand Ram used the bull for ploughing his fields. Bal Krishna, therefore, filed the complaint, which has given rise to this reference, charging the applicant with having committed an offence under Section 295 (injuring or defining place of worship with intent to insult the religion of any class), Section 295A (deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or religious beliefs) and Section 403 (dishonest misappropriation of property) of the Indian Penal Code. At the trial a charge under Section 427, Penal Code, was framed. The terms of the charge were :

"That you on or about 10-12-1949 in V. Panditwari, P.S. Rajpur committed mischief by intentionally keeping and detaining with you Shivanadia, produced in Court, knowing that you were thereby likely to cause wrongful loss to the Sanatan Brahmin public and detaining it thus diminished its value and utility and thereby committed an offence punishable under Section 427, Penal Code."

The purchase of the bull was admitted by the applicant but he denied that it was Shivanadia or that he knew of this fact. He also denied that he had put it under the plough. The learned Magistrate found that the bull had a mark of delation before the auction and that the applicant had kept the bull in confinement knowing it to be Shivanadia and had punctured its nose. Relying on a case of the Punjab Chief Court Bahadur Singh v. Empress, 34 Pun. Re. 1888, the learned Magistrate held that the bull could be the subject of mischief and holding that by keeping it in confinement and puncturing its nose the applicant had diminished its value and potentialities as a bull. He convicted the applicant under Section 427, Penal Code, and sentenced him to pay a fine of Rs. 50. Against this order the applicant went up in revision to the learned Sessions Judge who has made this reference recommending that the conviction of applicant be set aside.

2. The reference is not opposed on behalf of the complainant. In Empress v. Jamura, 1884 ALL. W. N. 87; Queen Empress v. Bandhu, 8 ALL. 51 and Queen Empress v. Nihal, 9 ALL. 348, dedicated bull was held to be nullius in partibus, property of nobody, and as such not capable of being made a subject of theft or similar offence. In Abdul Qayum v. Emperor, A.I.R. (32) 1945 ALL. 430, it was

held that when an animal was dedicated to a particular deity, it belonged to that deity and was not *res nullius*. It appears to me that a dedicated bull is neither *nullius in proprietate* or *res nullius* nor property of a particular deity.

3. In an agricultural country like India good cattle is a necessity and for good cattle stud bulls are required. To ensure a supply of good bulls the practice was encouraged on certain ceremonial occasions to brand a young bull of certain specifications and let it loose so that no one may be able to misappropriate it. It was dedicated to Lord Shiva and there were directions that nobody should tie it up or ill-treat it. This practice was enjoined as a part of religious duty and ensured the country of a free supply of good stud bulls and these bulls being deemed to be the property of Lord Shiva, no Hindu could think of either ill-treating it or of appropriating it as his own property. There being a religious sanctity attached to such a bull, people following other faiths could not hurt it for fear of hurting religious susceptibility of the Hindu community. Dedication to Lord Shiva, however, merely meant dedication for the benefit of the public at large and not to any particular deity installed in any temple or place. Unless the deity, in the shape of an idol, is either in existence as a consecrated idol or is in contemplation of being so consecrated, the deity cannot be said to be a juristic person capable of holding property. The bull, in the present case, therefore, must be presumed to be public property. Even so, the question still remains whether any offence was committed by the applicant. A public bull has no licence to trespass upon private property. If it does so trespass it can be rightly sent to the cattle pound. When it has been sent to the cattle-pound and no one appears to claim it on payment of charges cattle-pound authorities can sell it by auction. If the bull is so sold under the Cattle Trespass Act the purchaser acquires proprietary title to it and the public lose their title to it. It is a sad result but there appears to be no help for it. After having purchased the bull in an auction sale the applicant could not be said to be guilty of mischief under Section 427, Penal Code, or of having committed any other offence. The conviction of the applicant was, therefore, not justified and must be quashed.

4. I, therefore, accept this reference, set aside the conviction of the applicant and acquit him. The fine, if paid, shall be refunded to him.