

Muthiah Chetti and ors. Vs. Emperor

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Court : Chennai

Decided On : Oct-17-1905

Reported in : (1906)ILR29Mad190

Judge : Boddam and; Moore, JJ.

Appellant : Muthiah Chetti and ors.

Respondent : Emperor

Judgement :

1. The appellants have been convicted of being members of an unlawful assembly and have been fined under Section 143, Indian Penal Code. They have also been bound over to keep the peace under Section 106, Criminal Procedure Code.
2. We are clearly of opinion that the conviction was right. It is found that the appellants with others to the number of 100 armed with aruvals, sticks, etc., went to a piece of land claimed by the prosecutor with the object of taking possession of it and demolishing a building upon it and though no force or violence was used - that was because the prosecution party were overawed and did not come into conflict with them.
3. It is however contended, and we think rightly, that the accused in the circumstances of this case were improperly bound over to keep the peace under Section 106, Criminal Procedure Code, inasmuch as (1) they were convicted by a Second-class Magistrate only and not before a Court such as is named in the

section and (2) they have not been convicted of an offence involving a breach of the peace.

4. We think that the power given to an Appellate Court to make an order under this section is not an unlimited power to make such an order in any circumstances, but is to be taken as giving the Appellate Court power to do only that which the lower Court could and should have done, and therefore, that the power of the Court to pass such an order is confined to cases where the conviction has been by a Court named in the section and in circumstances required by the section.

5. It has been held that the words 'involving a breach of the peace' in the section, require that a breach of the peace should be an ingredient of the offence proved, and that before the section can be put in force there must be a finding that a breach of the peace has occurred see *Baidya Nath Majumdar v. Nibaraa Chunder Gope* 1 I.L.R. Cac. 93 and *Kannockraran Kunhamad and Ors. v. Emperor* I.L.R. Mad. 469. As in this case there was no finding that a breach of the peace had been committed, and the offence for which the accused were convicted did not necessarily involve a breach of the peace and no breach of the peace was in fact committed, we set aside the order requiring the accused to give security for keeping the peace, and the bonds if already executed will be cancelled.

6. Except as above, we affirm the convictions and sentences.