
(1925) 07 MAD CK 0016
In the Madras High Court

A. Ramanathan Ghattiar and Others	APPELLANT
Vs	
Kanagasabapathy Chettiar and Others	RESPONDENT

Date of Decision : 31-07-1925

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1926 Mad 500 : 94 Ind. Cas. 955 : (1926) 23 LW 339

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

1. In the former of these appeals Defendants 2 and 4 are the appellants, but Mr. T. Rangachariar informed us that he is only instructed to appear for the 4th defendant and we have consequently heard no argument on behalf of the 2nd defendant. In A.S. No. 80, 5th defendant is the appellant and appears by Mr. G.S. Venkatachariar. The suits were brought by certain worshippers in the temple of Sri Minakshi Sundareswaral and other connected temples comprised in what is commonly known as the "" Madura etc., Devasthanams."" In the suit to which A.S. No. 54 relates the principal prayer was for removing the defendants from their respective offices. A.S. 80 is an appeal from the same decree by one of the defendants (Defendant No. 5) in that suit. It is of some importance to describe the defendants ; 1st defendant is one Kuppusami Mudaliar, the Manager of the Sri Minakshi Sundareswaral temple." The other defendants are or were members of the Committee of the said Temple. The 2nd defendant, A. Ramanathan Chettiar, as has been stated, does not appear to argue before us. 3rd defendant, C. Sambasiva Mudaliar, gave evidence in the case as D.W. 1 to which evidence more particular reference will be made by and by, and at the end of a lengthy cross-examination

tendered his resignation to the Judge so that he has now ceased to be a member of the Committee. 4th defendant is one Tirugnana Sambanda

Pandara Sannadhi whose conduct will be in question in considering the subject-matter of this appeal. 5th defendant is one A. Rangasami Aiyar,

who, I understand, is a leading vakil in Madura and has held the position of Public Prosecutor and Government Pleader. The 6th defendant is K.V.

Subramania Aiyar who is, as a matter of fact, dead and has been exonerated by the learned District Judge who tried the suit. The District Judge

has ordered the removal of Defendants 2, 4 and 5. As stated, 2nd defendant does not appear before us to urge his appeal. We are, therefore,

concerned only with the cases of Defendants 4 and 5. The grounds on which the 4th defendant has been removed from his office are two : (1) that

he took part in appointing one T. Minakshisundaram Pillai as trustee of the institution at the end of the year 1920 ; and (2) that he was responsible,

directly or indirectly, for the non-performance or imperfect performance of the Chitharai festival in the plaint temple in April 1921. With regard to

the 5th defendant: the only charge against him is No. 1 above, namely, that he voted for T. Minakshisundaram Pillai as trustee of the temple. It will,

therefore, be convenient to proceed to investigate the appeal in the first instance by taking the first charge which is common to both the 4th and 5th

defendants. 4th defendant was selected to the Temple Committee in 1919, and the 5th defendant in 1911, and the first point at which it is

necessary to take up the matter is September 1920, when, in answer to the advertisement for a joint Manager, a telegram, Ex. CCCI was received

by the Temple Committee from Minakshisundaram Pillai on the 20th of that month. The original idea seems to have been to associate a joint

manager with Chockalingam Chettiar who was the manager at that time. There was apparently some inclination on the part of the Committee to get

rid of Chockalingam Chetti because in Letter Ex. CVI, dated 25th September, Minakshisundaram Pillai applied for the post of manager which had

not yet been notified as vacant ; but Chockalingam Chetti resigned on the 27th September, and it was then incumbent upon the Committee to

appoint a new Manager. They had two meetings on the 3rd and 5th October 1920, to consider this question, but apparently it was then resolved

merely to call for further applications for the post, and we are told that as many as 37 applicants applied, and on the 17th October, the Committee

again met to consider the applications. The proceedings are contained in Ex. XI in which we see the names of the applicants for this post. It is quite

evident that this question of appointing a manager was made a communal question. D.W. 1¹ frankly says that he wanted to appoint a Non-Brahmin

Manager. So did the 4th defendant and at the meeting of the 17th October he was not for appointing anybody but Minakshisundaram Pillai. Again

the witness points out that in nearly all the resolutions passed by the Committee there has been this controversy and that he has joined Defendants

