

In Re: Rangaswami Goundan and ors.

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SooperKanoon Citation : sooperkanoon.com/795685

Court : Chennai

Decided On : Aug-26-1943

Reported in : AIR1944Mad45

Appellant : In Re: Rangaswami Goundan and ors.

Judgement :

ORDER

Kuppuswami Ayyar, J.

1. All the three petitioners seek to have the order of the Joint Magistrate of Pollachi confirming the order of the Stationary Sub-Magistrate of Polladam, convicting them of an offence punishable under Section 183, Penal Code, and sentencing them to pay a fine of Rs. 20 each set aside. Ragi in their possession during their absence was seized by the head-constable, P.W. 1, who had come there to investigate a case of theft, and kept loaded in a bandy for the purpose of being taken. The three accused and others hearing about it, came from the north, stood before the bandy and raising their hands said that the bandy should not be driven and they objected to the article being taken. The charge was originally laid under Section 353, Penal Code; but as the evidence of the constable indicated that no force was used and that nothing was done by these accused except stating orally that the article should not be taken and that they stood before the cart with raised hands, the Magistrate thought that this is a case in which the offence under Section 353 was not committed. He found however from these facts that there was resistance to the

seizure by the constable and convicted them under Section 183, Penal Code. On facts as found by both the Courts there is no dispute. The only question is, whether from these facts the accused could be said to have committed an offence punishable under Section 183 Penal Code? The section reads as follows:

Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description which may extend to six months or....

The evidence is that after the ragi was seized and was loaded in the cart, these three persons came from the north, stood before the bandy with hands raised and said that that should not be taken. It clearly indicates that all that happened was that these accused coming to know that their ragi was being taken, wanted to object to the same being removed and stated their objection by first standing before the cart, so that the constable may stop the cart. The raising of the hands was only the dumb man's way of expressing that the cart should not go. They subsequently followed it up by stating that the article should not be taken. A mere objection to the head constable's seizing the article cannot be said to amount to 'resistance.' All that was done in this case was a statement by the accused objecting to the constable taking the article accompanied by a pantomime indicating that they were so objecting. This could not be taken to amount to offering any 'resistance.' At this rate every case in which a judgment-debtor who objects to his articles being attached in execution of a decree on the ground they are exempt from being attached or a claimant who objects to the articles under attachment being removed could be considered to be offering 'resistance.' That is not what was intended to be prohibited by Section 183, Penal Code. I therefore set aside the conviction and sentence and acquit the accused. The fine, if already collected, will be refunded.