

(1932) 03 MAD CK 0051
In the Madras High Court

Ahmad Hussain Sahib

APPELLANT

Vs

The President, Union Panchayat

RESPONDENT

Date of Decision : 10-03-1932

Acts Referred:

Citation : 138 Ind. Cas. 370

Hon'ble Judges : Pakenham Walsh, J

Bench : Single Bench

Judgement

Pakenham Walsh, J.—The petitioner was convicted for failure to pay a certain sum due by him as lessee of a slaughter house and temporary market. The agreement itself was subsequent to the new Madras Local Boards Act XI of 1930. The proceedings appear to have been taken u/s 221(2) of the old Act. There is no such sub-section in the new Act. Section 221(2) of the old Act relates to procedure. Briefly the argument for the petitioner is this. If the conviction was under the old Act, it cannot be sustained in the light of the ruling in *In re Punya Syamolo* 77 Ind. Cas 240 : 47 M. 381 : 25 Cri. L. J. 352: AIR 1924 Cal. 669. If it was under the new Act, it cannot be sustained because the proceedings have been irregular. I think this contention must prevail. The scheme of the old Act u/s 221 was that on a default, apparently whether wilful or not, reference could be made to a Magistrate who could summon the parties to appear before him and on their appearance hear and determine the question, if necessary placing either party under oath. I do not think it is necessary to determine the point raised that those were not criminal proceedings because if they were the defaulter could not have been put on oath, while in the present Act it is regular criminal proceedings that are contemplated. What has to be noticed is the form in which the proceedings were taken. As I said, if this prosecution was under the old Act, the lease amount cannot be recovered under the ruling quoted by an action u/s 221. If the proceedings are said to have been taken under the new Act, then they are not in accordance with what is laid down in Schedule IV. Under that schedule the first thing that has to be done in such a case as this to proceed under Rule 33 and distrain the defaulter's property. Rule 33 (2) states

if for any reason the distraint, or a sufficient distraint, of the defaulter's property is impracticable the President may prosecute the defaulter before a Magistrate.

Rule 39 says that every person who is prosecuted under Sub-rule 2 of Rule 33 shall be liable, on proof to the satisfaction of the Magistrate that he wilfully omitted to pay the amount due by him or that he wilfully prevented distraint or a sufficient distraint, to certain penalties. What has been done in this case is to issue a distraint warrant and to charge the defaulter at the same time. This is clearly quite irregular as a charge can only be framed after an attempt has been made to collect the amount by distraint and after the distraint is proved to be impracticable. It has been argued for the counter-petitioner that, because the accused in this case refused to reply to the registered notices demanding the amount due from him, distraint was, therefore, impracticable and that it was for the President of the Union Panchayat to determine whether distraint was practicable or not. I cannot agree with this view. Mere refusal to answer notices is no sort of proof that distraint is impracticable. A person may have enough of property and yet refuse to reply. There is no evidence in this case that distraint was impracticable. Hence the procedure adopted was quite incorrect as the preliminary condition required to charge the defaulter criminally was absent. Under the circumstances the conviction must be set aside and the fine, if paid, re funded.