

**In Re: Valmiganathan**

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**Court :** Chennai

**Decided On :** Oct-30-1945

**Reported in :** AIR1946Mad102; (1945)2MLJ541

**Appellant :** In Re: Valmiganathan

**Judgement :**

ORDER

**Chandrasekhara Aiyar, J.**

1. Two objections are taken to the conviction in this case. One is that when the accused was charged under Section 359 of the District Municipalities Act and fined Rs. 10 for obstructing a Municipal servant in the discharge of his duty, the other charge under Section 323 of the Indian Penal Code for hurt caused to P.W. 1 does not lie. I do not agree. The one offence is not involved in the other; and, if in the course of the obstruction that is offered, hurt is caused, the accused can be charged separately for the two offences. I however think that, having made up his mind to proceed against the accused under Section 323, it would have been proper for the Magistrate to have dropped the charge under Section 359, in circumstances of this case. For this reason, and not because on any ground of impropriety or illegality, I set aside the conviction and the sentence under Section 359 of the District Municipalities Act.

2. It is argued on the strength of the decision in *In re Rajaratnam Pillai* : (1936)70MLJ340 of King, J., that it was not open to the Magistrate to proceed against the accused on a charge under Section 323 of the Indian Penal Code when information was laid before him only for an offence under Section 359 of the District Municipalities Act. This objection is not well-founded. So far as I am able to see, there is no legal bar. What appears to have happened in the case before King, J., is that the Magistrate not only took cognizance of the case as involving an offence under the Railways Act but proceeded with the trial of the case under the procedure laid down for the trial of summons cases and after taking the evidence for the prosecution in full, he converted the proceedings before him from a summons case into a warrant case. That is not what took place here. From the very commencement there was a charge against the accused under Section 323 of the Indian Penal Code and he was tried under the warrant procedure. The conviction under Section 323 of the Indian Penal Code will stand, but I reduce the fine to Rs. 20. Any excess, if paid, will be refunded.

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