
(1926) 01 MAD CK 0056
In the Madras High Court

Sivapuram Venkata Subbayya

APPELLANT

Vs

Muhammad Falauddin Khaji and Others

RESPONDENT

Date of Decision : 08-01-1926

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1927 Mad 611 : 101 Ind. Cas. 893 : (1927) 52 MLJ 651

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—It appears that for some years past there has been considerable friction between the Hindu and Muhammadan inhabitants of Nellore. This was due to the objections taken by the Muhammadans to music being played outside their mosques while the Hindus were taking religious processions through the streets. In 1917 the then District Magistrate considered the question and advised the Hindus to file a suit to establish their rights. They accordingly filed a suit in the Munsif's Court in the same year and obtained a decree on 2nd October, 1918. That decree was subsequently confirmed by the District Judge on appeal. In this decree their right to take procession with music outside the mosques was declared, subject to certain conditions as to time. Accordingly in 1919, a procession was taken but owing to the action of some of the Muhammadans there was a riot and three persons were killed and other injuries inflicted.

2. Since that time, no procession has been taken by the Hindus, apparently because, they were afraid to do so without special permission from the Magistracy and the Magistracy has declined to give that permission. An order has now been passed by the Sub-divisional Magistrate u/s 144, Cr.P.C., forbidding the Hindus to conduct a procession on 13th January, 1926. The application for leave to take the procession was made so early as October, 1925. The Sub-divisional Magistrate, while recognising no doubt the rights of the Hindus to take the procession, held that the likelihood of rioting and bloodshed was too great to allow them to exercise their lawful rights. This seems to me to be a confession of

impotence on the part of the authorities. The District Magistrate is undoubtedly the person who is to look after the peace of his District and naturally in cases of sudden emergency it may be necessary to restrict a person from exercising a perfectly lawful right. But it should not be necessary to prevent that person not only in a particular occasion in the near future but for all time from exercising that right because it would be too much trouble to render him adequate protection against persons who intend to disobey the law. Any interruption of the procession by the Muhammadans so long as it is conducted in accordance with the decree of the Civil Court is undoubtedly an infraction of the law and for the Government to state that they are not prepared to prevent the infraction of the law and to restrain law-breakers from interfering with lawful rights is practically to abdicate all authority.

3. Orders u/s 144, Criminal Procedure Code, are certainly not intended to be used as a means of depriving the citizens of lawful rights which have been declared by competent Courts. In " the present case the procession that is sought to be taken is fixed for the 13th January, 1926 and consequently it would now be very difficult for the authorities to take adequate steps to prevent any interference with the procession. I do not therefore propose to set aside the present order as it is too late in the clay. But I am far from saying that a similar order should be passed hereafter. If the Hindus apply again to take procession and give reasonable notice to the authorities that they propose to do so I think it would be incumbent on the authorities to take such action as will protect the rights of the Hindus. The Muhammadans may have to be bound over to keep the peace or it may be necessary to introduce armed force to compel them to do so. But whatever may be necessary should be done in order to protect the rights of the Hindus, who I may say, have been very careful not to exceed their rights and have even offered to pay the extra cost incurred by the Government in protecting their rights.

4. While therefore I cannot set aside this order at the present moment owing to the fact that there is no time to take steps to protect a breach of the peace I have expressed my views as to what should be the procedure hereafter. If the time had not been so short, I should have set aside the present order.