

(1945) 07 MAD CK 0011
In the Madras High Court

Kolimi Mahabub Sahib and Others

APPELLANT

Vs

Sri Sidheswaraswami temple at Devalampeta and Others

RESPONDENT

Date of Decision : 10-07-1945

Acts Referred:

Penal Code, 1860 (IPC) — Section 296

Citation : AIR 1945 Mad 496 : (1945) 58 LW 409 : (1945) 2 MLJ 200

Hon'ble Judges : Chandrasekhara Ayyar, J; Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Ayyar, J.—Defendants 26 onwards, who are the Muhammadan residents of a village called Kalakada in the Chittoor

district, are the appellants in this second appeal. The suit is a representative one by the Hindu residents of the village for a declaration of their right

to pass along the bit of the Chittoor-Cuddappah trunk road in Kalakada village in procession to the accompaniment of music notwithstanding the

existence of a mosque on that road. The District Munsiff gave the plaintiffs a decree declaring their right, subject however to three conditions : (1)

that the processions do not obstruct the lawful user of the highway by other members of the public; (2) that the processions are subject to all lawful

orders passed by the Magistrate and the Police; and (3) that musical accompaniments of the processions should stop playing, within the limits of

one chain on either side of the compound walls of the suit mosque at the five times of public congregational prayers in the mosque. He also

declared the right of the Hindus to play music in their private residences subject to the law relating to nuisance against which a member of the

public can get relief in Courts. On appeal, the Subordinate Judge deleted the third condition above mentioned. This second appeal is directed

against this declaration. In support of his argument, Mr. Pocker has placed very strong reliance on the decision in Kambham Kaveri Rangiah

Chetty and Others Vs. Khaji Syed Hassumiah and Others, , as supporting the propriety of such a condition as that imposed by the District

Munsiff. But for one distinguishing feature, which I believe to be a conclusive circumstance against the appellants, I would have reimposed the

condition, following the decision cited. The feature is this. This particular mosque is not the ancient mosque in the village. It is a new mosque that

came into existence somewhere about 1904 or 1905, and permission was given to the Muhammadans of the village, who wanted to have this

mosque erected, to construct it on a particular site, despite objections raised by the Hindus and on the undertaking given by all the then

Muhammadan residents of the place that there shall be no obstruction raised by them to music being played on the High Road in connection with

private or temple processions. The actual words used in Ex. P-4 are these:

Because of the Masjid we shall raise no obstruction to melam or music of any kind in Hindu houses or in connection with temple processions going

and coming along the High Road. There will be no objection from us or from our co-religionists to members of other religions and faiths going

along the way accompanied by music at any time.

It is rightly pointed out by the Subordinate Judge that the mosque or masjid was allowed to be built on this undertaking and that the rights of the

public which were intended to be preserved by Ex. P-4 must be upheld even now. Troubles started only in 1939 when objection seems to have

been raised for the first time by the Muslims to Hindu processions with music.

2. Mr. Pocker urged that Ex. P-4 is not binding against the Muhammadan community, especially when the grantees are not the residents of the

place but Muhammadans in general wherever they may reside. He argued that it was not open to a few Muhammadans, however influential, or

even to all the Muhammadan residents of a particular place or locality to enter into an arrangement of this kind, which would mean the offering of a

premium to members of other religions to disturb Muslim congregational worship in mosques. He also pointed out that such a disturbance is an

offence u/s 296 of the Indian Penal Code. In connection with this argument he referred to the agreement, Ex. D-1, dated 22nd January, 1939, by

the Hindus of the village in favour of the Muhammadans, under which it was arranged that music should stop near the mosque at specified places.

3. To accept the first portion of this argument would be to hold that, in a case where a mosque is concerned, there can never be any such

agreement given by any Muslim or Muslims at any time capable of enforcement, as it would always be open to persons who were not actually

parties to the agreement to come up and say that they are not bound, even though it may be that all the inhabitants of the locality of the same faith

agreed to a particular course. Such an extreme contention is obviously untenable. I am not prepared to assent to the broad proposition that the

playing of music near a mosque would by itself, without anything further, amount to an offence within the meaning of Section 296 of the Indian

Penal Code. Any deliberate intention to disturb the worship may not be necessary, but surely it must be found as a fact before the section could

apply, that there was a substantial and not merely fanciful disturbance of the worship. I do not think that the learned Judges who decided

Kambham Kaveri Rangiah Chetty and Others Vs. Khaji Syed Hassumiah and Others, intended to lay down any such broad proposition as

contended for by Mr. Pocker.

4. The latter part of the argument based on Ex. D-1 would have had force, but for the circumstances under which it has been found it came into

existence. The District Munsiff who deals with it in paragraph 21 states that he was not prepared to attach any significance or importance to it

because it was influenced by election factions and it was a case of some of the Hindus, who identified themselves with Muslim parties in connection

with the election to the Village Panchayat Court having executed an agreement at the request of the Muslims and to oblige them. But for this

infirmity, I would have held this agreement binding on the Hindus of the locality.

5. There were good grounds for the Subordinate Judge removing the third condition. The mosque is a recent one comparatively speaking, and it

has been found by both the Courts below that till 1939 or 1940 the mamool or the practice has been for processions being taken along the road

with music, in accordance with the undertaking originally given when the mosque was allowed to be built. If, taking advantage of this right declared

in their favour, any Hindu or group of Hindus disturb public congregational

prayers going on in the mosque by the adoption of obnoxious methods such as employment of instruments devised for causing trouble and annoyance, or by playing incessant music in or around the mosque or by needless or new processions started for the purpose of spiting their Muslim brothers, they can always be brought to book by being prosecuted. If any breach of the peace is apprehended the Police and the Magistrate can always issue orders for its prevention and any declaration by the Court of the right of the Hindus will be subject to those orders, as provided for in the decrees of the lower Courts.

6. In the circumstances of this case the Muslim appellants cannot ask for more and the second appeal is dismissed with costs.

7. Leave to appeal is refused.