

Local & Munl. (1896) Department.

MISCELLANEOUS.

G.O., No. 2396 L

DATED 18-12-96

INDEXED.

[Despatch Abstract.]

Burning ground.

Recording with ~~new~~ 807D. com-
municating the judgment of the High Court
in Criminal appeals nos. 554 & 555 of 1895; and
stating that the question ^{referred to therein} regarding — has
already been noted for consideration when the
Local Boards Act is amended.

BACK PAPERS.

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

FURTHER PAPERS.

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

Local & Munl. (189) Department.

CURRENT No. 33912

From The Judicial Dept.

Recd

Order No. 2396 Dated 4/10/29

Recorded with the remark
that the question referred to in
the Government Order read above
has already been noted for con-
sideration when the Local Boards
Act is amended.

V.A.
17/11/29

[Signature]

No. 1914

Dated 4-12-26

Received

Registered

Enclosures /

Spare copies.

SUBJECT.

Comm. with remarks, to
the Dr. magr. Dargun and the
L & M Dept., copies of the
judgment of the High
Court in ext. appeal
Nos. 534 + 535 of 25

To

The Judicial Department.

W.A. Copy - 18/12/26

[Signature]

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

*Tuesday, the twenty-fifth day of August,
One thousand eight hundred and ninety-six.*

PRESENT :—

THE HONOURABLE MR. JUSTICE SUBRAHMANIA AIYAR, C. I. E.,
AND
THE HONOURABLE MR. JUSTICE DAVIES.

CRIMINAL APPEALS NOS. 554 AND 555 OF 1895.

The Public Prosecutor	...	...	Appellant in both cases.
Saminadha Pillai	...	...	{ Accused in Criminal Appeal No. 554 of 1895.
Chokka Pillai	...	...	{ Do. in Criminal Appeal No. 555 of 1895.

Appeals under section 417 of the Criminal Procedure Code against the judgment of the Sessions Court of Tanjore, in Criminal Appeals Nos. 42 and 67 of 1895, in so far as it acquits the appellants therein of an offence under section 183, I. P. C.

CRIMINAL REVISION CASES NOS. 397 AND 398 OF 1895.

CRIMINAL REVISION PETITIONS NOS. 226 AND 227 OF 1895.

Saminadha Pillai	...	...	{ Petitioner in Criminal Revision Case No. 397 of 1895 (1st accused).
Chokka Pillai	...	...	{ Petitioner in Criminal Revision Case No. 398 of 1895 (2nd accused).

Petitions under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of the Sessions Court of Tanjore in the same appeals Nos. 42 and 67 of 1895, in so far as it confirms the convictions of, and sentences passed on, the petitioners under section 290, I. P. C.

These cases coming on for hearing on Thursday and Friday, the 13th and 14th instant, upon perusing the petitions of appeal and the revision petitions, and the record submitted in accordance with the order of this Court, dated the 27th September 1895, and upon hearing the arguments of the Public Prosecutor in support of the appeals and against the revision petitions and of the Honourable Mr. C. Sankaran Nair and Mr. V. Sankaranarayana Sastri, Vakils for the accused in all four cases, and of Mr. C. R. Patthabirama Ayyar, Vakil for the complainant in both the revision cases, and of Mr. R. A. Krishnasami Ayyar, Vakil for the complainant in revision case No. 397 of 1895, and the cases having stood over for consideration till this day, the Court delivered the following

JUDGMENT :—

The accused in this case, two of the residents of the village of Thirukodikaval, were convicted by the Magistrate under sections 183 and 290 of the Indian Penal Code. On appeal, the Sessions Judge reversed the conviction under the former section, but confirmed that under the latter. The act for which they were convicted was the cremation of the corpse of one Vyapuri Pillai, father of the 1st accused, on a spot, close to the ghat on the Kaveri used by the inhabitants of the adjoining village of Tiravaduthorai for bathing and other lawful purposes. Both the courts find that the cremation caused substantial

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GOVERNMENT OF MADRAS

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UNDER SECRETARY
PUBLIC WORKS DEPT.

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annoyance and discomfort to the persons who were at the ghat and to the passers by on the occasion. The spot, where the body was burnt, appears to have been used for such purpose by the Thirukodikaval people from time immemorial and to have been originally situated to the north of the river. But the place where the ghat referred to now exists came to be used as a place of public resort, only from the time when the river changed its course many years ago.

