

APPELLATE CRIMINAL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

QUEEN-EMPRESS

1895.
July 23.

v.

MUPPAN.*

Penal Code—Act XLV of 1860, s. 224—Escape from lawful custody.

The accused, having been legally arrested, was subsequently left unguarded and he escaped. He was then re-arrested, and was tried and convicted under Indian Penal Code, section 224:

Held, that the conviction was right.

CASE referred for the orders of the High Court under Criminal Procedure Code, section 438, by E. A. Elwin, Acting District Magistrate of Trichinopoly.

The case was referred as follows:—

“The accused in the case was charged under section 224, Indian Penal Code, for escape from lawful custody. It appears from the evidence of the police constable, from whose custody he was stated to have escaped, that accused was left unguarded at the time when the escape was effected. The sub-magistrate convicted the accused under the above section.

“The case is similar to *Queen-Empress v. Sarabaiya*(1) and *Queen-Empress v. Nallan*(2).”

Counsel were not instructed.

JUDGMENT.—We think the accused was rightly convicted. The custody of a prisoner does not necessarily come to an end because the custodian absents himself for a few minutes. A man legally arrested for an offence must submit to be tried and dealt with according to law. If he gains his liberty before he is delivered by due course of law, he commits the offence of ‘escape.’ It has been long established that even when the escape is effected by the consent or the neglect of the person that kept the prisoner in custody, the latter is no less guilty, as neither such illegal consent nor neglect absolves the prisoner from the duty of submitting to the judgment of the law (I Russ., 5th edition,

* Criminal Revision Case No. 222 of 1895.

(1) Weir's Criminal Rulings, p. 124.

(2) Weir's Criminal Rulings, p. 125.

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p. 567, Roscoe, 11th edition, p. 453, and Bishop's Criminal Law, 7th edition, section 1104). Consequently in the present case the neglect of the police officer in absenting himself from the place where the accused was detained when he escaped does not affect the accused's guilt.

We decline to interfere.

APPELLATE CRIMINAL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

PALANIAPPA CHETTI AND OTHERS (PETITIONERS),

v.

DORASAMI AYYAR AND OTHERS (RESPONDENTS).*

*Criminal Procedure Code—Act X of 1882, ss. 144, 435—Disputed possession—
Revision by High Court.*

The District Temple Committee dismissed the trustees of a certain temple and appointed others. The dismissed trustees retained possession. A breach of the peace having become imminent in the opinion of a Deputy Magistrate, he made an order under Criminal Procedure Code, section 144, directing the newly-appointed trustees not to interfere with the temple or its management :

Held, that the High Court had no power to interfere in revision under Criminal Procedure Code, section 435.

PETITION under Criminal Procedure Code, sections 435 and 439, praying the High Court to revise the proceedings of E. C. Rawson, Acting District Magistrate of Trichinopoly, affirming the order of Khadir Knavaz Khan, Deputy Magistrate of Trichinopoly.

The order sought to be revised was made under Criminal Procedure Code, section 144, and it directed certain persons who were the petitioners in the High Court not to interfere with a temple at Lalgudi or with its management. These persons had been appointed trustees of the temple in question by the majority of the Temple Committee of the district, in the place of certain other persons who had been dismissed from that office by the same authority. Contests having arisen between the dismissed trustees and those appointed in their places, the Deputy Magistrate, being of opinion that a breach of the peace was imminent, made the order in question. This order was affirmed by the District

* Criminal Revision Case No. 177 of 1896.