

(1917) 04 MAD CK 0031
In the Madras High Court

W. Kalamatappa and Others

APPELLANT

Vs

Joish Narayana Bhat and Others

RESPONDENT

Date of Decision : 18-04-1917

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 141

Citation : AIR 1918 Mad 448 : 42 Ind. Cas. 337

Hon'ble Judges : Seshagiri Aiyar, J; Bakewell, J

Bench : Division Bench

Judgement

1. We think this second appeal can be disposed of on a simple ground. The suit was based on an order of the Magistrate passed u/s 141 of the Code of Criminal Procedure. That order confines itself to stating that the procession claimed by the plaintiffs should not be permitted as there was danger of a breach of the public peace. Such an order was within the competence of the Magistrate and was perfectly legal. We fail to see how this order can furnish a cause of action for the suit, although it may be the occasion for instituting the suit. The order of the Magistrate leaves the Civil rights of the parties unaffected. Consequently, if the plaintiffs sue to vindicate their rights, they must allege and prove facts which, apart from the pronouncement of the Magistrate, would enable them to obtain a decree. If the right sought to be established is a public right, then special damage must be alleged and proved; if it is an individual right, such a damage need not be proved.

2. Mr. Rangachariar has quoted certain authorities for the proposition that the promulgation of the order by the Magistrate dispenses with the necessity of proving special damage. On examining the cases, we are unable to find that this general statement receives any support from them. In cases where the Magistrate exceeds his powers and passes an order which is not warranted by Section 144, it may be that proof of special damage is not necessary. That is how we understand the decision in Randasawmy Mudali v. Subraya Mudali 1 Ind. Cas. 716. The decisions in Muthialu Chetti v. Bapun Saib 2 M. 140 1 Ind. Dec. 369.

and in Kazi Sujaudin v. Madhavdas 18 B. 693. make this position clear. As regards Andi Moopan v. Muthuvirama Reddy 29 Ind. Cas. 218: 17 M. L. T. 453. it is enough to point out that in that case the Court found that the right claimed was an individual right and it was the infraction of that right that led to the suit. In that view, no question of special damage arose. In Maunada Mudali v. Nallayya Goundan 4 Ind. Cas. 870., an illegal order was passed prohibiting the plaintiff from obstructing the passing of a procession.

3. In our opinion, an order within the jurisdiction of the Magistrate and which is passed solely in the interest of the public peace without detriment to the Civil rights of the parties would not give plaintiff a right to dispense with the proof of special damage, if he is agitating a public right. On this ground, we hold that the suit was misconceived and dismiss it. At the same time, we think the decree which denies certain rights to the plaintiffs should be vacated. In dismissing the plaintiffs' suit, the Courts below were not entitled to declare any rights in favour of the defendants. There will be a simple decree dismissing the suit. In this Court each party will bear his own costs. The order as to costs in the Courts below must stand.