The questions are, whether the conviction under section 290 is right and whether the acquittal of the accused in respect of the offence under section 188 should be set aside. In determining these questions, it is necessary first to deal with the case independently of the notice of the District Magistrate, dated the 11th August 1894, to be more fully referred to hereafter, and then to examine the bearing of that notice on the alleged guilt of the accused.

Now, taking the case apart from the said notice, it is clear that the act of the accused falls under the limited class of cases sometimes designated as nuisances "legalised." In other words, it seems to be an instance of those compromises belonging to social life (alluded to by Pollock, C. B., in *Bamford v. Turnley*, 31 L. J., Q. B. at page 292) upon which the peace and comfort of that life mainly depend and in which some apparent natural right is invaded or some enjoyment abridged to provide for the more general convenience or necessities of the whole community. In support of the above view, it is hardly necessary to observe that, not only the religious sentiments of all sections of the community, but also the requirements of general health and comfort, absolutely demand that corpses shall be disposed of as early as practicable, so as not to prove hurtful to the living. It is this imperative necessity that, as a general rule, casts upon persons having charge of corpses not only as a matter of social but also of legal obligation, the duty of arranging for the disposal of those corpses in a reasonably speedy, decent and inoffensive way (cf. the observations of Denman, Chief Justice, in *Queen v. Stewart*, 12 Adolphus and Ellis, at p. 778 and of Lord Campbell, C. J., in *Reg. v. Vann*, 2 Denis, at p. 330). And to facilitate the discharge of such an important duty, it has been, as is well known, the general and immemorial custom to set apart some spots for use by the public as places of sepulture or cremation. The absolute necessity for some such common provision will become apparent on a moment's reflection. It is sufficient to refer to but one, not an unimportant, consideration bearing on the matter, viz. that the number of persons who are in a position to find for interment or cremation of the bodies of their deceased relations, friends or dependents, places of their own, which, while being convenient to those persons themselves, will not be a nuisance to others, is extremely small when compared with the millions of landless men and women who, if required to do so, would find it impossible to obtain such spots for similar use by them. Hence the existence of common burial and cremation grounds in almost every inhabited village in this Presidency, except portions of the west coast, where the conditions are somewhat different, owing to human dwellings not being crowded together as they mostly are elsewhere. In cases of this description, it is clear, adopting the language of Sir James FitzJames Stephen (*Digest of Criminal Law*, 5th Edition, 197), the fact that the act complained of facilitates the lawful exercise of their rights by part of the public shows that it is not a nuisance to any of the public. And when persons, like the accused entitled to use a particular spot dedicated for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incident to such an act as it is generally performed in this country, it must be admitted that he does what is perfectly lawful. To hold that an act so properly done not only in the exercise of a right of which the people of this country are generally so very tenacious, but also in the discharge of a serious duty, amounts, as the prosecution contends, to an offence, would be highly unreasonable and unjust. It follows, therefore, that the conviction of the accused cannot be sustained simply on the ground that their acts caused material annoy-

ance and discomfort to the Tiruvaduthurai people, who were near the place on the occasion referred to.

