

In Re: Arumuga thevar

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SooperKanoon Citation : sooperkanoon.com/788858

Court : Chennai

Decided On : Aug-31-1942

Reported in : (1942)2MLJ613

Appellant : In Re: Arumuga thevar

Judgement :

ORDER

Horwill, J.

1. The petitioner has been fined Rs. 20 under Section 3, Clause (12) of the Town Nuisance Act. He has also been bound over under Section 106, Criminal Procedure Code, to execute a bond for keeping the peace for a period of two years.

2. In revision I do not find any reason for not accepting the finding of fact that the petitioner was drunk and disorderly on the day in question. It is pointed out that such an offence is not a cognizable one and that P.W. 1 should himself have filed the complaint and not the police. However that may be, that cannot be a sufficient reason for interfering in revision with a just order.

3. This case was admitted with regard to the order passed under Section 106, Criminal Procedure Code. It is generally undesirable where a person is charged with some petty offence, to tack on to some small sentence of fine an order under Section 106, which in most cases, in view of the poverty of the accused persons

would necessitate their remaining in jail for a long period which very much exceeded the punishment legally permissible for the offence of which the accused were charged. An order under Section 106 is of course legally permissible, but should be used Very sparingly in such cases.

4. Needless to say, before passing an order under Section 106, the Magistrate should be satisfied that it is necessary to require the accused person to execute a bond for keeping the peace, i.e., the Magistrate should be satisfied that if he does not call upon the accused to furnish such a bond there is a likelihood that there will be breaches of the peace in future. It is difficult for the Magistrate to come to such a conclusion on a solitary instance of disorderliness where the evidence is of a very simple nature. The evidence in this case does not at all disclose that the accused is likely to do something similar in the future. ,

5. In deciding whether an order under Section 106, Criminal Procedure Code, should be passed or not, the Magistrate must moreover consider only legal evidence. He should not act on statements made by the prosecution from the Bar. Finally, even if all the evidence justifying an order under Section 106 Criminal Procedure Code were available, the order requiring the accused to furnish a bond for keeping the peace for a period of two years is out of all proportion to the gravity of the offence committed.

6. The petition is allowed with regard to the order under Section 106, Criminal Procedure Code, which is set aside. The order as to fine and in default as to imprisonment will stand.