2 and 4 against Defendants 5 and 6 because they are non-Brahmins. The attitude of Defendants 5 and 6 throughout was that they did not want a

non-Brahmin . manager. It will be observed that three members of the Committee, Defendants 2 to 4, were non-Brahmins whereas Defendants 5

and 6 were Brahmins. The non-Brahmin majority defeated at least five candidates proposed by one or other of the Brahmin members. A good

deal of discussion has arisen as to who exactly proposed the name of Minakshisundaram Pillai. 3rd defendant as D.W. 1, was the only witness for

the Defendants 2 to 4 and his evidence has been characterized by the Judge as truthful, though in many cases what he said was to his own

detriment. It appeals to me, therefore, that we must accept the opinion of the Judge who saw and heard the witness give his evidence. He says that

he thinks that the 4th defendant must have proposed Minakshisundaram Pillai and that the 5th defendant approved his nomination. The only

members of the Committee to whom Minakshisundaram Pillai was known at the time were Defendants 5 and 6. 6th defendant may be immediately

dismissed from consideration as he voted against the appointment. 3rd defendant (D.W.1) says that though he first met him (Minaksnisundaram) at

the 5th defendant's house, the latter did not recommend him until the meeting of the 17th October. 5th defendant knew Minakshisundaram Pillai

previously as they were both ardent theosophists. It does not seem to me to matter as to whether Minakshisundaram Pillay was actually proposed

by the 4th defendant or 5th defendant. We know that he was elected by a majority of 4 to 1 of the Committee (i.e.,) that the 5th defendant, though

a Brahmin, apparently convinced that none of the Brahmin candidates had any chance, eventually voted for his fellow theosophist. It may be

somewhat reasonably asked what the objection is to the nomination and election of this man Minakshisundaram Pillai. The objection to him may be

summed up. He had been for 23 years a Tahsildar in Government service and he left that service before the age limit without a pension, and he was

further at the time of his election an undischarged insolvent. In these circumstances, we are asked to say whether those who voted for this man

exercised their discretion as reasonable businessmen charged with the duty of protecting an institution whose yearly revenues, we are told, amount

to about two lacs of rupees. Much argument has been expended on the reasons or possible reasons why Minakshisundaram Pillai left

Government service. In an affidavit filed by himself in O.S. No. 63 of 1921 he says he was "" removed "" from Government service for "" flagrant

violation of the rules regulating the conduct of Government servants. "" D. W. 1 states that Minakshisundaram Pillai never placed any credentials

before the Committee ; that when the 4th defendant met Minakshisundaram Pillai in the 5th defendant's house about the 23rd or 24th September

1920, he then learnt that he was an undischarged insolvent and that he had been a Government servant. The witness says ;

I thought from what was said that papers should be gone into so as to see how his Government service determined.

2. There seems to be no doubt that Minakshisundaram Pillai had told the Committee or, at any rate let it be known, that he had been adjudicated

insolvent and had been a Government servant. D. W. 1 says that Minakshisundaram Pillai showed him (the witness) some printed papers. Prom.,

these papers the witness says he found that his services were dispensed with and he was not dismissed. The papers shown to him did not appear

to be final and he took Minakshisundaram Pillai on trust as to the truth of the printed papers without his producing any official communication.

Minakshisundaram Pillai held office for about a month and a half. As early as 23rd October 1920, a petition by worshippers was addressed to-the

Temple Committee pointing out the disabilities under which Minakshisundaram Pillai laboured and protesting against his appointment. The petition

further asked for a full and responsible statement on the points raised; and on the 9th December 1920, Ex. A, points out that the previous petition

remained unanswered, that the petitioners understand that the resignation of Minakshisundaram Pillai was due to the fact that the Official Receiver

attached the greater part of his salary and the petitioners, therefore, ask that in filling up the vacancy the proceedings of the Committee shall be in

public.

3. With regard to the 5th defendant it is contended that though he voted for Minakshisundaram Pillai he insisted that certain conditions should be

fulfilled which, it is said, would protect the institution. Those conditions were that he should only hold the office for five years, that he should furnish

security for Rs. 10,000, and that he should file a scheme suit as soon as possible. Although the 4th defendant had not the courage to go into the

box, the 5th defendant did so as D. W. 2. He says that he agreed to support Defendants 2 to 4 over Minakshisundaram Pillai's appointment if they

would agree to his (5th defendant's) conditions as he did not want to encourage any internal animosity such as was rife at about that time.