The next question for determination is whether the act of the accused was punishable in consequence of the notice issued by the District Magistrate on the 11th August 1894, addressed to the people of Thirukodikaval in general and prohibiting them from cremating any corpses in the place in dispute. If the above notice were valid, there can be no doubt that the conviction of the accused, not only under section 290, but also under section 188, would be warranted. But the order appears to be fundamentally invalid. The notice itself does not state under what provision of law it was issued. Our attention was not drawn to any special or local law empowering the District Magistrate to pass such an order. We were, however, referred by the Public Prosecutor to section 143 of the Criminal Procedure Code as the one under which the Magistrate acted. But under that section no Magistrate can prohibit what was lawful before the date of his order, and thereby make such an otherwise legal act, committed after the date of the order, punishable as a nuisance under the Indian Penal Code. For he is by that section empowered to enjoin a person from repeating or continuing only a public nuisance as defined in the Indian Penal Code or any special or local law. Since, however, it has been found, for reasons already stated, that to cremate on the ground in question was not a nuisance before the issue of the order of the 11th August 1894, the section relied on cannot be held to support that order. Nor have we been able to find any other provision of law under which it could have been rightly promulgated. No doubt before the District Magistrate made the order, another place, unobjectionable to the Tiruvaduthurai people, had been provided for the Thirukodikaval people to be used by them as their village cremation ground. Now some observations made by Innes and Muthusami Aiyar, J. J., in criminal revision case No. 86 of 1881 (*Weir, Cr. R.*, page 765), were cited to show that, in circumstances like those which existed here, it was within the powers of the Magistrate to prohibit the Thirukodikaval people from using the old spot as a place for cremation in future. The observations of the learned Judges, no doubt, support the contention. They are, however, but *obiter dicta*, for which no authority is cited and in which, with all deference to the learned Judges, it is difficult to agree. On the other hand, *Becharam Ghorooce v. Boistebnath Bhooayan* (14, W. R. C. R. 177) seems to be a direct decision in support of the contrary view. There, a Magistrate purporting to act under section 303 of the Criminal Procedure Code of 1862 had prohibited cremation in a spot originally devoted for such a purpose, on the ground that a more suitable place for it had been subsequently provided in another locality. Loch, J., who delivered the judgment of the Court, observed—"but here the public were charged with committing a nuisance by a private individual in the exercise of an admitted right, and we are not shown under what law the Magistrate proceeded when he prohibited the public from making use of this right." This appears to be the sound view to adopt, since it is not easy to see how the mere fact that another place has been set apart can empower a Magistrate acting under the general law, to deprive a party, entitled to use the existing cremation ground, of his vested right to continue to use such ground for the purpose for which it was originally appropriated. It is obvious that difficulties, like those which have arisen in the present instance, can be met only by the extension of provisions similar to those contained in section 240 of the District Municipalities Act, to the rural parts of the country. In the absence of such a law applicable to tracts like that in which the villages in question are situated, the prohibitory order relied on, on behalf of the Crown, must be held to have been made without jurisdiction and void. In this view it is, of course, unnecessary to consider the other objections taken to the validity of the District Magistrate's order.

The result is the convictions of the accused must be, and are hereby, set aside. The fines, if levied, must be refunded. The appeals against acquittal in respect of the offence alleged to have been committed under section 188 of the Indian Penal Code are dismissed.

Ordered accordingly.

(Signed) V. M. Ramalingam
 Ag. Dy. Registrar,
 Appellate Side.

Exd. T. Ramakrishna Pillai.

(True copy) *do & Co*
 High Court of Judicature,
 Madras, 27th November 1896. } Registrar.

To The Under Secretary to Government
 Judicial Department
 (To be returned)

Letter 279511/36

[G.]
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3,909-23-11-96.

Judicial Department.



LOCAL & MUNICIPAL DEPT.
CURRENT No. 32912

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers:-

From the Government Pleader, Madras, No. 706, dated 26th August 1896.

In continuation of this office letter No. 1043 of the 14th October 1895 I have the honour to state that Criminal Appeals Nos. 554 and 555 of 1895, on the file of the High Court, came on for hearing on the 14th August 1896 and stood over for consideration till the 25th idem, when the appeals were dismissed and the conviction under section 290 Indian Penal Code was set aside.

I have applied for a copy of the Judgment which will be forwarded on receipt.

From the same officer, No. 1012, dated 21st November 1896.

ORDER:- No. 1914, dated 4th December 1896.

Communicated to the District Magistrate of Tanjore and to the Local and Municipal Department. The Local and Municipal Department will be requested to take the concluding sentences of the judgment into consideration when Local Boards Act V of 1884 is amended.

(True Extract)

W. Ramis

for Chief Secretary.

To the Local and Municipal Dept with High Court Judgment.
,, ,, District Magistrate of Tanjore.

HIGH COURT OF JUDICATURE
AT
MADRAS.

JUDGMENT

IN

*Criminal Appeals Nos. 554 and 555
of 1895.*

*Criminal Revision Cases Nos. 397 and
398 of 1895.*

*(Criminal Revision Petitions Nos. 226 and
227 of 1895.)*

*(Criminal Appeals Nos. 42 and 67 of 1895,
Sessions Court of Tanjore).*

Dated 25th August 1896.

Sent



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