

In Re: V. Subramaniam

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Court : Chennai

Decided On : Nov-22-1968

Reported in : AIR1970Mad333

Judge : Sadasivam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 188

Appeal No. : Criminal Revn. Case No. 288 of 1967 and Crl. Revn. Petn. No. 285 of 1967

Appellant : In Re: V. Subramaniam

Advocate for Def. : R. Veeramani, Adv. for Public Prosecutor

Advocate for Pet/Ap. : C.K. Venkatanarasimham, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Sadasivam, J.

1. Petitioner Subramaniam was convicted under Ss. 447, 379 and 188 I.P.C. and sentenced to undergo rigorous imprisonment for two months on each of the first two counts and simple imprisonment for one month on the last count, by the Sub-

Magistrate, Tindivanam, and the sentences were ordered to run concurrently. But the learned District Magistrate, South Arcot. on appeal set aside the convictions under Ss. 447 and 379 I.P.C. and the sentences imposed in respect of the same, but confirmed the conviction of the petitioner only under Section 188 I.P.C. and modified the sentence to one of fine of Rs. 100 in default to undergo simple imprisonment for one week.

2. The complaint in this case was referred by the Sub-Divisional Magistrate, Yillupuram, on the ground that an order passed in M.C. 189 of 1962 on the file of that court on 13-11-1962 was disobeyed by the petitioner on 12-5-1966, The petitioner was the tenth respondent in the proceedings under Sec, 145 CrI. P. C. and he claimed item 8 in the schedule of properties in the said petition, which is the subject-matter of the present case, as having been taken by him on lease from the original owner, Padmanabha Gramani. It should be noted that the claims which led to civil disputes and the proceedings under Section 145 CrI. P. C. were between persons who claimed title as heirs of the said Padmanabha Gramani. In fact, an order of interim injunction was passed by the High Court against the petitioners in the proceedings under Section 145 CrI. P. C. Sri C. K. Venkatanarasimham appearing for the petitioner questioned the validity of the order under Section 145 CrI. P. C. on the above materials; but in my opinion, he is not entitled to do so as he failed to seek relief by taking proceedings against the said order, which has become final. Sri C. K. Venkatanarasimham has also taken a ground that the order under Section 145 CrI. P. C. has not been promulgated. But he fairly conceded that he could not urge such a ground as he was a party who took part in the proceedings in which the order was passed against him and others.

3. The main contention to be considered in this case is whether the disobedience of the order passed under Section 145 CrI. P. C. entailed one or other of the three consequences mentioned in Section. 188 I.P.C.

4. The first consequence mentioned in Section 188 I.P.C. refers to such disobedience which 'causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed'.

Obviously, this clause could have no application to the order in question. It would generally apply to cases where orders passed have to be enforced by public officials directly or through others lawfully employed by them. It is not necessary to state who all could be considered as coming within the clause 'persons lawfully employed'. The earlier part of third para of Section 188 I.P.C. refers to the second consequence, namely, 'such disobedience' which 'causes or tends to cause danger to human life, health or safety'. This will apply to cases of 'disobedience of orders passed under Chapter X, Crl. P. C. to prevent offences falling under Chapter XIV of the Indian Penal Code relating to public nuisances and similar cases. The third consequence referred to in the latter part of the third para of Section 189 I.P.C. is one relevant to this case namely, such disobedience of the order which causes or tends to cause a riot or affray.

5. The order under Section 145 Crl. P. C. could be made only when the dispute as to immoveable property is 'likely to cause breach of the peace'. If such an order is disobeyed and it 'causes or tends to cause a riot or affray', the person disobeying such order ought to be punished as the object of the order is to prevent breach of the peace. But before a person could be punished for disobedience of an order under Section 145 Crl. P. C. there should be evidence and a definite finding based on that evidence that his act of disobedience caused or tended to cause a riot or affray. I have already pointed out that there is no such finding by either of the courts below that the act of the petitioner caused or tended to cause riot or affray. The order under Section 145 Crl. P. C. was passed on 13-11-1962 and the disobedience complained of was nearly three and half years later on 12-5-1966. Having regard to the long interval between the date of the order and the date of disobedience of the same, the likelihood of the breach of the peace being caused by reason of the disobedience of the order could not also be presumed. The courts below have failed to note that mere disobedience of an order promulgated by a public servant is not in itself an offence unless it entails one or other of the consequences mentioned in Section 188 I.P.C.

6. The learned District Magistrate has acquitted the petitioner in respect of both the offences under Sections 447 and 379 I.P.C. So far as the offence punishable under Section 379 I.P.C. is concerned, he was of the view that the ingredients of

the said offence have not been made out. He has observed that it cannot at all be said, having regard to the facts of this case that the appellant cut and carried away the casuarina from the tope with any dishonest intention. He has observed that, it is obvious that he had done so in an attempt to set up his title to the casuarina standing thereon, however illfounded his claim may be. This finding, itself is inconsistent with the mens rea required, namely, knowingly disobeying an order so as to result in one or other of the consequences, mentioned in Section 188 I.P.C. It should be noted that the order was passed about 31/2 years prior to the occurrence in this case. I looked into the oral evidence adduced in this case. P.W. 1 Jagadeesa. Gramani has merely spoken to the fact that the trespass as well as the removal of the casuarina trees was about 10 or 15 days after the cyclone and that he came to know of the same by a letter received by him about 11/2 months prior to. his giving evidence. P.W. 2 Kannan, P.W. 3, Perumal and P.W. 4, Manickasami who all speak to the removal of the casuarina trees by the petitioner, have not even whispered that there was any likelihood of the breach of the peace.

7. For the foregoing reasons, the conviction of the petitioner under Section 188 I.P.C. cannot be sustained and it is set aside. The petitioner is acquitted even in respect of the charge under Section 188 I.P.C. and the fine amount, if collected, is ordered to be refunded to him.

8. The criminal revision case is allowed.

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