APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Ramesam.

1923
January, 17.

NATARAJA PILLAI (PETITIONER), PETITIONER,

v.

RANGASWAMI PILLAI AND THREE OTHERS (COUNTER-PETITIONERS), RESPONDENTS.*

Order under section 144, Criminal Procedure Code (V of 1898) —Disobedience of order—Sanction for prosecution—Proper appellate authority under section 195, Criminal Procedure Code, to revoke sanction.

A Subdivisional Magistrate passed an order under section 144, Criminal Procedure Code, prohibiting certain persons from interfering with a religious ceremony. On disobedience of that order he sanctioned their prosecution for an offence under section 188, Indian Penal Code;

Held that the Magistrate was not, when passing the order under section 144, Criminal Procedure Code, acting as a "Court," within the meaning of clause (7) of section 195 of the Criminal Procedure Code, but was only acting as a public servant; hence the proper appellate authority to revoke the sanction was not the Sessions Court but the District Magistrate as provided by clause 6 of section 195. *Arunachallam Pillai* v. *Ponnuswamy*, (1918) 35 M.L.J., 454 not followed. *Sunduram* v. *The Queen*, (1883) I.L.R., 6 Mad., 203 at 222 and *Abbas Ali Chowdhry* v. *Illim Meah* (1870) 14 W.R. (Cri.), 46 followed.

PETITION praying that in the circumstances stated therein the High Court will be pleased to set aside the order of J. I. SMITH, acting Sessions Judge of the West Tanjore Division, Tanjore, in Criminal Miscellaneous Petition No. 11 of 1922 setting aside the order of M. R. SANKARANARAYANA AYYAR, Subdivisional Magistrate of Tanjore, in his proceedings, dated the 8th December 1921, according sanction to prosecute the respondents herein for an offence under section 188, Indian Penal Code.

* Criminal Miscellaneous Petition No. 459 of 1922.

The facts are given in the judgment.

K. S. Jayarama Ayyar for the petitioner.

S. Subrahmanya Ayyar for the respondents.

The Public Prosecutor (*J. C. Adam*) on behalf of the Crown.

The Court delivered the following.

JUDGMENT.

The Subdivisional Magistrate, Tanjore, passed an order under section 144, Criminal Procedure Code, prohibiting certain persons (respondents before us) from interference with the performance of a certain religious ceremony. Respondents are said to have disobeyed this order: and the Subdivisional Magistrate thereupon sanctioned their prosecution for an offence under section 188, Indian Penal Code. The Sessions Judge, purporting to act under sub-section 6 of section 195 revoked his sanction.

We are now asked to revise his order: and the first ground taken is that, as the case falls under clause (*a*) of sub-section (1) of section 195, the power of revocation lay with the District Magistrate, not with the Sessions Judge, and that the latter's order was without jurisdiction.

The question has to be decided with reference to the provisions of sub-sections (6) and (7) of section 195. There is no doubt that, if the general principle of sub-section (6) is applied, the proper authority to revoke the sanction is the District Magistrate—vide section 17(1) and (5), Criminal Procedure Code. But it is contended that the Subdivisional Magistrate must be regarded as a "Court," when issuing an order under section 144 and (consequentially) when sanctioning prosecution for breach of the same, and that it follows that the special test laid down in sub-section (7) for determining the

NATARAJA PILLAI v. RANGASWAMI PILLAI

subordination of "Courts" in this connection applies. If so, the proper authority to revoke is undeniably the Sessions Judge.

It is, we think, reasonable to hold that if the order under section 144 is passed by a person acting as a Court, that person must also be treated as a Court, when he sanctions prosecution for disobedience of the same. It is also possible that the "Public servant" referred to in sections 172 to 188, Indian Penal Code, might in certain circumstances be a "Court." Whether in the latter event, sub-section (7) should apply, or whether the application of that sub-section is confined to cases falling under clauses (*b*) and (*c*) of sub-section (1) seems to us doubtful. But we are inclined to hold that a Magistrate passing an order under section 144, Criminal Procedure Code, does so only as a "Public servant" and not as a "Court." We are aware that an opposite view has been taken by a bench of this Court in *Arunachallam Pillai* v. *Ponnuswamy*(1). We have carefully considered the judgment in that case which appears to proceed on the footing that an order under section 144 is an order of a Court. NAPIER, J. says such orders "have always been treated as judicial orders" which the learned judge appears to treat as identical with orders of a Court. With all respect we do not think this view is correct. A Full Bench of this Court in *Sundram* v. *The Queen*(2), a leading case on orders under this section, has specifically laid down that

"It should always be borne in mind that orders under section 518 of the Code of Criminal Procedure of 1872 corresponding with section 144 of the present Code are not judicial proceedings;"

(1) (1918) 35 M.L.J., 454.

(2) (1883) I.L.R., 6 Mad., 203 (F.B.)

and the same view has been taken by a Full Bench of the Calcutta High Court in *Abbas Ali Chowdhry* v. *Illim Meah*(1) of section 62 of the Code of 1861. That section has been elaborated, and its operation in some ways restricted in the corresponding sections of the subsequent Codes. But we find nothing in the changes which would render less applicable the considered opinions of the learned judges in that case.

This view seems to be supported by a consideration of section 144. This section merely empowers certain Magistrates to pass temporary orders in urgent cases. These orders need not be based on any record outside the Magistrate's own knowledge or observation; and it is not even necessary that the party against whom it is directed should first be given a chance of being heard. To take a simple instance, a Magistrate observing with his own eyes (without complaint or report) that certain property was in a condition imminently dangerous to human life, might immediately and without waiting to hear what any human being had to say, issue an order under this section and, provided his order was in writing, set out the material facts and was properly served, it would be a valid order, disobedience to which would be an offence under section 188, Indian Penal Code. The remedy of a party injuriously affected is to get it set aside under sub-section (4). Can such an order be treated as an order of a Court, or, to use another phrase, "a judicial order"? If not, is its nature altered because the Magistrate *may* hold an enquiry and record and consider evidence before issuing it?

Orders under section 145, Criminal Procedure Code, which must be preceded by an enquiry in the presence of parties who are entitled to adduce evidence, stand

(1) (1870) 14 W.R. (Cri.), 46.

NATARAJA PILLAI v. RANGASWAMI PILLAI.

on a different footing, though orders under both sections are withdrawn from the ordinary revisional jurisdiction of this Court—vide section 435 (3), Criminal Procedure Code.

In our opinion a Magistrate passing an order under section 144, Criminal Procedure Code, is not acting as a "Court," and sub-section (7) of section 195 is inapplicable to such a case.

In considering the intention of the legislature it may not be out of place to refer to the improbability that, while securing orders under section 144 from interference except by the successor of the Magistrate passing them or by some superior Magistrate (vide clause 4 quoted above), the Sessions Judge should have been given the power to render the order practically nugatory by declining to allow a prosecution for disobedience to it.

We would also refer to the judgment of a Bench of this Court reported in *Sankaram Aiyar* v. *Sakkarappa Mudaliyar*(1), in which the learned judges took a more extreme view than that we have expressed above, and held, in effect, that all sanction orders passed under clause (*a*) of sub-section (1) must be taken to be passed by a public servant who was not acting as a Court.

In our opinion the orders of the Sessions Judge must be held to be without jurisdiction, and accordingly set aside.

N.R.

(1) (1873) 2 Weir, 155.