Apparently the idea of the 5th defendant, as stated was that in the scheme there would be a provision against the manager's post being held by an

insolvent, so that, if Minakshisundaram Pillai did not get his discharge within a short time he would ipso facto cease to be manager. 5th defendant

admits that he had known Minakshisundaram Pillai as a theosophist for 5 to 10 years and that he received from Dr. Annie Besant a letter of

recommendation to him which, however, neither he nor I imagine, anybody else could describe as strong. 5th defendant says that from subsequent

events he is prepared to ascribe improper motives to Defendants 2 and 4 in appointing Minakshisundaram Pillai. His whole excuse is in a word that

Minakshisundaram Pillai would have been appointed in any case by non-Brahmin majority on the Committee and that knowing this he (the witness)

thought it was better that he should be appointed on the conditions laid down by him. The latter admits that with regard to his retirement from

service he was shown one paper and he did not pay any real attention to it nor did he call for any more papers on this subject or on the matter of

his insolvency. The witness adds:

I did not want to make further enquiries as in my then view he was not a suitable candidate even for the joint manager's post. A fortiori I thought

him unfit to be manager. I regarded him as not suitable until 17th October 1920. I thought his appointment against the interests of the Devasthanam

under normal conditions. When I changed it was because the evil was one that could not be avoided and which I wished to minimise as far as

possible.

4. It is difficult to see how if Minakshisundaram Pillai was not a suitable person to be appointed, the conditions have made any material

difference. To begin with it is doubtful whether it is within the powers of a Committee under the Act of 1863 to appoint a trustee for a limited term.

Secondly, it seems very doubtful if the security said to have been furnished by the sons of Minakshisundaram Pillai was of any real value. No

Committee member seems to have considered it his duty to really investigate the matter. The only enquiry made by the 5th defendant as to the

value of the properties was at the meeting of the 17th, October by asking the members, which; of course amounts to nothing at all.-Again it is very

difficult to see how the manager could have been forced to bring a scheme suit and it is surely improbable" that he would have done so voluntarily

considering that one of the terms was that no insolvent was to hold the post. In my opinion, the conditions sought to be imposed were entirely

illusory and were put in because the Committee, as a body, were aware that the appointment of Minakshisundaram Pillai was entirely improper

and in order that they might be able to meet objectors with some form of guarantee. It is, of course, perfectly clear in law that an insolvent ought

not to be appointed to a position of trust of this sort. In *Raja of Kalahasti v. Ganapathi Iyer* [1918] M.W.N. 535 *Abdur Bahjm and Burn, J.*,

observe as follows:

We think that the observation of. Jessel, Master of Rolls, in *Inre Barker's Trusts* [1875] 1 Ch.D. 43, affords a proper guidance to the Court in

cases of this character. A necessitous man is more likely to be tempted to misappropriate trust funds than one who is wealthy and besides a man

who has not shown prudence in managing his own affairs is not likely to be successful in managing those of other people.

5. I cannot hold that either of these Committee member Defendants 4 and 5, did their duty or acted reasonably in the interests of the institution of

which they were Committee members in giving: their vote for this man Minakshisundaram Pillai. It is said that, as a matter of fact, no loss has

occurred to the Devasthanam through this appointment. It seems to me, that that is entirely a perverted way of regarding the matter. If an improper

choice is made by a person in a fiduciary capacity it seems to be wholly wrong to say that after all the choice was not improper because as it turns

out that no material damage has been done to the institution through the improper appointment. Even so this is apparently not certain.

Minakshisundaram Pillai resigned on the 9th December 1920, asking it a condition of his resignation that his security bond should be cancelled.

This was accepted by the Committee and the security bond was returned to him on that very day. D. W. 1 says:

We had seen the accounts at that time which gave us no room to suspect defalcation or warrant us in keeping the security bond alive.

6. But later on he says:

The devasthanam had a complicated system of accounts. They are hard to understand without the help of trained professional auditors. Without

such assistance it will be hard to find out any irregularity. The Committee had no such assistance when it looked into the accounts.

