

In Re: Molaiappa Goundan

Court: Madras High Court

Date of Decision: Aug. 15, 1928

Acts Referred: Penal Code, 1860 (IPC) " Section 268, 290

Citation: (1929) ILR (Mad) 79 : (1928) 28 LW 621 : (1928) 55 MLJ 715

Hon'ble Judges: Wallace, J

Bench: Division Bench

Judgement

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Wallace, J.

Several points of law have been raised in this Criminal Revision case. The petitioner was charged on the complaint of the Local

Fund Overseer, Dharapuram, with an offence u/s 290 of the Indian Penal Code of causing a public nuisance by allowing prickly pear to spread

from his own property on to the public road. He was convicted and fined, and now applies for revision of the conviction.

2. The first point argued was that the property from which the prickly pear spread is not his but his brother's. It is clear from the evidence including

that of the defence witness that, although the property is in the actual enjoyment of his brother, both he and his brother are undivided and therefore

both are still joint owners. A joint owner is responsible in law for nuisances caused by his property.

3. The next point is that the act or omission is not a public nuisance, the argument being, that it is the duty of the Local Board and not of the owner

of the adjoining property to keep prickly pear from spreading on the road. No ruling in point is cited to me in support of that view. The principle

governing the case seems to me to be the general principle that no man shall so use his property as to injure his neighbour, and it makes no

difference that the neighbour is the public and not an individual. u/s 268 of the Indian Penal Code a person is guilty of a public nuisance who does

any act or is guilty of an illegal omission which must necessarily cause obstruction to persons who may have occasion to use any public road, and

"illegal" u/s 43 applies to everything which is an offence or is prohibited by law or which furnishes a ground for a civil action. I am of opinion that

allowing prickly pear to spread on to a road used by the public is a public nuisance within this definition.

4. The next point is whether the Local Fund Overseer had any legal authority to launch a prosecution against the petitioner under the Indian Penal

Code. It is pointed out that Section 162 of the Local Boards Act provides a detailed procedure designed ad hoc for the removal of prickly pear

spreading from private property on to public roads, and it is contended that the enactment of that procedure impliedly deprives Local Boards and

their servants of the right to prosecute under the Indian Penal Code. I am clear that such a right, if it existed, cannot be impliedly taken away by the

provisions of another statute, nor is any ruling cited which goes so far. The case in *Chandi Per shad v. Abdw Rahman*¹ is not really in point. There

a party was being prosecuted u/s 182 or Section 199, Indian Penal Code, for making a false statement of the number of carriages and ponies

possessed by him in an application for license for vehicles and animals. The High Court held that the Indian Penal Code had no application as the

Municipal Act was complete in itself and attached no penalty to the making of a false statement in such an application and that, therefore, the party

was under no obligation of law to make a true statement. That ruling has no application to an act or omission which does itself come under the

definition of a specific offence set out in the Indian Penal Code.

5. The question, therefore, is whether the Local Fund Overseer who launched the prosecution had legal authority to do so. It seems to me that he

had the ordinary right of any person to complain of a criminal offence. Nor is that right taken away because he did not profess to complain as an

ordinary person but as a Local Fund Overseer. For purposes of this complaint his official position may be neglected. He is a member of the public

entitled to go on those portions of the road which had been encroached upon by the prickly pear and as such is entitled to complain.

6. It is then argued that since he was not examined on oath as a private complainant should be, the proceedings are illegal. Again I am not referred

to any authority which goes so far. Omission to take a sworn statement from the complainant is under the law in this Presidency an irregularity and

not an illegality. See *Queen-Empress v. Moriu*² and *Ambaydira Goundan v. Pachanuuthu Goutidan*.³ I am unable to see how that omission in this

case has prejudiced the petitioner.

7. I therefore see no reason to interfere in this case and dismiss the petition. I should, however, add that I think it would be better that all such

cases be dealt with under the relevant sections of the Local Boards Act which ensures that the Local Board as a whole considers the case one

which should be prosecuted, and I recommend the Board to follow that practice in future.