

1930

Present : Lyall Grant J.

KANAPATHI PILLAI v. SANMUGAM

746—*P. C. Mullaitivu*, 10,676.

Village Tribunal—Husband's right to represent the wife—Wife charged with offence—Necessity for presence—Village Communities Ordinance, No. 9 of 1924, s. 48.

The right given to a husband to represent his wife in a Village Tribunal does not dispense with the necessity for her personal attendance in Court as an accused person.

APPPLICATION to revise a conviction by the Police Magistrate of Mullaitivu.

Ramachandra, for applicant.

Tiagarajah, for respondent.

June 28, 1930. LYALL GRANT J.—

This is an application in revision by a man convicted for obstructing a public officer in the lawful discharge of his duties. The accused was sentenced to one month's rigorous imprisonment.

The evidence shows that a woman was summoned before a Village Tribunal charged with cattle trespass. Her husband attended the Tribunal on her behalf, but the President insisted on the appearance of the woman herself and issued a warrant for her arrest. When the Police Vidane attempted to execute the warrant in the woman's house she shut herself up in a room and refused to come out. Another woman was in the compound and this person threatened the Police Vidane with a broom.

The Police Vidane at first said that the third accused, the present applicant, had a gun and threatened to shoot the man who had been ordered by the Vidane to open the door and also threatened to shoot the Vidane. Later the Vidane admitted that the third accused had no gun in his hand. It appears there was a gun in the verandah of the house. Various objections to the convictions were urged. It was argued that the warrant was bad, first because there was no proof that the President of the Village Tribunal issued it. I do not think there is any substance in this objection. The warrant which was produced is in the ordinary form and appears to be signed by the President of the Village Tribunal. The Vidane said that he knew the President and his signature.

The second objection was that the warrant was issued on a mistake of law, that by section 48 of the Village Communities Ordinance, No. 9 of 1924, the husband is entitled to represent his wife at the Village Tribunal. I do not think there is any substance in this objection either. Section 48 allows husbands to represent their wives in the same manner as advocates and proctors represent their clients in the ordinary Courts. When a person is accused of an offence, in the absence of any special reason to the contrary he is bound to appear personally when a summons is served upon him.

It has not been shown that in the present case the President was not entitled to issue the warrant. It is however urged that no reasons for its issue have been recorded. The evidence as to the circumstances under which the warrant was issued is not sufficiently clear to enable me to say that this was not a case where the warrant should have issued. Nor is it proved that the provisions of the law were not duly observed. The husband of the second accused (the woman) who could have given evidence on this point has not been called. I think I must presume in the absence of anything to show that the procedure of the Village Tribunal was irregular, that everything

has been done in order. This presumption appears to me to arise under sub-section (e) of section 114 of the Evidence Ordinance.

The evidence in regard to the obstruction is that of the Vidane, who is corroborated by one Kanthar Arumugam. Both these persons say that although the accused had no gun there was one beside him ; and that he threatened the Police Vidane with death. In these circumstances I think the conviction was justified, and I do not think it is a case in which I can interfere with the sentence.

Application refused.
