

In Re: Ramaswami thevan and anr.

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SooperKanoon Citation : sooperkanoon.com/774101

Court : Chennai

Decided On : Jan-25-1923

Reported in : (1923)44MLJ485

Appellant : In Re: Ramaswami thevan and anr.

Judgement :

Spencer, J.

1. The only question argued at the hearing of this appeal is whether the order under Section 106, Criminal Procedure Code, requiring the accused to give security to keep the peace is a legal order. It is argued (1) that the offence of voluntarily causing hurt (Section 323 I.P.C.) is not one of these specified in Section 106, Criminal Procedure Code and does not of itself necessarily involve a breach of the peace and (2) that there ought to be a finding by the Sessions Judge that a breach of the peace was actually caused before the Court made the order under this section.

2. On the first point I find that the accused's act included an assault on prosecution 9th witness in a public place, and assault is one of the offences specified in Section 106. The expression 'Other offences involving a breach of the peace' would embrace offences ejusdem generis with the offences of assault and rioting which are specified in the section. It is only because the accused's act was more serious than one of petty assault that they were not convicted of that minor

offence.

3. But the circumstances spoken to by the witnesses as those in which hurt was caused to prosecution 9th witness were such that there can be no doubt that there was a breach of the peace on that occasion.

4. On the second point I do not think it is necessary that the lower court should record a finding that a breach of the peace was involved in order to invest itself with power to make an order under Section 106(1), Criminal Procedure Code.

5. If the offence of which the accused were convicted was one which did not of itself necessarily involve a breach of the peace such as criminal trespass, mischief, or unlawful assembly, it would be proper that the Magistrate or Judge should in his order make it clear that a breach of the peace was committed.

6. But the section does not require such a finding to be recorded, and when the offence of which the accused is convicted is one which implies the use of violence it would be superfluous to say more. The Judge has recorded his opinion that it is necessary in this case to require the convicted persons to execute a bond for keeping the peace, and that is all that the section in terms demands.

7. The order will therefore stand.