

**In Re: Subbiah thevan and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/807832](http://sooperkanoon.com/807832)

**Court :** Chennai

**Decided On :** Nov-26-1941

**Reported in :** (1942)1MLJ490

**Appellant :** In Re: Subbiah thevan and ors.

**Judgement :**

ORDER

**Horwill, J.**

1. This petition was admitted on the question whether the order passed under Section 106, Criminal Procedure Code was proper in the absence of reasons given by the trial Magistrate for passing such an order and the absence of any reference to the order in the judgment of the Sessions Judge.

2. The trial Magistrate has expressed an opinion that because of the facts noted in the judgment he was of opinion that an order under Section 106, Criminal Procedure Code was necessary. It has been argued on the authority of Muhammad Rahim v. Emperor : AIR1926 All144 and Jai Singh v. King-Emperor A.I.R. 1927 Pat. 37 decisions of single Judges, that something more is necessary. I do not think that even those cases lay down any general rule that a trial Magistrate must give reasons for his opinion. However, that may be, the decisions of this Court are clear on this point. Spencer, J., in Ramaswami Thevan, In re : (1923)44MLJ485 says,

I do not think it is necessary that the lower Court should record a finding that a breach of the peace was involved in order to invest itself with power to make an order under Section 106 (1), Criminal Procedure Code.

If the offence of which the accused were convicted was one which did not of itself necessarily involve a breach of the peace, such as criminal trespass, mischief or unlawful assembly, it would be proper that the Magistrate or Judge should in his order make it clear that a breach of the peace was committed.

But the section does not require such a finding to be recorded, and when the offence of which the accused is convicted is one which implies the use of violence it would be superfluous to say more. The Judge has recorded his opinion that it is necessary in this case to require the convicted persons to execute a bond for keeping the peace, and that is all that the section in terms demands.

Jackson, J., in *Kunhikannan v. Emperor* (1934) M.W.N. CrL. 562 states this principle in very much the same words and refers to *In re Thirwmal Reddi* (1922) 30 M.L.T. 348 and *Muthiah Chetty v. Emperor* I.L.R.(1905) Mad 190 which express a somewhat different view, and says that the former merely follows the latter and that the latter was dealing with an offence of which a breach of the peace was not a necessary ingredient.

3. There was, therefore, no illegality in the order of the Sub-Magistrate. The Sessions Judge makes no reference at all to the order under Section 106, Criminal Procedure Code; and the reason for this omission is presumably that the vakil for the petitioners did not think the point worth pressing.