

(1922) 11 MAD CK 0056
In the Madras High Court
In Re: Puniya Syamalo

Date of Decision : 01-11-1922

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435
Government of India Act, 1915 — Section 107
Madras Local Boards Act, 1884 — Section 221

Citation : 72 Ind. Cas. 624 : (1923) 17 LW 155

Hon'ble Judges : Wallace, J

Bench : Single Bench

Judgement

Wallace, J.—This is a case referred by the Sessions Judge of Ganjam. The Town Sub-Magistrate of Berhampore purporting to act u/s 231 of Act XIV of 1920 (Madras Local Boards Act) not only directed a toll gate lessee to pay up fees due from him to the Ganjam District Board, but fined him Rs. 25 as well. The Sessions Judge is of opinion that the levy of fine is illegal and I quite agree with him.

2. The point of some difficulty raised is, whether this Court, sitting in the exercise of its powers of criminal revision, has authority to deal with such a case; in other words, whether the Magistrate is, when he takes action u/s 221 of Act XIV of 1920, an inferior criminal Court within the meaning of Section 435 of the Code of Criminal Procedure.

3. The word "Magistrate" is not defined in Act XIV of 1920, consequently, I must fall back on the definition in the Madras General Clauses Act, viz., "any person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure." The word "warrant" is also not defined in Act XIV, of 1930, but I think it can have no other meaning than a warrant for the collection of a fine as if in a criminal case, such as the Magistrate would ordinarily issue u/s 386 of the Code of Criminal Procedure for the collection of a fine in a criminal case. Otherwise, the Local Boards Act provides no machinery by which the "warrant" issued u/s 221 is to be carried out.

4. Section 221, therefore has to be read as if the Magistrate had fined the

defaulter for the amount due to the Local Board and issued a warrant u/s 386 of the Code of Criminal Procedure for its collection, and the collection of the fine is not by any method of execution of a civil order or decree, but by the method for the collection of a fine in a criminal case.

5. In this view, I think it must be inferred that the Magistrate, in acting u/s 221 of the Local Boards Act, is acting as a Criminal Court, and that his orders thereunder are, therefore, subject to the re-visional jurisdiction of this Court.

6. In imposing a fine in addition to the recovery of the Tees due, the Magistrate was clearly acting beyond the jurisdiction conferred on him by Section 221, Local Boards Act. If the power in this Court to set aside such an order made without jurisdiction is not conferred by Section 435 of the Code of Criminal Procedure, this Court can interfere u/s 107 of the Government of India Act.

7. I, therefore, set aside the order of the Magistrate, so far as it relates to the imposition of the fine and the sentence of imprisonment in default of payment, and direct that the fine, if paid, be refunded.