7. The witness also states that the resolution to cancel the security bond was in his opinion premature. He further adds that by the cancelling of

Minakshisundaram Pillai's security bond he considers that the interests of the Devasthanam have suffered because of his having expended or

drawn sums which he should not have expended or drawn for which the Devasthanam may be held liable. 5th Defendant as D.W. 2 states that the

accounts of Minakshisundaram Pillai's management have not so far been audited. Therefore, it appears to me, that these two persons, Defendants

4 and 5 by voting for the appointment of this undischarged insolvent Tahsildar who had, in his own words been removed from Government service

for a flagrant breach of the rules regulating the conduct of Government servants of which we have no details had acted improperly and that men

who can lend themselves to an appointment of this sort are entirely unfitted to carry out the responsible duties with which they were entrusted. This

is possibly more so in the case of a man of the world like the 5th defendant than in the case of the former. But in neither case can I find any excuse

or palliation for their conduct. In the case of the 4th defendant, there is, as I stated at the outset, a further charge which I propose to treat very

shortly. I have stated that Minakshisundaram Pillai resigned on the 9th December 1920. The 1st defendant, Kuppusami Mudali, was then

appointed manager. He apparently was a weak individual who was easily swayed by the Committee. A matter which was investigated at some

length by the District Judge, and which has in fact been the subject of more than one proceeding in this Court is the undue interference with the trustees by the Committee of this Devasthanam. I do not proceed with this matter as the learned District Judge has decided that it is not sufficient to warrant the removal of any Committee member on this ground. But the events immediately preceding the suit and which no doubt gave rise to disputes in the institution are that soon after the appointment of Kuppusami Mudaliar, namely, on the 30th December 1920, the 2nd defendant complained that the pipers were not carrying out their duties in the temple properly (Ex. DDD). The Bhattars had apparently for some time been in the habit of engaging the services of the pipers on private occasions in their own houses and this had increased to such an extent as to detract them from their proper piping services in the temple. The Committee then passed a resolution on the complaint of the 2nd defendant that a written permission should be taken by the pipers before they are engaged in these private festivals. The trouble seems further to have increased by an alleged insult to the 2nd defendant of which he complained in Ex. LXVI on the 20th January 1921, and he accuses the Bhattars with want of respect to himself. This came up on the 23rd January 1921, Ex. XIII in which the two Brahmin members thought that the matter might be recorded and the others thought that the matter should be referred to the manager for disposal. This state of things seems to have gone on- we are left without any details-till the approach of the Chithrai festival in April when owing to the strike of the Bhattars and the attempt to bring in substitutes to carry on the festival, resulted in something like an open riot within the temple so much so that an application had to be made to the Town Magistrate u/s 144, Criminal Procedure Code. A Nadar Magistrate arrived with a European Police Sergeant wearing boots and various incidents offensive to the scruples of the worshippers appear to have taken place. The learned Judge finds that Defendants 2 to 4 not only kept aloof in this crisis but threw obstacles in the way of things being properly done. In a word these three defendants never showed their face at all; 4th defendant is said to have been found in the 5th defendant's house and the excuse they have is that they were all in danger of their lives. The learned Judge has examined the evidence very carefully as to this charge in which only the 4th defendant is concerned, and I am not prepared to say that

he is wrong. But I think we possibly have not the whole history of this quarrel between the Bhattars and the manager and the Committee before us.

The Bhattars no doubt imagined themselves to be in an impregnable position from the fact that they hold a hereditary office and are in fact the one

permanent element in the temple staff. It was undoubtedly the duty of the Committee and the Manager the latter having a primary duty, to see that

the worship at the Chithrai festival was properly carried out and it is probably enough to say that if a Manager and the Committee permit a state of

things to arise such as had arisen in this temple shortly before and during the Chithrai festival, it is proof positive that they are unfit to hold the

management of the Institution. I prefer, however, to rest my judgment principally on the first ground which is common to both the defendants,

though it must not be supposed that I am in any way differing from the finding of the learned District Judge on the second ground. Both the

appellants appeal to us that we should refrain from delivering judgment and that they might both be allowed to resign. Speaking for myself, I must

say that they have made such an application too late and it would have come from them with far better grace if, after they had seen how matters

went before the District Judge when they heard the admissions made not only by the 3rd defendant but by one of themselves in the witness-box

they had then applied to withdraw. It is difficult to appreciate the state of mind of men who after a long and patient enquiry are so determined to

cling to this office in which they have been found, and rightly in my judgment found, to have failed in their duty. Both these appeals must be

dismissed with costs.

Madhavan Nair, J.

8. I agree and have nothing to add.