

In Re: Chinnathambi Rowthan and ors.

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Court : Chennai

Decided On : Feb-07-1911

Reported in : 9Ind.Cas.594

Judge : Abdur Rahim and ;Ayling, JJ.

Appellant : In Re: Chinnathambi Rowthan and ors.

Judgement :

ORDER

1. This is a petition to revise the order of the Head Assistant Magistrate, Palghat, dated the 31st May 1910, calling on the petitioners under Section 107, Criminal Procedure Code, to give security for keeping the peace for one year.

2. The petitioners are members of the Rowthar community of Koduvayur in Malabar. For two years prior to the date of the order there appears to have been a dispute between the Rowthars on the one hand and the Chetties and Nairs of the place on the other in consequence of the Rowthar's objections to allow Hindu processions to pass their mosques. On three occasions projected processions have, in consequence of threatened opposition, been either prohibited by Magisterial Order or abandoned or taken by another route. On the 7th September 1909 a civil suit for damages was filed by the Head of the Nair family of Kuthiravettah against 75 of the Rowthars (including all the petitioners). On the 18th October 1909 Prosecution witness No. 1, a member of that family, presented a petition to the Head Assistant Magistrate stating that he feared violence on the

part of 17 specified Rowthars (including the petitioners) and asking that inquiry might be made and necessary orders passed so that no disturbance might take place. This petition was referred to the police, who on the 12th March 1910, filed a charge sheet under Sections 107 and 110, Criminal Procedure Code, against the petitioners before the Head Assistant Magistrate. This resulted after inquiry in the passing of the order now sought to be revised.

3. The question for decision is simply, whether there is evidence on record to support the Magistrate's conclusion that danger to the public peace is to be apprehended from the individual petitioners, each man's case being separately considered. The Magistrate relies mainly on the utterance by the petitioners on different occasions of threats against Prosecution witness No. 1 and his family: but in gauging the weight to be attached to these threats he takes into consideration (as, in our opinion, he is entitled to do) the previous relations of the parties and the antecedent and existing circumstances. The evidence regarding the threats used is summarised in paragraph 7 of the Magistrate's order.

4. In the case of petitioners Nos. 3 to 6 the evidence is such that we are unable to say that the Magistrate was not justified in concluding that there was reasonable danger of a breach of the peace being committed by these persons.

5. The case of petitioners Nos. 1 and 2 stands on a different footing. Though their names are found in the original petition Exhibit B, it is not among the persons who are said to have threatened Prosecution witness No. 1 but merely as leading members of the Rowthars community, whom Prosecution witness No. 1 wished the Magistrate should warn. The threats ascribed to them by Prosecution witnesses Nos. 2 and 3 to the effect that if the suit went on they would plant a flag on the Nair Kotta and build a mosque can only be regarded as mere bombast. They are of a different character to those used by petitioners Nos. 4 to 6. No doubt the position of these petitioners in their own community and as co-defendants in the suit may incline them to sympathise with their more truculent friends, but we find no evidence which can fairly be taken to indicate a design on their own part to cause a breach of the peace. There is the evidence of Prosecution witnesses Nos. 12 and 13 who say that on the occasion of one of the previous processions the

second petitioner endeavoured to enlist their services to forcibly oppose it, but this by itself can hardly be taken as indicative of an intention to break the peace at the time of the order. It is with considerable reluctance that we interfere with the order of the local Magistrate in a matter of this kind: but as regards these two men, it seems to us that there is no evidence on record on which the order could be supported. The bonds entered into on behalf of the petitioners Nos. 1 and 2 are ordered to be cancelled; in the case of the other petitioners the order is confirmed.

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