

Madras High Court

Queen-Empress vs Suka Singh And Anr. on 8 August, 1890

Equivalent citations: (1891) ILR 14 Mad 223

Bench: A J Collins, Kt., Weir

JUDGMENT

1. The petitioners, who are members of a body known as the Salvation Army, have been convicted under Section 71, clauses xi and xv of the Madras City Police Act, and have been sentenced to pay fines. The case was tried summarily by the Magistrate, and there has been, so far as we can see, no evidence recorded in the case.

2. The Magistrate was not bound, under Sections 263 and 362 [In cases where no appeal lies, the Magistrate or Record in cases where Bench of Magistrates need not record the evidence of the witnesses there is no appeal. or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:

(a) the serial number;

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e) or clause (f) of Section 260, the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(h) the finding, and, in the case of a conviction, a brief statement of the reasons there for;

(i) the sentence or other final order; and

(j) the date on which the proceedings terminated.] [Section 362--In every case in which a Presidency Magistrate imposes a fine exceeding two-

hundred Rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses Presidency Magistrates' with his own hand, or cause it to be taken down in writing from Courts. his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record. Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take

down, or cause to be taken down any particular question or answer.

Sentences passed under Section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.] of the Code of Criminal Procedure, to record the evidence, but, as the case was one of some public importance, we think it is to be regretted that he did not do so, more especially as the learned Counsel for the accused maintains that the judgment is misleading, or at least ambiguous as to certain features of the case.

3. The proceedings came, however, before us in revision, and we are bound to take the facts to be as stated in the Magistrate's judgment, and we have no power to consider any facts other than those stated in the Magistrate's judgment.

4. As regards so much of the conviction as is under clause xv of Section 71, it is argued, on behalf of the accused, that the conviction is not sustainable, inasmuch as there was no evidence that the accused played music in the public streets. In connection with this argument, we have to observe that the Magistrate's judgment states that one witness deposed that the accused played music along Errabauloo Chetti street, after being warned against it by the Police.

5. It was sought to be argued by the counsel for the accused that this incident occurred after the termination of the transaction, in respect of which the charge now under trial was laid; but the observation of the Magistrate in his judgment does not show that this was so, and, as already observed, we are bound, in the absence of any record, to take a statement made in the judgment to mean what it appears to mean.

6. So taking it, it would appear that the accused did play music in the public street, and, this being found as a fact, the accused were undoubtedly liable under clause xv of the section.

7. We may, however, on this part of the case, intimate our opinion that, if the accused had not, as a matter of fact, been found to have played in a public street, but on private property, the conviction, on this head, for merely playing music, except at such times and places as may be allowed by the Commissioner, could not have been sustained.

8. The provision in clause xv is, we consider, governed by the words at the head of Section 71, viz., "whoever in any public street, road or thoroughfare, or place of public resort," that is to say, by virtue of the words at the beginning of the section, playing of music at times or places other than those allowed by the Commissioner must be the playing of music in a public street, road, thoroughfare, or place of public resort, and it follows, therefore, that the playing of music, where there is no wilful obstruction of a thoroughfare caused thereby, is not in itself punishable, when such playing takes place on private property.

9. The next ground of objection urged has been that the language of clause xi, "whoever in any way wilfully obstructs or causes obstruction to the free passage of any thoroughfare" when read along with the words in the heading of Section 71, already referred to, must be held to mean that, whoever being at the time in any public street, road, thoroughfare, or place of public resort in any way

wilfully obstructs or causes obstruction shall be liable, and that inasmuch as the accused were at the time, in respect of which the offence is charged, not in a public street, etc., but on a piece of private ground, they are not liable under the section.

10. As to this argument it has, in the first instance, to be observed that the Magistrate's judgment describes the accused as being at an angle of the street at the time of the alleged obstruction. This expression is somewhat ambiguous and may mean that the accused were actually in or on the street, or that they were at some spot or corner closely abutting on the street. Taking it, however, to have the latter meaning, it has to be considered whether the argument put forward, on behalf of the accused, is one which can reasonably be admitted.

11. It appears to us, on consideration, that it cannot have been the intention of the Legislature that the person causing the obstruction should actually be on or in the street at the time of the alleged obstruction, The words of the clause are very wide, viz., "whoever in any way wilfully obstructs or causes obstruction, etc.," and it is clear that it was the intention of the Legislature to confer very extensive powers on the City Police for the control and regulation of street traffic.

12. A narrow construction of the terms of the section, such as is contended for on behalf of the petitioners, would obviously restrict very much the powers of the Police in respect of street traffic, and, in so far as it did so, would defeat the object aimed at by the Act, and it appears to us that a person or body of persons, who, although not actually in the street, are on a piece of ground or in a house immediately abutting on or adjoining a street have, under such conditions as were found to exist in this case, as much power of obstructing the traffic by collecting a crowd as if they were actually standing on the street. It is not disputed that the accused player music and sang on the spot where they were, immediately adjoining a street, and the effect of the music and singing, the natural and ordinary effect, and, we think, we may add the intended effect and object (the players and singers being members of the Salvation Army) was to collect a large crowd, which crowd obstructed the free passage of the public road.

13. Such being, in our view, the natural and ordinary result, as also the intended result of the action of the petitioners, we think, it must be concluded that the accused wilfully, I.E., intentionally brought about that result, and, as the result was undoubtedly an obstruction to the traffic, we think, they were liable under clause xi of the section, and that the conviction under this clause, as well as under clause xv of the section, must be sustained.

14. We must, therefore, refuse to interfere in revision.