

SWAMI-
NATHAN
v.
LETCHMANAN.
—
MADHAVAN
NAIR, J.

Ndit Upadhia v. Imam Bandi Bibi(1), where it was held that the Registrar's order in that case rejecting the application as filed beyond time could not be considered as a "refusal to register" within the meaning of the Act. The other decisions referred to by the appellant, *Kunhimmu v. Viyyathamma*(2), *Edun v. Mahomed Siddike*(3), and *Gangadhara v. Sambasiva*(4), do not advance his case any further. In this case, I have shown that the Registrar's order rejecting the application made by the plaintiff as time-barred is wrong, i.e., that the application was made in time; in other words, that the plaintiff has complied with the condition precedent to the maintenance of the suit. It therefore follows that the plaintiff's suit is maintainable.

This Civil Miscellaneous Appeal fails and must be dismissed with costs of the first respondent.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

D. MADAR SAHIB *alias* MADDU AND ANOTHER

(ACCUSED), PETITIONERS.*

Madras District Municipalities Act (V of 1920), Sch. IV, App. A
—Signature—Meaning of—Warrant issued by Chairman
—Not signed but bearing facsimile—Validity of.

A warrant purporting to have been issued by the Chairman of a Municipality, not signed by him but only bearing a facsimile stamp of his signature, is not a valid warrant.

(1) (1902) I.L.R., 24 All., 403. (2) (1884) I.L.R., 7 Mad., 535 at 537.

(3) (1882) I.L.R., 9 Calc., 150 at 154.

(4) (1916) I.L.R., 40 Mad., 759 at 766.

* Criminal Revision Case No. 617 of 1929.

The word "Signature" in Appendix A of Schedule IV of the District Municipalities Act must be taken in its accepted sense of Sign Manual. MADRAS
SAHIB, *In re.*

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Sessions Court of Cuddapah in Criminal Appeal No. 27 of 1929, preferred against the judgment of the Court of the First-class Magistrate of Cuddapah in Calendar Case No. 23 of 1929.

V. L. Ethiraj and S. Ramachandran for petitioners.

K. S. Vasudevan for Public Prosecutor (L. H. Bewes) for the Crown.

JUDGMENT.

The two petitioners have been sentenced to three months' simple imprisonment and Rs. 50 fine under section 332, Indian Penal Code, for resisting a distraint under a warrant purporting to have been issued by the Municipal Chairman of Cuddapah.

It seems clear that there was no warrant. The prosecution theory is that the ex-Chairman left a facsimile stamp of his signature behind him, which the peons continued to use. Of course, this would be quite irregular and would give no validity to a warrant.

It is clear from Appendix A of Schedule IV of the District Municipalities Act that the warrant must bear the signature of the Chairman. "Signature" must be taken in its accepted sense of Sign Manual. The fact that in section 2 (20), Code of Civil Procedure, sign is used as including stamp has no bearing on the Madras District Municipalities Act.

The only departure from the general rule is that, if the Chairman happens to be illiterate, under section 3 (29), Madras General Clauses Act, he may affix his mark.

Even if the distrainers had a warrant, they had no right to do as they threatened, and take the front door

MADAR
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of the house, *Queen Empress v. Shaik Ibrahim*(1), a proceeding which rendered the house unsafe, and called for immediate defence of private property. In the circumstances, I am not prepared to hold that the accused exceeded that right. The conviction is set aside and the fine ordered to be refunded.

Accused's bail is released.

B.C.S.

SPECIAL BENCH.

*Before Mr. Horace Owen Compton Beasley, Chief Justice,
Mr. Justice Ramesam, Mr. Justice Krishnan Pandalai;
Mr. Justice Eddy and Mr. Justice Cornish.*

1930,
January 20.

S. A. SUBBIAH AYYAR, PETITIONER,

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS,
RESPONDENT.*

Indian Income-tax Act (XI of 1922), secs. 66 (1) and (2) and sec. 4 (2)—Application by assessee for reference to High Court—Point of law, not included in the application, whether can be ordered by the High Court to be referred—Application under sec. 66 (1) by assessee, if competent—Remittances from foreign places to British India to the assessee, whether out of profits or capital—Presumption, whether conclusive or rebuttable by assessee—Entries in assessee's account, whether relevant evidence.

Where an assessee had not made an application to the Income-tax Commissioner, under section 66 (2) of the Income-tax Act, 1922, to refer a point of law to the High Court within one month of the passing of an order under section 31 or 32 of the Act, he cannot ask the High Court to direct the Commissioner to refer such a question to the High Court.

(1) (1890) 1 L.R., 13 Mad., 518.

* Original Petition No. 180 of 1928.