

Madras High Court

Queen-Empress vs Tirakadu And Ors. on 3 October, 1890

Equivalent citations: (1891) ILR 14 Mad 126

Author: M Ayyar

Bench: M Ayyar, Best

JUDGMENT Muttusami Ayyar, J.

1. There are two divisions of Bois in the village of Kamalapuram in the District of Bellary, and they used to go in procession on the New Year's day to hunt in the hills adjoining the village. For some time past, the Chavidikeri Bois objected to their rivals, the Manmatakeri Bois, passing in procession over a piece of ground called Hemagiri Ukkadam. That piece of ground is found not to be private property, but to form part of the vacant village site ordinarily used as a short cut to get out of the village. On the 11th May last, about 60 or 100 of the Manmatakeri Bois formed a procession and proceeded a short distance down the main street. In the meantime, some 60 or 100 of the Chavidikeri Bois assembled on the Hemagiri Ukkadam and there is no doubt upon the evidence that they did so to forcibly prevent the Manmatakeri Bois passing in procession over that spot. The Inspector of Police ordered them to disperse, but they did not obey his order. He then fired in the air and then fired with buck shot and wounded one of the men assembled. The wounded man was carried off, but the crowd did not disperse, though they attacked neither the Police nor the rival faction. Finding that his efforts to disperse the crowd were ineffectual, the Inspector prevailed on the Manmatakeri Bois to abandon their intention of going in procession on that day. It appears that on the 20th March a temporary injunction issued under Section 493, Code of Civil Procedure, in a civil suit instituted by the Chavidikeri Bois was in force and that it prohibited the Manmatakeri Bois from going in procession over the ground in dispute until the disposal of the suit. It is thus clear that the Manmatakeri Bois endeavoured to go in procession in contravention of the order of the Civil Court, that the Inspector of Police ordered their rivals to disperse instead of preventing their procession and that, but for the Manmatakeri Bois ultimately giving up their intention to go in procession on that day at the instance of the Inspector of Police, a serious riot would have ensued.

2. Upon the foregoing facts, the Acting District Magistrate convicted the four persons, whose case is now before us, of offences punishable under Sections 143 and 145, and three of them also of an offence punishable under Section 144 on the further ground that they were armed with daggers. On appeal, however, the Sessions Judge considered that they committed no offence at all, and acquitted them. The question which we have now to consider is whether, upon the above facts the four persons acquitted by the Judge were not members of an unlawful assembly within the meaning of Section 141 of the Indian Penal Code. The Chavidikeri Bois assembled at the place in dispute, being about 50 or 100 in number, and their object in doing so being to forcibly obstruct the procession of Manmatakeri Bois, there is no doubt that they formed an unlawful assembly, as defined in clause 4, Section 141, of the Indian Penal Code. Even assuming that the assembly was not unlawful at first, it clearly became unlawful after it had been ordered to disperse and failed to disperse. The intention indicated by the heading of chapter VIII, in which Section 141 is inserted, was to constitute certain acts, which endangered the public peace, into offences against public tranquility, but it does not follow from it either that a person may do what he is entitled to do or prevent another from doing what he is not entitled to do by means of criminal force or by show of criminal force. In construing

