

1943

Present : Moseley A.C.J.

GNANAPRAKASAM v. SABARATNAM.

796—M. C. Jaffna, 20,006.

*Obstructing Public Servant—Lawful Order—Penal Code, s. 183.*

Where a District Judge purporting to act under section 839 of the Civil Procedure Code made an order, which was not consistent with sound, general principles of law,—

*Held*, that obstructing a Public Servant, carrying out such an order, was not an offence under section 183 of the Penal Code.

*Selvadurai v. Rajah et al.* (41 N. L. R. 423) followed.

**A** PPEAL from a conviction by the Magistrate of Jaffna.

S. Nadesan for first accused, appellant.

A. C. Alles, C.C., for Crown, respondent.

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*Cur. adv. vult.*

January 13, 1943. MOSELEY A.C.J.—

The appellant was convicted of an offence punishable under section 183 of the Penal Code in that he voluntarily obstructed a public servant or a person acting under the lawful orders of such public servant in the discharge of his public functions. He was sentenced to pay a fine of Rs. 75. The charge arose out of circumstances following the death of one Suppiah, who appears to have been in trade at Jaffna. He died possessed of no inconsiderable an amount of movable and immovable property. At the time of his death one Thuraiappah had a decree against the deceased for the sum of Rs. 30,733.95. The deceased had appealed against that judgment and the appeal had been argued but the deceased died, pending delivery of the judgment. The judgment-creditor alleging that he had reason to believe that the estate of the deceased had been or was likely to be tampered with, applied for letters of administration. He cited as respondents in the matter the widow and two infant children of the deceased. He did not, however, disclose that the children were in fact infants nor that the deceased had left a will by which he appointed his widow executrix. The learned District Judge held the view that a grant of letters *ad colligenda* did not apply to the circumstances of the case but it seemed to him that it was necessary to make some order for the preservation of the estate, pending the grant of letters to such person who would be thereto entitled. He therefore ordered the Secretary of the Court to proceed to the house of the widow and to the shops which had been carried on by the deceased and take an inventory of all the stock-in-trade and movable property and further to *bring into Court any cash exceeding a sum of Rs. 100*, which was to be left with the widow for her expenses. The order does not set out the authority under which the learned District Judge purported to act. It can only be assumed that he had in mind section 839 of the Civil Procedure Code, which is as follows:—

“Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

The Secretary of the Court, armed with the order, proceeded to carry out the instructions therein contained and for that purpose went to the house of the widow, where he proceeded, apparently with the acquiescence of the widow, to make an inventory. In fact, the widow would appear to have given the Secretary every assistance in order to enable him to carry out what he believed to be his duty. The appellant, however, whose interest in the matter is quite unapparent but who appears to have been somewhat shocked by the intrusion of the Secretary into the house of the deceased upon a day of wailing, questioned the right of the Secretary to take an inventory and ordered him out of the house. The Secretary thereupon left the house without completing the task upon which he had entered.

It seems to me that the only point for decision is whether the order made by the learned District Judge was a lawful order within the meaning of section 183 of the Penal Code. There is clearly no express provision



in the Civil Procedure Code for the making of such an order, and, as I have already said, it can only be presumed that the aid of section 839 was invoked. This section, at first glance, would appear to invest the Court with very wide powers to make such orders as may be necessary for the ends of justice. A wealth of authority was cited by Counsel for appellant whereby he sought to indicate the limits which have been imposed by judicial authority upon the exercise by the Courts of the power given by the section. I have considered all the authorities but do not feel that it is necessary to refer expressly to any one of them beyond observing that they appear to support the view of Wijeyewardene J., in *Selvadurai v. Rajah et al.*<sup>1</sup>, to the effect that a Court "must be careful to see that its decision is in harmony with sound general legal principles and it is not inconsistent with the intentions of the Legislature." I do not propose to express any view as to the legality or otherwise of the order of the learned Judge in regard to the taking of the inventory, but it seems to me that the order directing the Secretary to bring into Court any cash exceeding a sum of Rs. 100 cannot be said to be consistent with sound general principles of law. The order in this respect, on the face of it, embraces all money which might be found in the house, irrespective of the person or persons to whom it belonged. This part of the order, therefore, seems to me, notwithstanding the argument of Crown Counsel that it must be presumed to be legal, manifestly illegal.

However one may view the conduct of the appellant, it seems to me clear that he committed no offence for which he is punishable by law. I allow the appeal and set aside the conviction and sentence.

*Set aside.*

