

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1976

Dated 20th Sept. 1895

INDEXED.

[Despatch Abstract.]

APPEAL AGAINST ACQUITTAL.

Directing the Government Pleader to appeal against the judgment of acquittal passed by the Sessions Judge of Tanjore in Criminal appeals Nos. 42 and 67 of 1895.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	4778 4878 5045.		1895				

Copy of Note by the Honble Mr. Bliss C. J. E.
of 12th September 1895, on judicial Cn^o. 4198
of 1895

Please ask Mr. Forbes to mention the
case in reporting to India about the amend-
ments of the criminal Procedure Code and to
say that the result of the appeal which
has been made will be reported.

(True Cn^o):
Done Davidon
Ag. Under Secretary. 1.10

To
G. S. Forbes Esqre J. C. S. On special duty with
Copy of document to be kindly
returned soon.

Seen by Mr. Forbes.
29/10/95.

9
Tanjore D. Magistrate's Office
Ref on C. C. no 968 of 1895. Villam 25th August 1895

From
E. C. Rawson Esquire,
Acting D. Magistrate,
Tanjore.

To
The Chief Secretary to
Government,
Judicial Department,
Madras.

Sir, I have the honor to submit
the records of C. C. no 42 of 1895 on
the file of the 1st class Sub Divisional
Magistrate, Kumbakonam and a
Copy of the Judgment of the Sessions
Court, Tanjore, in Criminal appeals
nos 42, 67, 68 and 69¹⁸⁹⁵ for orders
2. The villages of Thirukōdikāval,
Kumbakonam Taluk, and —
Thiruvāduthorai, Mayāvaram
Taluk, lie on opposite sides
of

of the river Cauveri. Thirukodikaval lies on the north bank and its old burning ground used to be on that bank, but many years ago, the Cauveri shifted its bed to the north with the result that the burning ground lay on its south bank close to the bathing ghaut of Thiruvaduthorai village. This state of things continued without objection till the beginning of 1893.

3. At this time, the Thiruvaduthorai people objected to the proximity of the burning ground to the bathing ghaut and to the public path. The Taluk Board and the District Surgeon were of opinion that the removal of the burning ground was desirable, and a piece of ground on the north bank of the river was set apart by the

the Taluk Board to be used as a burning ground by the Thirukodikaval people. 4. On the 17th June 1893 the Sub-Divisional Magistrate of Kumbakonam issued a notice under Section 144 of the Code of Criminal Procedure, prohibiting the Thirukodikaval people from using the old burning ground. Owing to some defects in this notice, it was followed by a revised one dated 5th August 1893. The Sub-Divisional Magistrate then requested the District Magistrate to move Government to have the order made absolute. Mr. Sherrock inspected the spot in person and considered that there was no room for two opinions with regard to the desirability of moving the site of the burning ground but the matter not being one of urgency, he set aside the

the Sub-divisional Magistrate's notice, dated 5th August 1893. and gave the Thirukodikaval people two months' time to come to some reasonable arrangement after which he said he would consider the necessity ^{for the} of adoption of legal proceedings.

5. The Thirukodikaval people, however, refused to come to any arrangement or to have the burning ground removed. Vide enclosed translation of the deposition of the principal villagers before the Tahsildar of Kumbakonam, dated 26th December 1893. And eight months later the following notification dated 11th August 1894 was issued by the District Magistrate.

Notification

"It is hereby notified for the information and guidance of the people of Thirukodikaval village in Kumbakonam Taluk and of the

the people of Thiruvaduthorai village, Mayavaram Taluk, that to avoid danger to human health they are from the date of publication hereof to cease using their burning grounds situated adjoining each other on the Southern bank of the Cauveri and to use those otherwise provided and known to them. Disobedience of this order will entail prosecution under Sections 290, 291 and 188, Indian Penal Code."

This was widely published in the villages concerned.

6. In spite of this notification, some of the inhabitants of Thirukodikaval, on the 11th May 1895, burnt on the prohibited ground the corpse of one Vyāpuri Pillai. The Sub-divisional Magistrate, Kumbakonam, tried the case and convicted the accused of offences.

Offences under Sections 188 and 290 Indian Penal Code in C.C. No 42 of 1895 on his file. But on appeal the Sessions Judge reversed the convictions under Section 188 Indian Penal Code in the case of all the appellants and those under Section 290 Indian Penal Code in the case of appellants 3 and 4. It is as regards the reversal of the convictions under Section 188 that I am now addressing the Government. The ground on which the convictions under that section have been reversed is that the District Magistrate's notification, dated 11th August 1894, was not legal, there being a want of legality in its inception and that it was therefore no offence to disobey it.

The Sessions Judge says that the notification could not have been issued under Section 133, Code of Criminal Procedure, as it was

was ab initio absolute, and there is no doubt of the correctness of this view. But he also says that he doubts if it could be legally issued under Section 143, Code of Criminal Procedure. His difficulties are (1) whether the villagers of Thirukodikaval could be held to be a person as defined in the Indian Penal Code, and (2) whether they as a body had already been guilty of the public nuisance prohibited by the District Magistrate. As regards the first difficulty, the Sessions Judge admits that the word 'person' as defined in the Indian Penal Code includes a body of persons, but he considers that the villagers of Thirukodikaval cannot properly be called a 'body of persons'. I beg to submit that this ^{reasoning} meaning is incorrect and

and that there is no reason why the inhabitants of a village - should not be looked on as a "body of persons."

