
(1925) 01 MAD CK 0037

Madras High Court

Case No: None

B.R. Ramanujachariar

APPELLANT

Vs

T.V. Kailasam Aiyar

RESPONDENT

Date of Decision: Jan. 8, 1925

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 248
- Madras Local Boards Act, 1884 - Section 207

Citation: AIR 1925 Mad 1067 : (1925) ILR (Mad) 870 : (1925) 22 LW 736 : (1925) 49 MLJ 386

Hon'ble Judges: Srinivasa Aiyangar, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Srinivasa Aiyangar, J.

The petitioner in this case was charged before the Stationary 2nd class Magistrate of Mannargudi with an offence

u/s 159 read with Section 207 of the Local Boards Act (Madras Act XIV of 1920). He raised a plea in bar of the prosecution on the ground that

for the same offence he was previously charged in C.C. No. 215 of 1923 on the file of the same Court, that the complaint was then withdrawn by

the local authority and that the order of acquittal then passed by the Magistrate u/s 248 of the Criminal Procedure Code was a bar to the present

prosecution. The learned Counsel for the District Board of Tanjore has contended before me that according to the scheme of the Act the offence

consisted not in the encroachment alleged to have been made by the accused but in his failing to comply with any direction lawfully given to him

within the terms of Clause (c) of Section 207 of that Act and that therefore the local authority was entitled again and again to give notice u/s 159

and every time the conditions in the notice were not complied with there would be an offence committed by the person to whom such notice is

given. There is a very fatal objection to the maintainability of such a contention. u/s 223 of the same Act it is provided that ""no person shall be tried

for any offence against the provisions of this Act or of any rule or by-law made under it unless complaint is made by the police or the President of a

Local Board, or by a person expressly authorised in this behalf by the Local Board or its President within three months of the commission of the

offence."" The contention of the learned Counsel for the District Board of Tanjore comes to this: that it is within the powers of the Local Board to

extend the period of limitation prescribed by Section 223 by giving fresh notice and constituting the disobedience to each of such fresh notices as

amounting to an offence u/s 207. To construe it in that manner would obviously be to defeat the provisions of the principle underlying Section 223.

I take it that the real principle underlying that section is that it should not be within the power or province of a local authority to molest and annoy

persons by prosecutions which are not promptly undertaken by the local authority. If this view is correct it follows that the original offence was at

any rate committed on the expiry of the first notice given by the local authority to the accused. The prosecution therefore was liable to be launched

within three months of that date, and, as the present prosecution is undertaken long after the expiry of three months from that date, the present

complaint is not sustainable.

2. Even apart from this, there is another objection to the maintainability of the present prosecution. There has been an acquittal by a competent

Court in respect of the offence charged against the accused in the year 1923. If it was an offence not to comply with and carry out the directions of

the notice issued by the local authority in the year 1923 and if on that offence the accused was acquitted he cannot possibly be tried again for the

same offence and I cannot read the sections of this Act as contemplating different offences being committed in respect of the same subject-matter

every time the local authority chooses to give a fresh notice and launch a prosecution. My attention has been drawn to the second clause of Section

207 which provides for enhanced sentence in the case of persistent or old offenders. That has, however, nothing to do with the question what is the

offence that is contemplated by the Act for which a penalty is provided. It is no doubt true that Section 159 of the Act is not very happily worded.

Taking a common sense view of the provisions of Section 159, it seems to be clear that the real offence in such cases is the wrongful encroachment

that is committed by the person. The notice referred to in the section is in a sense merely in the nature of a condition precedent to the prosecution

and all that the Act says is that one should be prosecuted straightway simply because he has committed or is deemed to have committed an act of

encroachment, but the Act requires that some notice should be given to him and that he should be prosecuted only if, even after such notice, he

fails to remove the encroachment. No doubt the contention that it is merely a failure to comply with the direction contained in the notice can be

advanced, having regard to the terms of Section 207 of the Act; and having regard to those terms it is impossible to say that the offence is

complete even before any notice is given because the Legislature clearly treats as an offence only a failure to comply with the terms of the notice.

But, taking the real nature of the acts said to constitute the offence and the terms of all the sections, it is clear that an offence within the meaning of

the Act comes to be committed at any rate on the expiry of the notice by which the person is called upon to remove the encroachment and fails to

do so within the time limited in the notice. It will, be against all principle to hold that, even though a person commits an offence by thus disobeying

the terms of the notice he should be deemed to commit a fresh offence every time the local authority chooses to give a fresh notice calling upon him

to remove the obstruction. In any view, therefore, the present prosecution cannot possibly be sustained, and I must therefore hold that the Sub-

Magistrate was wrong in the view taken by him that the plea in bar was not valid. In my judgment the plea is not only valid but sound and in that

view the complaint should be dismissed and I direct accordingly.