Section 141, regard must be had not only to the general intention deducible from the heading of the chapter, but also to the specific mode in which the Legislature intended to carry out that intention. The words in clause 4 "to enforce a right or a supposed right" show that it is perfectly immaterial whether the act which one seeks to prevent by the use of criminal force or show of criminal force is legal or illegal, the test of criminality being the determination to use criminal force and act otherwise than in due course of law so as to threaten the public peace. Hence it was that Holloway, J., observed in VII Madras H.C.R., App. 35, that if a procession were actually illegal, it would be no defence whatever to the accused, unless the right of private defence arose. In the case before us, the right of private defence, which was pleaded, was properly held as well by the Judge as by the District Magistrate not to be tenable. This being so, the remedy open to the Chavidikeri Bois, when their rivals acted in contravention of the terms of the injunction issued by the Civil Court, lay in getting them punished for contempt and not in seeking to prevent the act by assembling to commit a riot, if necessary. The Inspector of Police was further justified in ordering an unlawful assembly to disperse when a riot was imminent, though his prior action in omitting to prevent the rival procession might have been open to question or injudicious. The case reported in 4 Madras H.C.R., App. 63, shows only that a person in possession of crops or grain or other property would be justified in protecting his possession by the use of force, if necessary, against another who forcibly disturbs that possession in the assertion of a supposed right. But in the case before us, the ground in dispute was neither the exclusive property of Chavidikeri Bois nor in their exclusive possession. On the contrary, it is found to form part of the village-site, which both divisions of Bois are entitled to use as a short cut for going out of the village on ordinary occasions. The contention of Chavidikeri Bois was that Manmatakeri Bois were not entitled to use it for going in procession on the Ugadi day, and the exclusive right asserted by the former was denied by the latter and pending adjudication in the District Munsif's Court of Narayanadevarkeri. The present case is therefore not one of protecting subsisting possession of private property against one who forcibly disturbs it, but it is one in which a right which was disputed and pending adjudication in a civil suit, to exclude the Manmatakeri Bois from the use of a common village-site or path on a special occasion, was intended to be enforced, on the ground that the latter had forborne to use it for some years. The right of protecting possession of property is substantially part of the right of private defence of property, which the Judge himself has disallowed.

3. For these reasons, I am of opinion that the order of acquittal cannot be supported and that the sentence of the District Magistrate should be restored and the unexpired portion of it be carried out.

Best, J.

4. The Acting Sessions Judge concurs with the Magistrate in finding that the four persons with whom we are now concerned were members of an assembly which had determined to forcibly prevent the Manmatakeri Bois procession from leaving the village by passing over the Hemagiri Ukkadam, which is "a vacant piece of ground about 15 yards across in the main street of the village with houses of Chavidikeri Bois on each side of it." The Judge has also found the right of self-defence set up on behalf of the accused to be "obviously untenable."

5. The question is whether, under these circumstances, he was justified in setting aside the conviction of those persons of offences punishable under Sections 143, 144 and 145 of the Penal Code?

6. The offence punishable under Section 143 is being a member of an unlawful assembly; that under Section 144 is being such member armed with anything which, used as a weapon of offence, is likely to cause death; and that under Section 145 is the continuing in an unlawful assembly "knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse."

7. With reference to this last offence, there can be no doubt that the assembly of which these persons continued to be members was called upon by the Police Inspector to disperse, but would not do so; and that these four persons continued to be members of the assembly notwithstanding the Inspector's order to the contrary.

8. No doubt, as observed by the Judge, "the general principle underlying Section 141 is indicated by the heading of the chapter of which it is the first section, viz., Of offences against public tranquility." I am, however, unable to accept the subsequent reasoning by which the Judge has arrived at the conclusion that the accused in this case are not guilty, although their acts were such as must have resulted in a riot, had it not been for the forbearance of the opposite party.

9. The circumstance that appears to have influenced the Judge in finding that the accused in this case were entitled to an acquittal, is the fact that they had already instituted a civil suit for an injunction to prevent the Manmatakeri Bois from taking their procession over the Hemagiri Ukkadam, and had in that suit obtained a temporary injunction to the above effect. The Judge's argument is that the accused are entitled to an acquittal, because the Manmatakeri Bois were acting illegally in attempting to pass over the place in question and because the Inspector also acted illegally in directing the accused to disperse in order to allow of the Manmatakeri Bois so passing. But, as remarked by holloway, J., in the case reported in VII Madras H.C.R., App. 35, the fact of the illegality of the act of the opponents of the accused is wholly immaterial "unless it brings itself within the category of those in which self-defence is permitted"; and, as already observed, the Judge has himself found that the plea of self defence is, in the present case, "obviously untenable." Most, if not all the authorities referred to and relied on by the Judge in support of this finding in favour of the accused are cases in which the accused acted in defence of property or person.

10. The assembly of the accused in the present case was unlawful because its object was to enforce a right or supposed right by show of criminal force.

11. The Judge's order of acquittal must therefore be set aside and the finding and sentence of the District Magistrate restored and the incomplete sentences carried out.