

In Re: Thimmakka and anr.

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SooperKanoon Citation : sooperkanoon.com/808789

Court : Chennai

Decided On : Oct-09-1941

Reported in : (1942)1MLJ583

Appellant : In Re: Thimmakka and anr.

Judgement :

ORDER

Horwill, J.

1. The petitioners were convicted under S.,186, Indian Penal Code by the Taluk Second Class Magistrate of Hindupur and sentenced to a fine of Rs. 100 each. The convictions and sentences were confirmed in appeal by the Joint Magistrate of Penu-konda.

2. P.W. 1 is a sales officer of the Hindupur Credit Co-operative Societies and in execution of a decree went to a certain house in the village of Mothukapalli with the intention of entering it to . seize some movables in the house which is said to belong to the second accused, against whom the decree was being executed. The first accused, the wife of the second accused, just when P.W. 1 was about to enter the house, slammed the door in his face and prevented him from entering the house to do his duty.

3. The first objection raised by the petitioners was that the offence was really one under Section 52 of the Madras Co-operative Societies Act, which is triable only by

a First Class Magistrate. The Hindupur Second Class Magistrate ignored the offence under Section 52 of the Co-operative Societies Act and by trying the accused under Section 186 of the Indian Penal Code, clutched at jurisdiction and so acted improperly. In the first place, it does not seem that an offence was committed under Section 52 of the Act; but even if there was, an offence under Section 186 of the Indian Penal Code is more serious. The Magistrate was therefore quite competent to try the accused for that offence.

4. The second point raised was that the house which P.W. 1 sought to enter belonged not to the judgment-debtor but to his wife, the first accused, and that therefore P.W. 1 would have committed trespass if he had entered into the house. The movables therein, both the accused said, belonged to the first accused. That is a question of fact and it has been found against the accused by the Courts below.

5. It is next contended that shutting the door in P.W. 1's face was not obstructing him. I can however think of no more effective method of obstructing P.W. 1 in the performance of his duty of attaching the property inside the house than by shutting the door in his face. *Queen Empress v. Somanna* : (1892)2MLJ120 and *Nishi Kanta Pal v. The Emperor* (1916) 20 C.W.N. 857, which have been cited in support of this contention, do not support the petitioners in any way.

6. The last question is whether the sales officer was a 'public servant'. 'Public servant' is defined in Section 21 of the Indian Penal Code. 'Public servant' denotes a person whose duty it is to execute any judicial process and also any officer whose duty it is to take property. It was undoubtedly a part of the duty of P.W. 1 to take property in execution of the decrees of the Society. He would therefore conform to the definition of a public servant.

7. The petition fails on all grounds and is dismissed.