

In re
 KOCHUNNI
 ELAYA
 NAIR.
 KUMARA-
 SWAMI
 SASTRI, J.

as it has all the powers of a Court of Sessions having original jurisdiction and as appeals from the Tribunal lie to the High Court he can move this Court if bail is wrongly refused. He has therefore an adequate remedy. I dismiss the petition for a *Habeas corpus*.

The petition for the issue of a writ of *certiorari* is not pressed and is dismissed.

I do not think that I ought, at this stage and on the scanty materials before me, to direct the release of the petitioner on bail, and I accordingly dismiss the petition without prejudice to his applying later on if he is so advised.

M.H.H.

APPELLATE CRIMINAL.

Before Mr. Justice Kumaraswami Sastri.

1921,
 September
 28.

THYARAMMAL (ACCUSED IN CALENDAR CASE NO. 7998 OF 1921 ON THE FILE OF THE HONORARY PRESIDENCY MAGISTRATE'S COURT, MADRAS).*

City Police Act (Madras Act III of 1888), sec. 71 (xi)—Petty bazaar—Obstructing a thoroughfare.

Section 71, clause (xi) of the Madras City Police Act covers cases of obstructing a thoroughfare in any manner, for example, by keeping a petty bazaar, and is not limited to obstruction caused by vehicles and animals. In the case of vehicles and animals the act and the obstruction caused by the act are sufficient to prove the offence. In other cases the fact of obstruction as well as the intention must be proved.

CASE referred for the orders of the High Court under section 432, Criminal Procedure Code, by the President of the Honorary Presidency Magistrate's Court, Egmore, Madras,

* Criminal Revision Case No. 374 of 1921 and Case Referred No. 43 of 1921.

The accused was charged with "causing obstruction by keeping a petty bazaar" on the side of the road. The Reference by the Bench was in these terms :

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"We doubt if causing obstruction by keeping petty shops would come under the wording of clause (xi) of section 71 of the City Police Act. It is sought by the police to bring the guilt under the third part of the clause : 'or in any way wilfully obstructs or causes obstruction.' It will be seen that two things are essential, viz. (i) an intention and (ii) actual obstruction for this part of the clause. Intention has not been proved in this case. A comparison of clause (xi) of section 71 of the City Police Act with clauses (5) and (6) of the Town Nuisances Act will show that cases of this kind are not covered by clause (xi) of section 71 of the City Police Act. Clause (5) of the Town Nuisances Act is the same as clause (xi) of section 71 of the City Police Act. Clause (6) runs : 'whoever exposes goods for sale so as to cause obstruction.' The facts of this case come under the wording of the clause and we refer to the High Court under section 432, Criminal Procedure Code, the question whether clause (xi) of section 71 of the City Police Act covers cases which come under the wording of clause (6) of the Town Nuisances Act, in view of the similar wording of clause (xi) of section 71 of the City Police Act and clause (6) of the Town Nuisances Act."

The Public Prosecutor for the Crown.

KUMARASWAMI SASTRI, J.—I think clause (xi) of section 71 of the City Police Act covers a case of obstructing a thoroughfare in any manner and is not limited to obstruction caused by vehicles and animals. There is no reason to suppose that the legislature intended to permit all other kinds of obstruction and punish only obstructions by vehicles or animals. There is a semicolon

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before the sentence "or in any way wilfully obstructs, etc." In the case of obstruction by vehicles and animals there is no question of intention—the act and obstruction caused by the act are sufficient. In other cases intention is necessary to be proved in addition to the obstruction. These are questions of fact to be determined by the Magistrate. The fact that Act III of 1889 contains clause (6) to section 3 which deals with exposing goods for sale so as to cause obstruction which follows clause (5) which is similar in terms to clause (xi) of the City Police Act affords no guide to the interpretation of the City Police Act. Probably the legislature intended to place the matter beyond all doubt.

I am of opinion that the accused will be guilty of an offence under clause (xi) of section 71 of the City Police Act, if the requisite intention and the fact of obstruction are proved.

M.H.H.
