

## APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Mutusami Ayyar.*

QUEEN-EMPRESS

v.

VARATHAPPA CHETTI.\*

1889,  
March 7, 26.

*Penal Code, section 174—Disobedience to lawful order of public officer—Summons by Revenue officer to give evidence in a pauperism inquiry—Act III of 1869 (Madras)—Standing Order of Board of Revenue (Madras), No. 48a.*

The accused, who were parties to a petition pending in a District Court, were summoned by a tahsildar to give evidence on an inquiry by him as to whether or not the petitioner was a pauper; they omitted to attend on the summons, and were charged in respect of such non-attendance under section 174 of the Indian Penal Code and were convicted:

*Held*, the conviction was bad, the tahsildar not being authorised to issue the summons under Act III of 1869 (Madras).

PETITION under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of the General Deputy Magistrate of Salem in summary cases Nos. 8, 9, 10, and 11 of 1888.

The petitioners had been convicted under section 174 of the Indian Penal Code of the offence of intentional disobedience to a lawful order of a public servant. The order in question was a summons with which they had respectively been served requiring them to appear and to give evidence before the tahsildar of Namakal. The proceeding to which the summons related was an inquiry by the tahsildar into the allegation of pauperism by the petitioner in a District Court, to whose petition the accused were parties.

On its appearing that the tahsildar had been directed by the Collector of the district to hold the inquiry in question, and that the accused had for various reasons neglected to attend in accordance with the summons, the General Deputy Magistrate convicted the accused as above. The present petitions prayed for the

---

\* Criminal Revision Case No. 19 of 1889, with which were connected Criminal Revision Cases Nos. 20 to 22 of 1889.

QUEEN-  
EMPRESS  
v.  
VARATHAPPA  
CHETTI.

revision of the proceedings of the General Deputy Magistrate on the ground, *inter alia*, that the tahsildar had no authority in law to issue the summons.

Mr. *Wedderburn* for petitioners.

The Code of Civil Procedure, section 406, authorizes the Judge to hold inquiry as to the poverty of the petitioner, and when a special procedure is provided, it must be followed. The question of liability to Court fees is not a matter of general revenue administration, but a matter peculiarly within the cognizance of the Civil Courts.

The Collector's duty was to have any witnesses he required summoned and examined by the District Court in which the petition was filed under sections 408 and 409 of the Code of Civil Procedure. In any case the wording of the summons was misleading, and there was no intentional disobedience of an order.

The *Acting Government Pleader (Subramania Ayyar)* for the Crown.

Pauperism inquiries are within the purview of Act III of 1869 (Madras) and so the tahsildar was lawfully competent to issue the summons. With that Act must be read the Standing Order of the Board of Revenue (Madras), No. 48a, which is as follows :—

“ 48a.—*Application to sue in formâ pauperis how to be dealt with.*

“ On receiving notice under section 408 of the Code of Civil Procedure regarding an application to sue *in formâ pauperis*, Collectors should institute the necessary inquiries as to the real status of the applicant, and should they feel satisfied that he is a real pauper, they will not dispute such application.

“ 2. But if, on such inquiry, there appear to be circumstances in the appellant's case which *primâ facie*, disentitle him to sue as a pauper, the Collector should place himself in communication with the defendant or respondent in the case, and if such defendant or respondent is disposed to dispute the application, the Collector by co-operating with him and employing the same vakeel may effectually oppose the application.

“ 3. When a defendant or respondent is not inclined to oppose the application, and when the Collector is of opinion that the application should be opposed, he will employ a vakeel and cite witnesses. Such cases will naturally be rare and the regulation fee for the vakeel and other costs incurred will on application be sanctioned by Government.

“4. When a person is permitted to sue as a pauper, it is not necessary that a vakeel should be employed to watch the further proceedings in the case ; but should circumstances subsequently come to light which show that the indulgence granted to the plaintiff or appellant was one to which he was not entitled, the Collector will act in co-operation with the defendant or respondent in the manner directed in paragraph 2, or independently as laid down in paragraph 3 of this order.”

QUEEN-  
EMPRESS  
S.  
VARATHAPPA  
CHETTI.

JUDGMENT :—The accused, who were defendants in a pauper petition pending in the District Court of Salem, were summoned by the tahsildar of Namakal to give evidence as to whether or not the petitioner was a pauper. They neglected to appear in obedience to the summonses which were served on them personally, and the second-class Magistrate convicted them of an offence punishable under section 174, Indian Penal Code. It is contended that the conviction is illegal on the ground that the tahsildar had no legal authority to issue the summonses. It appears that the Collector directed the tahsildar to hold an inquiry regarding the alleged pauperism of the petitioner in the District Court and to make a report. It is urged that in connection with the pauper petition a notice was served on the Government Pleader under section 408 of the Code of Civil Procedure, and that under the Standing Order of the Board of Revenue (48a) the Collector directed the inquiry. The point for decision is whether this class of cases is within the purview of Act III of 1869 (Madras). The contention of the Government Pleader is that the Collector was authorized by the Standing Order of the Board of Revenue (48a) to institute the necessary inquiry as to the petitioner's position in life and to satisfy himself that he was really a pauper, before deciding whether the Government ought to oppose his application for permission to sue as a pauper, that the purpose of the inquiry was the protection of the stamp revenue, and that the case was therefore one in which the evidence of the accused was required for the investigation of a matter in which the Collector was authorized to hold an inquiry within the meaning of section 1 of Act III of 1869.

The Act purports to empower Revenue officers to summon persons to attend at their cutcherries for the settlement of matters connected with Revenue administration. The preamble states that the Revenue administration of the country is retarded, because

QUEEN-  
EMPRESS  
v.  
VARATHAPPA  
CHETTI.

Revenue officers are not made competent by express provision of law to issue summonses for the attendance of persons in certain cases in which it is their duty to hold investigation. Then section 1 enacts: "Collectors, Sub-Collectors, Assistant Collectors, Deputy Collectors, Tahsildars, and Deputy Tahsildars shall have power "to summon all persons resident within the district whose evidence "may appear to them to be necessary for the investigation of any "matter in which they are authorized to hold an inquiry, and also "to require the production of any document relevant to the matter "under inquiry which may be in the possession or under the "control of such person." The intention was to create a facility towards the settlement of matters connected with Revenue administration, and the facility created consisted in empowering Revenue officers to summon persons to give evidence which may appear to be necessary for the investigation of any matter in which they are authorized to hold an inquiry. Having regard to the rule of construction that when an Act gives a special power, the power must be limited to the purpose for which it is conferred, we are of opinion that the inquiry held by the tahsildar was not within the purview of the Act. The question of the petitioner being a pauper or otherwise was not one which the Revenue authorities had to decide finally in connection either with revenue or general administration. It was a question pending decision in a civil suit to which the Government was constructively a party for a limited purpose, and the Collector's power as a party was limited to obtaining information from his subordinates and from such others as were willing to supply it. It was open to him to obtain process from the Court to enforce the attendance of witnesses who might appear from the information before him to be able to prove that the petitioner was not a pauper. The tahsildar was therefore not competent to issue summonses under the Act, and we set aside the convictions of the accused and direct that the fines be refunded if collected.

---