

APPELLATE CRIMINAL.

Before Mr. Justice Phillips and Mr. Justice Napier.

1919,
March 31.

THE PUBLIC PROSECUTOR, APPELLANT,

v.

SANKARALINGA MOOPAN (ACCUSED), RESPONDENT.*

Local Boards Act, Madras (V of 1884), ss. 33, 98 (1) and (2)—Delegation of duty to give notice of removal of obstruction to a public road by the president of a taluk board to a chairman of a union, validity of—“Other person duly authorized by him as aforesaid” in sec. 98 (2), meaning of.

Section 33 of the Madras Local Boards Act (V of 1884) does not restrict the specific delegations of duty allowed to the president of a taluk board by other sections of the Act. The words “other person duly authorized by him as aforesaid” in section 98, clause (2), mean “any person duly authorized by him in that behalf,” viz., the one mentioned in section 98, clause (1), and do not mean only the vice-president of the taluk board. Hence a notice to remove an obstruction to a public road given by the chairman of a union to whom the president of the taluk board within which the union was situated delegated the power to give such notice is a legally valid notice; and disobedience to the notice is an offence under the Act.

CRIMINAL APPEAL under section 417 of the Criminal Procedure Code (V of 1898) against the acquittal of the accused by T. S. JAMBUNATHAN, Subdivisional Magistrate of Sivakāsi, Rāmnād district, in Criminal Appeal No. 18 of 1918, against the conviction of the accused by R. SAMI AYYAR, Third-class Magistrate of Sattur, in C.C. No. 11 of 1918.

The accused, one Sankaralinga Moopan of Sivakāsi, was charged with an offence under section 162 (c) of Madras Local Boards Act (V of 1884) in that he had erected without permission a masonry pial in a public street in front of his house in Sivakāsi town and that he had failed to remove the same within the time allowed by the notice issued to remove the same by the Union Chairman of Sivakāsi. The accused pleaded *inter alia* that the notice issued by the Union Chairman was not a legal one and that he had therefore committed no offence. The Court of first instance found that the Chairman was authorized by the President of the Taluk Board of Sattur under

* Criminal Appeal No. 778 of 1918.

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section 98, clause (2), of the Local Boards Act to issue notices to remove encroachments on public roads, that the same was valid and that the accused was therefore guilty. On appeal against the conviction by the accused, the Subdivisional Magistrate acquitted the accused holding that the delegation of the duty to issue the notice to any one but the Vice-President of the Taluk Board was not valid. The Government preferred this appeal against the acquittal under section 417 of the Criminal Procedure Code.

E. E. Osborne, the Public Prosecutor, for the Crown.

Accused was not represented.

The JUDGMENT of the Court was delivered by

PHILLIPS, J. PHILLIPS, J.—We cannot agree with the Subdivisional Magistrate that the words “other person duly authorized as aforesaid” in section 98 (2) of the Local Boards Act refer only to “some person, duly authorized by him in that behalf” mentioned in section 98 (1) for we think that the use of the single word ‘other’ precludes this view which would require the word ‘any’ or “such other” to support it. In our opinion there must be a separate authorization under each clause of the section and the words “as aforesaid” in clause (2) must be read as meaning “by him in that behalf”. In this view the notice issued by the Union Chairman was valid, as authority had been given to him by exhibit C. Section 33 of the Act does not restrict specific delegations allowed by other sections of the Act, and there is no reason to read the words “other person” as meaning vice-president alone.

The case against accused being a summons case no charge was necessary and as accused was represented by a vakil he must have been aware of the charge against him and could not have been prejudiced by the Magistrate’s omission to explain it to him.

We set aside the order of acquittal and confirm the conviction and sentence of the Sub-Magistrate.

N.B.