

APPELLATE CRIMINAL.

Before Mr. Justice Wilkinson and Mr. Justice Subrahmanya Ayyar.

QUEEN-EMPRESS

v.

SOMMANNA.*

1892.
Jan. 25, 28.

Penal Code, ss. 183, 186—“Voluntarily.”

A District Judge ordered that the house of the defendant in a suit pending before him be searched and certain property brought to the Court, and appointed a commissioner to carry out this order. The commissioner went to the house, but the defendant shut the doors and would not admit him. A crowd collected, and the commissioner felt it would be unsafe to proceed to carry out the order by force, and was unable to do so otherwise. The defendant was prosecuted and sentenced under Penal Code, s. 186 :

Held, that the facts disclosed no offence under that section.

PETITION under Criminal Procedure Code, ss. 435, 439, praying the High Court to revise the judgment and sentence of T. Rama Rau, Sub-Divisional Magistrate of Cuddapah, in criminal appeal No. 40 of 1891, confirming the judgment and sentence of the Second-class Magistrate of Pullampet in calendar case No. 102 of 1891.

The facts of the case as found by the Sub-Divisional Magistrate were as follows :—

In a certain civil suit the District Judge of Cuddapah issued a commission to P. Tirumala Rau, First-grade Pleader, to search the house of the accused and remove certain property thence to the District Court. The commissioner accordingly went to the village of the accused and, having read out the order, asked him to allow it to be executed. The accused remained inside his house and, closing the doors against the commissioner, obstructed the execution of the commission in spite of repeated requests addressed to him. The commissioner tried for several hours to effect an entrance into the house, but did not succeed. He invoked the assistance of the Village Magistrate and got some implements to force open the doors. But, seeing that the accused was a wealthy and influential merchant, and that there was a

* Criminal Revision Case No. 581 of 1891.

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large crowd round his house, the commissioner feared that there might be a disturbance of the public peace if he resorted to that measure. He then reported the matter to the nearest police-station house officer. But by the time the police arrived the plaintiff, on whose behalf the commission had been issued, had come to terms with the defendant and requested the commissioner not to execute it.

The *Acting Advocate-General* (Hon. Mr. *Wedderburn*) for petitioner.

The *Government Pleader and Public Prosecutor* (Mr. *Powell*) in support of the conviction.

JUDGMENT.—The petitioner was convicted by the Second-class Magistrate of Pullampet under section 183, Indian Penal Code, of resistance to the taking of property by the lawful authority of a public servant and sentenced to two months' rigorous imprisonment and a fine of Rs. 200. On appeal the Sub-Divisional Magistrate confirmed the sentence, but altered the finding to one of an offence under section 186, Indian Penal Code, and the only question now is whether the ingredients of the offence have been made out. On behalf of the petitioner it is urged that there was nothing more on his part than non-compliance with an order which he was not bound to obey. On the part of the Crown it is argued that there was active obstruction and a threatened breach of the peace. There is nothing in the judgment of the Sub-Divisional Magistrate to lead us to think that it was the petitioner who gathered the crowd, nor on referring to the evidence of the commissioner do we think that it can be held that it was through the instrumentality of the prisoner that the crowd came together. It would seem to have been a very orderly crowd which collected upon hearing that an inventory was to be made of all the goods and chattels in the house of the principal merchant in the place. All that is found is that the commissioner, who appears to have acted throughout in a very injudicious manner, read out the order and asked the petitioner to be allowed to carry it out, and that petitioner, without giving any answer, remained inside his house with closed doors. We do not think that mere failure to comply with the request of the commissioner amounts to such obstruction as is contemplated in section 186. The use of the word "voluntarily" seems to us to indicate that the Legislature contemplated the commission of some overt act of obstruction, and did not intend to render penal

mere passive conduct. It was not asserted that petitioner barricaded his doors or assaulted the commissioner, or took any active step to oppose the execution of the commission. He merely shut himself up in his house and took no notice of the commissioner. His object apparently was not to obstruct, but to gain time for the compromise, which later on in the day was effected. The conviction cannot be sustained, and we accordingly set it aside, and the fine, if paid, will be refunded.

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APPELLATE CIVIL,

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

NARAYANACHARIAR (PLAINTIFF), APPELLANT,

c.

RANGA AYYANGAR AND ANOTHER (DEFENDANT AND
SUPPLEMENTAL RESPONDENT), RESPONDENTS.*

1891.
Dec. 4, 10.

*Rent Recovery Act—Act VIII of 1865 (Madras), ss. 8, 9, 10—Suit for a patta—
Denial of tenancy by landlord.*

In a summary suit brought under Rent Recovery Act (Madras) to compel the defendant to give a patta to the plaintiff for certain land which plaintiff claimed to hold from him, the defendant denied that the plaintiff was his tenant:

Held, that the Collector was bound to try this question so raised and not to refer the parties to a regular suit for its determination.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of Tinnevely, in appeal suit No. 180 of 1889, affirming the decision of T. Varada Rau, Acting Head Assistant Collector of Tinnevely, in summary suit No. 3 of 1889.

The plaintiff brought this suit to compel the defendant, from whom he alleged he held certain land, to give him a patta in respect thereof. The defendant denied the tenancy, and the Head Assistant Collector dismissed the suit, observing:—"As a question regarding the existence or otherwise of the relationship of landlord and tenant has arisen in this case, the matter must be determined in the regular way."

* Second Appeal No. 1593 of 1889.