

Muttumira and ors. Vs. the Queen Empress

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Court : Chennai

Decided On : Sep-18-1884

Reported in : (1883)ILR7Mad590

Judge : Charles A. Turner, Kt., C.J. and ;Hutchins, J.

Appellant : Muttumira and ors.

Respondent : The Queen Empress

Judgement :

Charles A. Turner, Kt., C.J.

1. During the Muharram festival the accused, who are Labis resident in the village of Dalavaipatnam, erected a pandal or temporary shed on a piece of waste land forming part of the village site, and placed in it an image.
2. The land is in the neighbourhood of Hindu temples, whence at certain seasons processions are conducted past the site, and parts of it are used by the Hindus at the Kaliyamman festival for tying buffaloes dedicated to the idol.
3. It is found that in so doing the accused had no deliberate intention to wound the religious feelings of the Hindus, but the Appellate Court has sustained the order of the Magistrate convicting them of having caused a public nuisance, on the ground that the placing of a Muhammadan symbol in the neighbourhood of Hindu temples is likely to cause serious annoyance to the Hindu public.

4. A public nuisance is defined in the Penal Code as an act or omission which causes any common injury, danger, or annoyance to the public or people, in general, who dwell or occupy property in the vicinity, or which must necessarily cause obstruction, danger, or annoyance to persons who may have occasion to use any public right. It is obvious from the language of the Act that it was not intended to apply to acts or omissions calculated to offend the sentiments of a class. In this country it must often happen that acts are done by the followers of a creed which must be offensive to the sentiments of those who follow other creeds. The erection of a place of worship in a particular spot is likely to offend the sentiments of adherents of other creeds residing in the neighbourhood, but the Penal Code does not regard such an act as a public nuisance. The scope of the provision we are considering is to protect the public or people in general, as distinguished from the members of a sect, from injury, danger, or annoyance in the neighbourhood of places where they dwell or occupy property or when they have occasion to use a public right.

5. The erection of the pandal and the location in it of a tabut have not caused any danger, injury or annoyance to the people in general who live in the vicinity, nor have these acts caused any injury, obstruction, danger, or annoyance to any persons in the exercise of a public right, for instance, a right of way over the land.

6. The Labis have done no more than at other seasons is done by the Hindus--they have made a temporary use of a piece of waste land for a purpose, deemed by them religious. The circumstances that these acts may provoke the religious intolerance of others and induce them to commit a breach of the peace does not render the acts of the accused a public nuisance.

7. It would be the duty of the Magistrate, if occasion arose, to have recourse to the powers conferred on him to restrain persons who, on reasonable grounds he is satisfied, contemplate a breach of the peace. If the risk of disturbance is so serious or so sudden that it could not be averted by the means at the Magistrate's disposal, he might properly order the removal of the pandal, &c.;, but the acts of the accused for the reasons above mentioned do not constitute an offence punishable under Section 290 of the Indian Penal Code, and the convictions must

be quashed and the fines returned.

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