

[235] APPELLATE CRIMINAL.

The 31st October and 7th November, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

The Queen against Khader Moidin.*

Penal Code Section 283†—Madras Police Act, Section 48, Clause 3‡—Spreading fishing nets by roadside not within.

To spread fishing nets by the side of a thoroughfare in a town is neither an offence punishable under Clause 3, Section 48 of Act XXIV of 1859, nor, without proof of obstruction caused to any particular person or class of persons, under Section 283 of the Indian Penal Code.

IN this case the prosecutor (a Policeman) deposed that he "saw a bad-smelling net dried on the road by the side of the house of the first accused so as to cause obstruction to persons passing by."

The second accused admitted the net was his and had been left there by him.

The Magistrate convicted the second accused under Clause 3 of Section 48 of the Madras Police Act (Act XXIV of 1859) and fined him one rupee.

The case was referred by the District Magistrate of Madura for the orders of the High Court on the ground that the action of the accused in drying nets in the street did not, in his opinion, constitute such an obstruction as is contemplated in Clause 3, Section 48 of Act XXIV of 1859.

No one appeared at the hearing.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

Judgment :—Clause 3, Section 48, of the Police Act (Act XXIV of 1859), under which the accused has been convicted, refers to obstruction of the road

* Case No. 51 of 1881 referred by H. J. Stokes, District Magistrate of Madura, under Section 296 of the Code of Criminal Procedure.

†[Sec. 283 :—Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred Rupees.]

‡[Sec. 48 :—Any person who in any street, road, thoroughfare, or passage, within the limits of any town, commits any of the following offences to the obstruction, inconvenience, annoyance, risk, or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any Police Officer to take in custody without warrant any person who within view commits any such offence.

Cl. 3.—Any person who shall keep any cattle, or conveyance of any kind standing in any road or street longer than is required for loading or unloading, or for taking up or setting down passengers, or who shall leave any conveyance in such a manner as to cause inconvenience or danger to the public.]

or street caused by *cattle* or by *conveyances*, in certain circumstances therein detailed. The act of the accused in spreading fishing nets by the side of the road was clearly, therefore, not punishable under this clause of Section 48 of the Act.

[236] The present conviction cannot also, in our opinion, be sustained as a conviction under Section 283 of the Penal Code, because, although it is stated in the evidence, in general terms, that obstruction was caused, it does not appear that obstruction was caused to any particular individual or individuals. The conviction is accordingly quashed. The fine collected from the accused must be refunded.

[4 Mad. 236.]

APPELLATE CIVIL.

The 7th November, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Gopal Kristna Sastri and another.....Plaintiffs
and
 Ramayyengar and others.....Defendants.*

Small Cause Court Jurisdiction—Hindu Law—Obligation of son to pay deceased father's debt—Cause of action.

A suit against the undivided sons of a deceased Hindu father to enforce payment of a debt incurred by the latter is within the jurisdiction of a Small Cause Court, and that jurisdiction is not ousted by a plea that the debt was contracted for immoral purposes.

THIS was a case stated under Section 617 of the Code of Civil Procedure in a Small Cause Suit by the Subordinate Judge of Madura on the following terms :

“The plaintiffs sue to recover Rs. 500, being the balance of principal and interest due under a simple bond executed by the late Srinivasa Ayyangar, the father of the defendants, on the 30th October 1876.

“The defendants plead that this Court has no jurisdiction to try this suit on the Small Cause side. The second defendant adds that the debt was contracted for illegal and immoral purposes.

“The case came on for hearing before me on the 13th instant. Final hearing was adjourned to 30th proximo, pending the decision of the Honourable the Judges of the High Court of Madras on the following case :

“The plaintiffs seek to obtain a decree against the defendants as the representatives of their deceased father. All the defen-[237]dants were adults at the date of the suit bond. It is not disputed that the whole of the property in their possession is the ancestral property of the late Srinivasa Ayyangar. The defendants contend that they were, from the date of their birth, joint owners of property with their father during his life; that, by right of survivorship, they have become the owners of the deceased's share in the joint family property; that it is a misnomer to call them representatives of their father who left no

* Referred Case No. 13 of 1879 stated by K. Kristnasami Rau, Acting Subordinate Judge of Madura, in Small Cause 368 of 1879.