

In Re: Vadugu Kumar Nadar

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SooperKanoon Citation : sooperkanoon.com/822026

Court : Chennai

Decided On : Dec-01-1927

Reported in : 110Ind.Cas.583

Judge : Devadoss, J.

Appellant : In Re: Vadugu Kumar Nadar

Judgement :

ORDER

Devadoss, J.

This is an application to revise the order of the First Class Magistrate of Melur Division declining to interfere with the conviction of the petitioner by the Special Second Class Magistrate of Madura under Section 159 (1) read with Section 207 (1) (c), Madras Local Boards Act, 1920. The only point urged before me by Mr. Ethiraj is that a conviction under Sections 159 and 207 cannot be had against the representative of a community. The prosecution was for disobedience of an order to remove an obstruction to a public pathway. The Sub-Magistrate in the course of his judgment observes that 'the petitioner is one of the representatives as the treasurer for the community. The charge against him is also in his capacity as a representative of Nadars although it is not stated so in the notice'.

In appeal it was contended that the encroached portion belonged to the Hadar community and not to the accused in his private capacity. The Sub-Divisional

Magistrate observed in his judgment:

It is idle to talk on behalf of the accused that the accused is not liable for prosecution as he is one of the community that is using the nandavanam. The accused himself has admitted in his statement before the lower Court on 11th October, 1126, that he himself dug up a well and formed nandavanam with a compound wall.

In order to make a person liable for disobedience under Section 159 he must be the owner or the occupier of any premises which caused the obstruction or encroachment. The word 'owner' is defined in Section 3 (14) as including the person for the time being receiving or entitled to receive the rents or profits of the property whether on his own account or as agent, trustee, guardian, manager, or receiver for another person or for any religious or charitable purpose. It is not the case for the prosecution that the petitioner himself is one of the persons in charge of the property, or is a trustee who is entitled to receive the rents and profits of this nandavanam, or one who manages on behalf of the community the affairs of the nandavanam. The fact that he constructed the compound wall or formed a nandavanam would not be sufficient to make him an owner if he had before the date of the notice created a trust in favour of the whole community in respect of the nandavanam and divested himself of all interest in it. He says that he has no interest in it and that he made over the property to the community. From the judgment of the Second Class Magistrate and from the contention of the accused it cannot be said that he is either the manager, or the receiver or the trustee for the community. The mere fact that he is a treasurer of some fund of the community would not make him a trustee of the nandavanam or bring him within the meaning of the term 'owner' as used in the Local Boards Act. I, therefore, set aside the conviction and direct a re-trial of the case and the prosecution would be entitled to adduce evidence to show that the petitioner is a person coming within the definition of the term 'owner' in Section 3, Clause 14 or is an occupier of the nandavanam. The fine paid will be refunded.