

## APPELLATE CRIMINAL—FULL BENCH.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice, Mr. Justice Devadoss, Mr. Justice Beasley, Mr. Justice Waller and Mr. Justice Jackson.*

1928,  
January 27.

M. VISVANADHA RAO AND SIX OTHERS (PETITIONERS),  
COUNTER-PETITIONERS.\*

*Criminal Procedure Code (V of 1898), sec. 144—Public peace—Preservation of—Function of Government—Private rights—Temporary overriding of—Conflict—Which to prevail—Hindus of a certain locality obtain declaration from Civil Court regarding right to conduct procession with music past mosques—Government considers exercise of right jeopardises public peace—Order under sec. 144—High Court—If will interfere in revision.*

The preservation of public peace is the function of Government; and in the performance of it, it may be necessary to override temporarily private rights.

When there is a conflict between the public interest and a private right, the former must prevail.

Where the Hindus of a certain town obtained from a competent Civil Court a declaration of their right to conduct processions with music past the mosques of that place, subject to certain limitations, and the District Magistrate having jurisdiction over the locality, passed an order under section 144 of the Code of Criminal Procedure, prohibiting the Hindus from "taking any procession with music in any street of N where there are mosques," and the operation of the order was with some modification extended for a further period by the Governor in Council,

*Held*, in revision, that if Government consider the exercise of such a right cannot be secured without taking measures which may jeopardise the public peace, it is not for the High Court to say, whether the Government ought to adopt such measures, or to suggest other means of enforcement, as to the efficacy or advisability of which they alone are the proper judges, and that the High Court would not interfere in such a case.

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\* Criminal Revision Case No. 824 of 1927.

*Sundaram v. The Queen*, (1883) I.L.R., 6 Mad., 203 (F.B.), followed.

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PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1878, and section 107 of the Government of India Act, praying the High Court to revise the proceedings of the District Magistrate of Nellore, dated 7th October 1927, under section 144 of the Criminal Procedure Code.

*V. L. Ethiraj* (*C. Narasimhachari* and *A. Krishnaswami Ayyar* with him) for the petitioners, after referring to the various orders in the matter.—The order sought to be revised has now expired.

[CHIEF JUSTICE.—What are we here for?]

*Advocate-General*.—The Full Bench is convened because the Government desires to have an authoritative pronouncement on the matter.

[BEASLEY, J.—Are we to say, because of the decree in the Civil Court, the Magistrate cannot have recourse to section 144 under any circumstances?]

All that I submit is that the rights under the decree of the Civil Court must as far as possible be respected.

*Advocate-General* (*Public Prosecutor* with him).—If the Magistrate is to enforce obedience to a decree of the Civil Court every time, it is a matter depending on the resources available to him to maintain peace and order. It is for him to judge.

[JACKSON, J.—The interests of public peace are undoubtedly paramount.]

It is not the duty absolutely of a Magistrate to allow persons to enforce their rights.

*Public Prosecutor* followed and referred to Police Act (V of 1861), section 30 as regulating the matter.

*A. Krishnaswami Ayyar* (with leave of Court).—It is an omnibus order, including within its purview, marriage and funeral occasions. Ordinarily civil rights ought to be protected. See observations of PHILLIMORE, L.J., in *Glamorgan Coal Company v. Glamorganshire Standing Joint Committee*(1).

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“The subject pays rates and taxes to insure himself protection against domestic as well as foreign foes, and it is the duty of the Government to provide him with it.”

### JUDGMENT.

This Criminal Revision Petition has been placed before a Full Bench at the instance, we are informed, of the Public Prosecutor. The dispute out of which it arises, is concerned with the rights of the Hindus of Nellore Town to conduct processions with music past the mosques of that place. The Hindus have obtained from a competent Civil Court a declaration of their right to conduct such processions subject to certain limitations. In October last, they were, however, prohibited by an order of the District Magistrate passed under section 144, Criminal Procedure Code, from “taking any procession with music in any street of Nellore where there are mosques.” The operation of the order has been extended till 7th February by the Governor in Council “in so far as it prohibits any procession with music within 50 yards of any mosque in Nellore.”

Mr. Ethiraj for the petitioners concedes that he cannot contend that it is the duty of the authorities who are responsible for the preservation of the public peace in the town of Nellore, to enforce the decree in all circumstances and at all costs. If that be so, *cadit quaestio*. If we are not being asked to lay down that that is their duty, it is difficult to see what we are being asked to say. We are not here to advise the Government what measures they should take to protect the rights of the Hindus or to preserve the public peace at Nellore. The preservation of the public peace is their function and in the performance of that function, it may be necessary for them to override temporarily

private rights. To quote the judgment of Sir CHARLES TURNER, C.J., in *Sundaram v. The Queen*(1), "The first duty of Government is the preservation of life and property and to secure this end, power is conferred on its officers to interfere with even the ordinary rights of members of the community. The order of the 26th March 1859 appreciates the distinction between rights which have a primary and rights which have a secondary claim to such protection as the Government can afford, and, where the Government cannot protect both classes of rights; it may and it ought to abandon the latter and secure the former. In this view . . . the Government is not bound to deprive some members of the community of the services of the force that is found necessary for the protection of their lives and property to enable others to exercise a right which not only is not indispensable to life or to the security of property, but, in the case assumed, creates an excitement which endangers both." The position could not have been better stated. Where there is a conflict between the public interest and a private right, the former must prevail. The right which the petitioners claim and are entitled, in ordinary circumstances, to exercise, has once been enforced by drafting police into the town from seven other districts. If the Government consider that "that is the only method by which the right can effectively be enforced, but that it cannot be adopted without danger to the public interest at large, it is not for us to say that they are bound to adopt it or to suggest other means of enforcement, as to the efficacy or advisability of which they—and not we—are the proper judges." We decline to interfere and dismiss the petition.

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(1) (1883) I.L.R., 6 Mad., 203 (F.B.).

