

APPELLATE CRIMINAL.

Before Mr. Justice Wallace.

MOLAIPPA GOUNDAN (PETITIONER), ACCUSED.*

1928,
August 15.

Indian Penal Code, sec. 268—Allowing prickly-pear to spread on to road used by public—If a public nuisance—Enactment of certain procedure in sec. 162 of the Madras Local Boards Act—If impliedly deprives right to proceed under Indian Penal Code—Local Fund Overseer, whether can complain as member of the public—Sworn statement from complainant—Failure to record—Not an illegality.

The allowing of prickly-pear to spread on to a road used by the public is a public nuisance within the meaning of section 268 of the Indian Penal Code.

The enactment of a certain procedure under section 162 of the Madras Local Boards Act for the removal of prickly-pear spreading from private property on to public roads does not impliedly deprive Local Boards and their servants of the right to prosecute under the Indian Penal Code.

A Local Fund Overseer has the ordinary right of any member of the public to complain of a criminal offence and that right is not taken away because he did not profess to complain as a member of the public but as a Local Fund Overseer.

The omission to take a sworn statement from the complainant is, under the law in this Presidency, an irregularity and not an illegality. *Queen-Empress v. Monu*, (1888) I.L.R., 11 Mad., 443; *Ambaraya Goundan v. Pachamuthu Goundan*, (1924) 419 L.W., 461, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, and section 107 of the Government of India Act, 1915, praying the High Court to revise the judgment of the Court of the First Class

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In re.

Bench of Magistrates, Dharapuram, in Summary Trial
No. 1309 of 1927.

Watrap S. Subramania Aiyar for petitioner.
Public Prosecutor for the Crown.

JUDGMENT.

Several points of law have been raised in this Criminal Revision Case. The petitioner was charged on the complaint of the Local Fund Overseer, Dharapuram, with an offence under section 290 of the Indian Penal Code of causing a public nuisance by allowing prickly-pear to spread from his own property on to the public road. He was convicted and fined, and now applies for revision of the conviction.

The first point argued was that the property from which the prickly-pear spread is not his but his brother's. It is clear from the evidence including that of the defence witness that, although the property is in the actual enjoyment of his brother, both he and his brother are undivided and therefore both are still joint owners. A joint owner is responsible in law for nuisances caused by his property.

The next point is that the act or omission is not a public nuisance, the argument being that it is the duty of the Local Board and not of the owner of the adjoining property to keep prickly-pear from spreading on the road. No ruling in point is cited to me in support of that view. The principle governing the case seems to me to be the general principle that no man shall so use his property as to injure his neighbour, and it makes no difference that the neighbour is the public and not an individual. Under section 268 of the Indian Penal Code, a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which . . . must necessarily cause obstruction to persons who may

have occasion to use any public road, and "illegal," under section 43 applies to everything which is an offence or is prohibited by law or which furnishes ground for a civil action. I am of opinion that allowing prickly-pear to spread on to a road used by the public is a public nuisance within this definition.

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The next point is whether the Local Fund Officer had any legal authority to launch a prosecution against the petitioner under the Indian Penal Code. It is pointed out that section 162 of the Local Boards Act provides a detailed procedure designed *ad hoc* for the removal of prickly-pear spreading from private property on to public roads, and it is contended that the enactment of that procedure impliedly deprives Local Boards and their servants of the right to prosecute under the Indian Penal Code. I am clear that such a right, if it existed, cannot be impliedly taken away by the provisions of another Statute, nor is any ruling cited which goes so far. The case in *Chanti Pershad v. Evans*(1) is not really in point. There a party was being prosecuted under section 182 or section 199, Indian Penal Code, for making a false statement of the number of carriages and ponies possessed by him in an application for licence for vehicles and animals. The High Court held that the Indian Penal Code had no application as the Municipal Act was complete in itself and attached no penalty to the making of a false statement in such an application and that therefore the party was under no obligation of law to make a true statement. That ruling has no application to an act or omission which does itself come under the definition of a specific offence set out in the Indian Penal Code.

(1) (1895) I.L.R., 22 Cal., 123.

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The question therefore is whether the Local Fund Overseer who launched the prosecution had legal authority to do so. It seems to me that he had the ordinary right of any person to complain of a criminal offence. Nor is that right taken away because he did not profess to complain as an ordinary person but as a Local Fund Overseer. For purposes of this complaint his official position may be neglected. He is a member of the public entitled to go on those portions of the road which had been encroached upon by the prickly-pear and as such is entitled to complain.

It is then argued that since he was not examined on oath as a private complainant should be, the proceedings are illegal. Again I am not referred to any authority which goes so far. Omission to take a sworn statement from the complainant is under the law in this Presidency an irregularity and not an illegality—see *Queen-Empress v. Monu*(1) and *Ambaraya Goundan v. Pachamuthu Goundan*(2). I am unable to see how that omission in this case had prejudiced the petitioner.

I therefore see no reason to interfere in this case and dismiss the petition. I should however add that I think it would be better that all such cases be dealt with under the relevant sections of the Local Boards Act which ensures that the Local Board as a whole considers the case one which should be prosecuted, and I recommend the Board to follow that practice in future.

B.C.S.

(1) (1888) 1 L.R., 11 Mad., 443.

(2) (1924) 19 L.W., 461.
