

Murugappa Naicker Vs. Emperor

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Court : Chennai

Decided On : Oct-09-1924

Reported in : AIR1925Mad613

Appellant : Murugappa Naicker

Respondent : Emperor

Judgement :

Krishnan, J.

1. This is an application to set aside an order passed by the District Munsif of Conjeevaram, under Section 476, Criminal Procedure Code, directing the prosecution of the petitioner before me under S, 186 of the Indian Penal Code. It was held by the District Munsif that the petitioner obstructed an Amin of his Court in the lawful discharge of his public functions, by pulling him by the band, when he went to deliver possession of a certain shop to the decree-holder, in O.S. No. 189 of 1922, on the file of his Court. The Amin, no doubt, had a warrant for delivery of possession of the shop to the decree-holder, and no doubt it may be, as the Munsif says, that some obstruction was offered to the Amin, in delivering possession of the shop. That is a matter, which will have to be decided later, if necessary; but for the purpose of the present case, I will assure e that such obstruction was offered by the petitioner before me.

2. The point taken before me is that, in doing so, he committed no offence whatsoever as the Amin was not acting in the lawful discharge of his duties inasmuch as the warrant issued to the Amin was an illegal warrant. On a previous occasion, an application had been made by this very decree-holder to get delivery of possession of the shop in question and the Amin had gone to the shop and there he had been obstructed by this petitioner. On that occasion, the Amin reported that delivery was obstructed by the petitioner, and thereupon the District Munsif had rejected the application of the decree-holder. What the decree-holder should have done on that was to have applied under Order 21, Rule 97 for an order to remove the obstruction and to deliver possession of the property; but, instead of doing that, she kept quiet but subsequently applied, after more than a month had elapsed, for a second order for delivery. When it was pointed out to her that her previous application failed, because obstruction had been offered by a third party, that is the petitioner, her (decree-holder's) Vakil himself asked that an order for symbolical delivery might be given to him and that he did not want an order for express and actual delivery. Whom this was the decree-holder's request for the warrant to the Amin to deliver actual possession, seems to have been drawn up erroneously. The warrant was therefore illegal in this respect.

3. Again, when the warrant was taken out to be executed by the Amin, it was perfectly open to the petitioner he being a person in possession of the property and not bound by the decree, to have obstructed the Amin and such an obstruction could not be treated as an unlawful obstruction to the exercise of lawful authority by a public servant, see : *In re Appaswamy Mudali* A.I.R. 1924 Mad. 555 *King Emperor v. Gopolasamy* [1902] 25 Mad. 729 and *Gahar Mahamad Sarkar v. Pitamber Das* 22 C.W.N. 804. I therefore hold that no offence under Sect. 186, Indian Penal Code has been committed. The order under Section 476, Criminal Procedure Code, must therefore be quashed.

4. Before parting with this case, I must observe that the way in which the District Munsif disposed of it seems to be very unsatisfactory. He seems to have hurried through the case, without granting the reasonable adjournment asked for, by the petitioner, apparently, because he wished to dispose of the case himself, before he might be transferred to some other place; it is said that he was then under

orders of transfer, which was subsequently cancelled. An affidavit was filed before him, by the petitioner and in the circumstances disclosed in that affidavit, he should have taken greater care in the disposal of this case than he really did.

5. The Revision Petition is allowed and the order under Section 476, Criminal Procedure Code, is set aside.

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