

APPELLATE CRIMINAL.

*Before Mr. Justice Waller and Mr. Justice
Madhavan Nayar.*

SUNDARESWARA SRAUTHIGAL, PETITIONER—
FIRST ACCUSED,

1927,
March 4.

v.

KING-EMPEROR, RESPONDENT.*

Indian Penal Code, sec. 341—Agraharam road—Vested in a municipality—Public street—All members of public entitled to equal rights—Obstruction to lawful user—Wrongful restraint—Conviction for, if proper.

All members of the public have equal rights in public streets vested in a municipality, and one section of the community cannot interdict another section of the community from the lawful use of the public streets.

Where the accused, a Brahman, obstructed the complainant an Izhuva convert to Arya Samaj, from using a road in an *agraharam*, the road in question being vested in a municipality, held, that he had no right to so obstruct, and that he was rightly convicted under section 341, Indian Penal Code.

Sadagopa Chariar v. Krishnamoorthy Rao, (1907) I.L.R., 30 Mad., 185 (P.C.), *Manzur Hasan v. Muhammad Zaman* (1925) I.L.R., 47 All., 151 (P.C.), *Muchimarri Malliah v. Yerravulu Ganganna*, (1926) 94 I.C., 226, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Sub-divisional Magistrate of Palghat Division in Calendar Case No. 28 of 1926.

T. R. Ramachandra Ayyar, P. S. Narayanaswami Ayyar and K. R. Narayanaswami Ayyar for the petitioner.
Public Prosecutor for the Crown.

* Criminal Revision Case No. 603 of 1926,

JUDGMENT.

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The complainant (P.W. 1) an Izhuva convert to Arya Samaj, who is employed as a clerk in the District Registrar's Office, Palghat, was sent by the District Registrar to Govindarajapuram gramam to transact some official business. While he was returning after finishing his work he was stopped in the middle of the road at New Kalpathy by the petitioner, a Brahman, and was taken to task for passing along the agraharam road. The petitioner was then charged before the Subdivisional Magistrate of Palghat with the offence of wrongful restraint under section 341 of the Indian Penal Code. On the evidence the Subdivisional Magistrate found that P.W. 1 went to Govindarajapuram to execute the orders of the District Registrar, that there is no evidence to support the suggestion of the defence that he went along the Kalpathy road in order to insult and annoy the Kalpathy Brahmans, that the street along which he passed is a public street and that the charge of wrongful restraint brought against the petitioner was proved to the hilt. He was accordingly convicted of an offence under section 341 of the Indian Penal Code and sentenced to pay a fine of Rs. 30, or in default to undergo simple imprisonment for a week. He was also ordered to execute a bond with sureties for keeping the peace for a period of one year. The petitioner has filed this criminal revision petition against the above conviction and sentence.

The main facts of the case and the conclusions of the learned Subdivisional Magistrate on the evidence except as regards the *bona fides* of the petitioner are not disputed before us. What is mainly argued is that the complainant has not proved that he has a right to proceed along the street in question and that, even if he has proved that he has such a right, the Subdivisional

Magistrate should not have convicted the petitioner as he obstructed the complainant believing, in good faith, that he had a lawful right to do so. A judgment in Criminal Appeal No. 12 of 1879, on the file of the Sessions Court of South Malabar and various orders of the Government which could not be filed before the Sub-divisional Magistrate owing to his refusal to grant an adjournment have been brought to our notice by Mr. Ramachandra Ayyar to show that Izhuvas and other members of the theendal caste have no right to use the agrapharam street. These documents do not afford us much help. Except scanty references to a custom which would confine the use of these streets to Brahmans and Nayars, such abundant proof as one would expect in support of a custom has not been put forward in this case.

Confining ourselves to the evidence before us we have no doubt that the conviction should be upheld. It is amply proved that the road in question is vested in the Palghat Municipality, that it is subject to its control and that the municipality spends public money for its maintenance (see the evidence of D.W. 1, a Brahman, First-grade Pleader, residing in Govindarajapuram). He also says "Dr. Krishnan (a Tiyya) comes to agrapharam. . . . I have invited Dr. Krishnan to my house and I did no purification ceremony." When the streets are public streets vested in a municipality all members of the public have equal rights. Decisions of this Court and of the Privy Council have upheld such rights, see *Sadagopa Chariar v. Krishnamoorthy Rao* (1). We have not been referred to any case upholding the right of one section of the community to interdict another section of the community from the lawful use of the public street.

(1) (1907) I.L.R., 30 Mad., 185 (P.O.).

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In a recent decision of the Privy Council in *Manzur Hasan v. Muhammad Zaman*(1), it has been laid down in clear terms that any member of the public has got a right to use a public street in any lawful manner. As pointed out by KRISHNAN and ODGERS, JJ., in *Muchumarri Malliah v. Yerravulu Ganganna*(2), this was the view taken by the Madras High Court, and the Privy Council has accepted the Madras view as correct. In these circumstances, we must hold that P.W. 1 has a right to use the Kalpathy road and that the petitioner has no right to obstruct him from doing so.

As regards the question of his *bona fides*, the facts show that the petitioner cannot claim good faith to justify his conduct. Evidence shows that there was recently a case against P.W. 1 for passing along the Kalpathy road and he was acquitted and that the present petitioner was in Court during the trial of the case. Having knowledge of that case, if he was actuated by *bona fides*, the petitioner should not have now obstructed P.W. 1 from proceeding along the road. The petitioner was recently convicted of affray in the Kalpathy road. The Magistrate notes that the punishment awarded in that case has had no effect in deterring him from committing offences involving a breach of the peace. He has now been convicted under section 341 of the Indian Penal Code. In these circumstances, we think that his conviction and sentence and also the order directing him to execute a bond for keeping the peace should stand. This Criminal Revision Petition is dismissed.

B.C.S.

(1) (1925) I.L.R., 47 All., 151 (P.C.).

(2) (1928) 94 I.C., 226.