

In Re: Balian

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SooperKanoon Citation : sooperkanoon.com/794848

Court : Chennai

Decided On : Mar-31-1938

Reported in : AIR1938Mad795; (1938)2MLJ152

Appellant : In Re: Balian

Judgement :

ORDER

Horwill, J.

1. The First Class Bench Magistrates, Negapatam,. convicted one Balian under Section 3 (12) of the Madras Town Nuisances Act and sentenced him to pay a fine of Rs. 10 and further bound him over under Section 106, Criminal Procedure Code, for six months.

2. The case has been referred to this Court by the Sessions Judge of East Tanjore on the ground that the judgment of the Bench Court does not disclose any reason for the order binding over the accused to keep the peace. The accused was charged with causing disturbance by using abusive language and by behaving in a riotous and disorderly manner. Prima facie, behaving in a riotous and disorderly manner amounts to a breach of the peace, and as the Bench of Magistrates accepted the evidence and found the accused guilty of behaving in a riotous and disorderly manner, I do not see why one should doubt that the accused committed a breach of the peace.

3. Newsam, J., in Appachi Goundan, In re (1937) Mad. Cri. C. 316 seemed to be of the opinion that an offence under Section 3(12) of the Town Nuisances Act would not involve a breach of the peace; but I do not think that he intended to lay down a general principle that no offence punishable under Section 3(12) of the Town Nuisances Act would involve a breach of the peace. If he did, it would be in direct opposition to the finding of a Bench of this Court in District Magistrate of Coimbatore v. Dasappa Naicken (1933) M.W.N. 548.

4. I am however of opinion that it is ordinarily objectionable, when the accused is convicted only of some petty offence under the Town Nuisances Act, that he should also be bound over for a considerable time under Section 106; for this binding over would involve a far more serious punishment than the main sentence. Those guilty of disorderly and riotous conduct are usually poor men who may not be able to find security, in which case they would be liable to be imprisoned for a substantial period, although the maximum punishment awarded under Section 3(12), Town Nuisances Act, is only one month's rigorous imprisonment. On the other hand, binding over an accused for only two or three months would not serve the purpose for which the order was passed. Section 106, Criminal Procedure Code, should therefore be very sparingly invoked where the offence committed is a petty one.

5. However, I do not know what public policy lies behind the order of the Bench Court, and as long as this Court has no reason to believe that Bench Courts are abusing their powers to bind over accused under Section 106, Criminal Procedure Code, this Court will not readily interfere. I do not therefore find' sufficient reason for cancelling the order calling upon the accused to find security for keeping the peace for a period of six months.

6. The reference is accordingly returned.