8. With regard to the second difficulty of the Sessions Judge, viz, whether that body had been already guilty of the particular nuisance - prohibited, it is quite enough, I think, if it is proved that the nuisance prohibited had been previously committed and is being continued by members of the body to whom the prohibitive order was issued.

It is not contended that the burning of corpses close to the bathing ghaut is not a nuisance, and there is ample evidence on record that corpses used to be burnt on the prohibited ground by the Thirukodikaval people before the District Magistrate's notification

in 1894 the

notification was issued. This was indeed the ground on which the order was based. Moreover Endeavours were made for over a year and a half to come to an amicable arrangement with the Thirukodikaval people but they refused to come to any terms and it was only after all hope of inducing them to cease using the prohibited ground was over that the prohibitory order was issued. This resistance and refusal are, I think, sufficient proof of the continuity of the nuisance. I am of opinion that the District Magistrate's notification dated 11th August 1894 was a legal one and that the Sessions Judge was not justified in setting the conviction aside.

10. It may at first sight appear that

that as the convictions for causing a nuisance under Section 290 have been upheld (except in the case of the 3rd and 4th — appellants) the matter under discussion is merely an —
Academical one. But the question involved, viz, whether a Magistrate can issue such an order as the one in question to the inhabitants of a village as a body, is really one of extreme importance, and it is desirable I think to get an authoritative ruling on the point. It is difficult to see how an order prohibiting the use of a burning ground used commonly by all the villagers can be issued except generally to the villagers as a body.

11. I should mention that — though it would have been better had the Magistrate been convicted under Section 291 Indian Penal Code, which is the Section really appropriate, the

the offence, if it is held that there was an offence, comes also within the four corners of Section 188. This is therefore a technical error which can easily be amended in appeal.

12. I beg that, if Government agrees with me, the Public Prosecutor may be directed to present an appeal against the order of acquittal passed by the Sessions Court.

I have the honor to be,
Sir,
your most obedient servant,

Remond
a District Magistrate.

rs
Lm

Papers to be read in proceedings:—

[G.
24.]
50-23-7-95.

Again G.O., dated

189 , No.

Again G.O., dated

189 , No.

Current No.

of 189 , dated , from

" "

" 189 , " , "

" "

4198 " 1895, " 25-5, " D.M., Tanjore

ORDER. 8 20th September 1895, No. 1976.

The Govt. agrees with the Dist. Mag. in considering it desirable to obtain an authoritative decision as to the legality of the Sessions Judge's finding of acquittal in respect of the charges under sec. 188 of the P.C. From the concluding portion of para. 7 of the ^{appeals} it appears that the appellants in criminal appeals 68 & 69 of 1895 were acquitted on the ground that there was no evidence that they assisted in the commission of the acts which constituted the offence complained of. The Dist. Mag. does not contest this view & the Govt. therefore merely be instructed to appeal against the Sessions Judge's acquittal of the appellants in criminal appeals nos. 62 & 67 in respect of the charges under s 188 of the P.C. with the special object of establishing

may be preferred in this case. It is the latter portion of para. 6 of the judgment to which the Dist. Mag. takes exception, & the appeal is recommended in order to settle the question whether a prohibitory notice under s 143 Cr. P.C. can legally be addressed to "the inhabitants of a particular village". The ruling in s. 111, 99 is challenged on the ground that the expression "person" includes a body of persons, a phrase which in turn includes the inhabitants of a particular village.

11/9/95

We must appeal, & get the point of law settled.

Please ask Mr. Forbes to mention this case in reporting to India about the amendment of the Cr. Proc. Code & to say that the result of the appeal which has been made will be reported.

12/9/95

4/5/95

The Acting Dist. Magistrate
Tanjore

The Chief Secretary
to Government.
Judicial Department.
Madras

Dated 25th August 1895

Ref on Cur No 968
Maj 1895

Encs: 4

Subject

Recommending that the Public Prosecutor may be directed to prefer an appeal against the judgment of acquittal passed by the Sessions Judge Tanjore in Criminal appeals nos 62 & 69 of 1895.

the legality of the Dist. Magistrate's prohibitory Appeal against an acquittal order.

Per.

18/9/95

18/9/95

The D.M., Jambie (Pro) 18/9/95
The Dist. Magistrate (Pro) 18/9/95
with notes 2/10

Office.

Communicate copy of this note to
Mr. G. S. Foster. M.C. (on special duty) 2/10
18/9/95

DEPT. OF JUSTICE

H.M.

The draft is marked for H.M.
as it is not clear whether any
appeal should be preferred in C.D.
Nos. 68 & 69

I take it that H.M. does not care
about the cases in themselves
but wishes merely the appeal
to get a ruling on the point
of law raised.

19/9/95

18/9/95

When given for copying
When copied
When examined
When signed

189

READ AGAIN G.O., No. 189

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

ATTACHMENT WITH DITTO.

FORM NOT FILLED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

A - Copy in full.
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P - Copy abstract only.
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