

(1917) 11 MAD CK 0001
In the Madras High Court

In Re: N. Krishnaswami Aiyangar

Date of Decision : 14-11-1917

Acts Referred:

Government of India Act, 1915 — Section 107

Citation : 47 Ind. Cas. 981 : (1918) 35 MLJ 368

Hon'ble Judges : Oldfield, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—I have had the advantage of reading the judgment which has been just delivered by my learned brother, and I agree that

the petition ought to be dismissed, though not on the ground on which he has proceeded.

2. I am of opinion that we have jurisdiction to direct the expunging of irrelevant and scandalous matters in the judgment of the Subordinate Court

u/s 107 of the Government of India Act of 1915 The powers of superintendence vested in the High Court are of extremely wide character, and it

seems to me that if we find a case in which a Subordinate Court has gone out of its way to introduce matters in its judgment which are absolutely

irrelevant and scandalous in their nature, we can remove those passages from the judgment, so that they may not be circulated and published to the

prejudice of persons who are or are not concerned in the suit either as a party or as a witness. It is quite true that, as pointed out, there is no

precedent for such action except in a recent case (C.R.P. No. 888 of 1916), to which I was a party. There the question of jurisdiction was not

discussed, though it was assumed that we had jurisdiction to delete certain passages from the judgment of the Subordinate Court. On the other

hand, the question was considered in an. other resent case (C.R.P. Nos. 587 588 and A.A.O. Nos. 205 and 206 of 1914) [Ramabadra Naidu v.

Subramania Iyer 33 Ind. Cas. 608 by Sadasiva Aiyar and Moore, JJ., in which Sadasiva Aiyar, J., expressed his opinion affirming our jurisdiction.

I quite realise that it must be in extremely exceptional cases that the High Court will be called upon to interfere in a matter of this sort and I am

entirely of opinion that we ought to act with the greatest caution in making such an order as has been applied for in this case. On the merits,

however, the application, in my opinion, must fail, because it could not be said that the remarks which are objected to were altogether irrelevant in

the view which the Subordinate Judge took of the case I do not suggest for a moment .that those" remarks were justified upon the evidence and in

fact. We have expressed our opinion in the judgment in the appeal that they were not justified at all. But, on the other hand, it could not be said that

the observations were clearly irrelevant and did not bear on the merits of the case For these reasons I agree in dismissing the petition.

Oldfield, J.

3. In this petition we are asked to expunge certain portions of the judgment of the Subordinate Judge of Kumbakonam, in Original Suit No. 79 of

1914, which has come before us on appeal We are asked to do so by a person, who was not a party to that suit and was merely the Vakil of a

party, in the exercise of our alleged powers u/s 107, 5 & 6 Geo. V.C. 61.

4. It has not been shown that any Court in England has ever given similar relief or that any other High Court has done so, either under the

provisions above specified or the corresponding Section 15, 25 & 26 Vic C 104. In this High" Court such relief has been given only, so far as we

have been shown, in one recent case C.R.P. No 888 of 1916, but without discussion of the Court's power to give it, whilst in another C.R.P Nos.

507 588 and A.A.O Nos. 205 and 203 of 1914 [Ramabadra Naidu v. Subramania Iyer 33 Ind. Cas. 608 one learned Judge held that it might be

given in suitable cases and the other refused to express an opinion ; and in the latter case it may be observed that the appellants petitioners were

parties to the proceedings. There is accordingly no course of authority binding on us in petitioner"s favour ; and the absence of such authority is

further material as justifying a doubt whether the exercise of the power in question is essential to the performance of our duty of superintendence

under the provision above referred to.

5. In the absence of authority the matter must be decided on general principles. It seems to me, with great respect, that the exercise of this power is not necessary and would not be advisable and that, therefore, the right to ask for it should not be newly recognised at this date as covered by the general term "superintendence". It has not been shown that any function resembling this has ever been treated as covered by it. It is true that in some cases, to which (as I understand my learned brother) he would confine interference, the judgment may contain irrelevant matter, scandalous or blasphemous, by which strangers to the proceedings may be aggrieved and which, as in the instance above referred to, could justly be expunged without investigation of any fact in issue. But such cases will be very rare ; and it is not necessary on their account to authorise a course of procedure, which would involve us in the risk of grave inconvenience. For there would be entailed, firstly, in many cases the novel recognition of the right to the Court's assistance in favour of persons not parties to or directly interested in any proceeding before it ; secondly, the investigation of many cases, in which the relevancy and correctness of the observations complained of would not be ascertainable readily or without enquiry into the merits. Such inquiry would frequently, it is to be feared, be asked for on account of personal enmity against the Judge, and its result would not necessarily be in any degree convincing, since it would have been reached without the assistance of any one interested to oppose the petition.

6. In these circumstances, I would not interpret the Court's duty of superintendence as covering the grant of the relief asked for by petitioner and I would, therefor, dismiss his petition without expressing an opinion on its merits.