In Re: Ramasami Iyer

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Court : Chennai

Decided On : Jan-27-1921

Reported in : 61Ind.Cas.652

Judge : William Ayling and; Coutts-Trotter, JJ.

Appellant : In Re: Ramasami Iyer

Judgement :
ORDER

1. The appellant in this case has been convicted and fined for an offence under Section 341, Indian Penal Code, wrongful restraint of a person. The facts appear to be these. The appellant was a Village Magistrate on the day in question his attention was drawn to the misconduct of one Mari Goundan. Mari Goundan is described as having been very drunk. He tore the scared thread of one of the witnesses and, subsequently, at what stage of the proceeding it is not quite clear, hit the appellant, the Village Magistrate, in the foot. Thereupon the Village Magistrate with the help of several persons tied his hands and removed him to the Police Station.

2. The Court of Appeal took the view that there was nothing in the conduct of Mari Goundan whish justified the action of the appellant on the ground that the evidence disclosed that Mari Goundan was drunk and probably disorderly which is a non-cognizable offense. An argument has been addressed to us to show that, under various Regulations of the last century, the appellant as Village Magistrate

possessed powers whish would enable him to effect an arrest in circumstances of this kind apart from his position as one of the general public. In our opinion, it is very doubtful whether such Regulations giving such power were not really repealed by Act XVII of 1862; but in any case we think that the matter is of sufficient importance to base our judgment upon a more general and wider ground and we propose to deal with the matter as if the Village Magistrate had been merely an ordinary member of the general public.

3. The Common Law of England on the subject seems to have become, if it was not so at the outset, reasonably free from doubt. Hale in his Pleas of the Crown seems a little doubtful as to how far the rights of arrest without a warrant except in cases of felony extend, but since then we have been referred to later passages in Hawkins Pleas of the Crown, Russell on Crimes and other standard beoks which show that the Common Law rights are such wider than Lord Hale was disposed to concede. Without going into ancient authorities, we may cite a passage from a judgment of Parke, B., in the case of Timothy v. Simpson (1835) 4 L.J. (N.S.) Ex. 81 which sums up the law as follows: After citing from Lambard, Hawkins, Hale and other text beoks of authority, he says: 'it is clear therefore, that any person present may arrest the after payer at the moment of the affray, and detain him till his passion has cooled, and his desire to break the peace has cased, and then deliver him to a peace officer. And, if that be so, what reason can there be why he may not arrest an affrayer after the actual violence is over, but whilst he shows a disposition to renew it, by persisting in remaining on the spot where he has committed it. beth eases fall within the same principle, which is, that, for the sake of the preservation of peace, any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows that the public peace is likely to be endangered by his sets. In truth, whilst those are assembled together who have, committed acts of violence and the danger of their renewal continues, the affary itself may be said to continue.' We have also been referred to a decision of the Court of Crown Cases Reserved in the case of Reg. v. Light 27 L.J.M.C. 1, where a very powerful Court, consisting of Cockburn, C.J., Erle and Williams, JJ., Martin and Chennell, BB, held that there was a power not only in a constable but in all Her Majesty's subjects to apprehend a person as to whom there reasonable ground for supposing that he is about to commit a breach

of the peace, The Common Law of England on the subject may be said to be clearly established and there is authority in this Court in Potaraju Venkata Reddi v. Emperor 14 Ind. Cas. 659 for holding that the Common Law of England may be applied to India, except where a Statute, either expressly or by implication abrogates it. We think that the power given in this matter is one which is very essential to the orderly government of society and preservation of the peace. No doubt the magistracy and the judiciary should jealously watch any interference with the liberty of the subject and scrutinize carefully the act of any person who alleges that, in order to preserve the peace, he had to interfere with the liberty of his fellow citizen. But if that necessity is once clearly established, we think that it is not only the law but it is extremely expedient that the power of interference should be upheld.

4. In this case we think that there was ample justification, on the facts as found, for the appellant, not as Village Magistrate but as a private citizen, to put a restraint upon this drunken and disorderly person who was not only threatening to commit a breach of the peace but was a danger to the other villagers. We, therefore, hold that the conviction and sentence must be set aside; the fine, if paid, must be refunded.