

APPELLATE CRIMINAL.

Before Mr. Justice Miller and Mr. Justice Sadasiva Ayyar.

GOVINDA CHEPPI AND EIGHT OTHERS, PETITIONERS,

v.

PERUMAL CHEPPI AND ANOTHER (COUNTER-PETITIONERS),
RESPONDENTS.*

1913.
September.

Criminal Procedure Code (Act V of 1898), sec. 144—Renewed orders under—Jurisdiction of Magistrate—High Court's power of interference under article 15, Charter Act (24 and 25 Vict., C. 104).

Where a renewed order passed under section 144, Criminal Procedure Code, did not state that there was again a temporary emergency and a continuing or existing insufficiency of the Police Force to protect the petitioners in their rights,

Held, that the Magistrate gave himself a more extended jurisdiction than is covered by section 144 and that the order was revisable by the High Court under article 15, Charter Act (24 and 25 Vict., C. 104).

Their Lordships declined to set aside the order as the two months during which the order would remain in force was almost expiring on the date of bearing.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the order of J. P. BEDFORD, the District Magistrate of Salem, in Criminal Miscellaneous Petition No. 8 of 1913, presented against the proceedings, dated the 27th June 1913, on the file of the Sub-Magistrate of Salem.

The facts of this case are stated in the order of SADASIVA AYYAR, J.

L. A. Govindaraghava Ayyar for the petitioners.

The Public Prosecutor on behalf of Government.

R. Sadagopachariar and *C. Rajagopulachariar* for the second respondent.

SADASIVA AYYAR, J.—In the absence of the Police Sub-Inspector's report of the 22nd June 1913, on the basis of which the Salom Town Sub-Magistrate passed his order of the 27th June 1913, I cannot see my way to hold that the said order passed under section 144 of the Criminal Procedure Code was an order passed without jurisdiction. The said report of the Sub-Inspector of Police is not part of the record sent to us and

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* Criminal Revision Case No. 458 of 1913 (Criminal Revision Petition No. 389 of 1913).

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before (we could send for and obtain it) the two months during which the order is to remain in force would expire and there would be no use in revising the order after it is spent. I would, therefore, dismiss this petition, but I do not think it inappropriate to make some observations with reference to the proceedings of the Lower Courts.

The Sub-Magistrate's proceedings of the 15th July 1913, lend some justification to the argument addressed to us by the petitioners' learned Vakil that the Sub-Magistrate considered himself legally bound by the "District Magistrate's order which prohibits the procession," evidently in perpetuity. The Sub-Magistrate while he ought to give due and very great respect to the advice of the District Magistrate, ought to have used his own judicial mind on the Sub-Inspector's report and have come to his own conclusion whether a temporary and emergent order under section 144 ought to have been passed. The general "instructions" of the District Magistrate are not legally binding on the Sub-Magistrate in particular cases. Again there is some force in the petitioners' learned Vakil's contention that the Magistracy at Salem are, under the shelter of section 144 of the Criminal Procedure Code (which relates to the passing of provisional orders to tide over temporary emergencies and in cases where "immediate prevention or speedy remedy is desirable"), the Magistracy are under the shelter of that section trying to clutch at a much more extensive jurisdiction namely a jurisdiction to prohibit the petitioners by a permanent injunction from taking processions (throughout an indefinite future) period along the streets of Salem. I have no doubt that under section 15 of the Charter Act, we are entitled to prevent such indirect evasion by the Magistracy of the law as laid down in section 144 [see *Remjit Singh v. Luchman Prasad*(1), *Satish Chandra Roy v. The Emperor*(2), *Gopi Mohan Mullick v. Taramoni Chowdhrani*(3) and *Queen Empress v. Pratap Chunder Ghose*(4)], the observations in which cases indicate that the arm of the law is long enough to prevent such evasion of the Code by arbitrary and successive renewals of orders passed under section 144 and that the powers given to the High Court under

(1) (1902) 7 C.W.N., 140.

(2) (1906) 11 C.W.N., 79 at p. 80.

(3) (1880) I.L.R., 5 Cal., 7 at p. 19.

(4) (1898) I.L.R., 25 Cal., 852.

clause 15 of the Charter Act are sufficient to prevent such evasion).

The District Magistrate's order of the 23rd July 1913, refusing to set aside the Sub-Magistrate's order of the 22nd June 1913 does not state that there was again a temporary emergency and a continuing or existing insufficiency of the Police force to protect the petitioners in exercise of their rights. Unless such a ground is expressly mentioned and is *prima facie* established in any future order passed in connection with this question, the presumption would, in my opinion, be very strong that the order was passed merely in order to evade the provisions of section 144 and that the Magistracy are attempting to give themselves a much more extended jurisdiction than is covered by section 144 of the Criminal Procedure Code.

With these observations I would dismiss this Revision Petition.

MILLER, J.—I agree in the order proposed, and entirely concur in my learned colleague's observations, as to the attempt which, there seems reason to fear, the District Magistrate of Salem is making, to obtain a jurisdiction wider than that given him by section 144 of the Code of Criminal Procedure.

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APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.

PHATMABI (PLAINTIFF), APPELLANT IN BOTH CASES,

v.

HAJI A. MUSA SAHIB (DEFENDANT), RESPONDENT IN
BOTH CASES.*

1913.
July 22 and
September 2.

Muhammadian Law—Mutawalliship of property annexed to a mosque—Right to succeed by principle of heredity—Proof and validity of such right.

Held, on the facts of the case, that the plaintiff who claimed to be the *mutawalli* of the plaint mosque by right of heredity, had not established by clear proof that that was the method of succession to the office and that he was therefore the lawful *mutawalli*.

Held also: as a valid appointment of a *mutawalli* could be made only in one of three modes, viz.: (a) by the original author of the waqf or by some person expressly authorized by him, or (b) by the executor of the author, or

* Second Appeal Nos. 1470 and 1471 of 1911.