

Kesavan Nair Vs. State

Kesavan Nair Vs. State

SooperKanoon Citation : sooperkanoon.com/718236

Court : Kerala

Decided On : Jul-09-1959

Reported in : AIR1960Ker78; 1960CriLJ229

Judge : P.T. Raman Nayar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 144

Appeal No. : Criminal Revn. Petn. No. 112 of 1959

Appellant : Kesavan Nair

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : T.N. Subramonia Iyer and; V. Rama Shenoi, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

P.T. Raman Nayar, J.

1. It is the case of the State as of the petitioner that the road in question is not a private road but a highway. That being no, it should be unnecessary to repeat what has been said so often by the courts (both before and after the leading cases

in *Parfhasaradi v. Chinna Krishnan*, ILR 5 Mad 304; *Simdaram Chetti v. The Queen*, ILR 6 Mad 203 (FB); and *Manzur Hsissan v. Muhammad Zaman*, AIR 1925 PC 36, that the right to go along the road in procession (whether religious or otherwise) with appropriate observances heres in every member of the public. The learned; Magistrate was clearly in rror when in his order dated 25-3-1959 declining to rescind under Section 144(4), Criminal P. C., an order he had passed on 17-3-1959 under Section 144(1) restraining the petitioner from taking out a religious procession along the highway within a distance of three furlongs of a mosque about 50 yards from the highway on the ground that it would be objected to by the worshippers in the mosque and thus lead to a breach of the peace, he observed that 'the proper remedy for the petitioner will be to move the civil court, and in appropriate action to establish the right which is now claimed' and that then, perhaps it would be possible for the authorities to take necessary action in accordance with the decree of the civil court. It is really the Other away about. (The right is a right inherent in the public nature of the road and the petitioner need not go to a civil court to establish it.) I am told by the learned Public Prosecutor that the Muslims of the locality claim that the road is a private road. But that is not the case of the State, and it would be for the Muslims to go to a civil court to establish their claim. I am by no means certain that this wrong approach did not influence the Magistrate in declining the petitioner's prayer.

2. The decisions have, however, been careful to emphasise that this inherent right to go in procession along a highway is subject to such considerations as public order and decency, the right of the public to the normal use of the road and the powers of the authorities to give directions to prevent obstructions of the thoroughfare and, what is pertinent to this case, to prevent breaches of the peace. While the jurisdiction of a magistrate to slop the exercise of lawfvd rights in an emergency in order to preserve the peace is unquestionable, it should be needless to say that it is the duty of the magistrates, as of ofher authorities charged with the duty of maintaining law and order, to protect lawful rights, if they can rather than to muzzle them, and to restrain, by the means within their power, unlawful interference with lawful rights. It is only if this is not possible and a breach of the peace is- threatened, that resort should be had to Section 144, Criminal P. C., for the purpose of restraining the exercise of lawful rights. Even so the restraint

should be the very minimum required for the maintenance of the peace and, should the occasion arise again, it might well be considered whether an order in such wide terms as the present order, not restricted to particular hours such as prayer time, or to music in front of the mosque, and covering such a big area as a circle of three furlongs radius around the mosque, is really necessary.

3. It is true that the particular order complained against has expired, the two months period specified in Section 144(6) being over, and that, in a sense this petition has become iniructuous. But I have been at pains to deal with the questions involved at some length because it would appear that the processions are an annual feature being conducted in connection with a temple festival generally held in the month of Kumbharn. The authorities cannot therefore plead want of notice of threatened trouble, and if the use of Section 144, Criminal P. C., is resorted to every year to restrain the processionists that would be tantamount to a permanent injunction against the exercise of lawful rights. This, I might add, is the second year in succession when such resort has been had. It is however represented by the learned public prosecutor that on this occasion the authorities were taken unawares since the decision of the petitioner to take out a procession was a sudden decision and that the procession contemplated was not one of the usual temple processions. If that be so, the order under Section 144(1), Criminal P. C., was no doubt justified - and I have been careful enough to say nothing about the merits of that order - but it seems to me that this is somewhat inconsistent with the observation of the learned Magistrate in his order dated 25-3-1959 that if the petitioner obtained a decree from the civil court it would perhaps be possible for the authorities to take necessary action in accordance therewith.

4. There being now no order to set aside, this petition is dismissed.