

PRIVY COUNCIL

Saiyid Manzur Hassan

Vs.

Saiyid Muhammad Zaman

P. C. A. No. 25 of 1923

(Lords Dunedin and Carson and Darling JJ.)

13.11.1924

JUDGMENT

LORD DUNEDIN J.

1. In the town of Aurangabad there are two sects of Moham medans, the Shias and the Sunnis. These sects worship in the month of Moharram in a different manner. In particular the Shias conduct a procession along with various emblems, which it is not necessary to specify, all alluding to the martyrdom of *Hasan* and Hosain, and as the procession proceeds they from time to time per form a ceremony called Matam which means that they stop for a little and wail. The Sunnis also revere the martyrdom of *Hasan* and Hosain but worship in a different way. In the town of Aurangabad from time immemorial the procession of the Shias has passed along a certain public road which passed behind the back of a mosque used by the Sunnis. In 1916, for the first time, the Sunnis interfered with the procession and alleged that it disturbed their devotions in the mosque. Modusvivendi was arranged for a time. In order to prevent disturbances for the moment the Magistrates passed a regulation for the year in question that there should be no performance of Matam within a certain distance of the mosque until the procession had passed a certain distance beyond the mosque. A similar arrangement was made in 1917.

2. To bring matters to crisis the Shias then in 1918, raised an action in the Court of Aligarh, asking for a declaration of their right to go in procession and use Matam and for a perpetual injunction against the Sunnis against interfering with them. They also asked for damages. The action was opposed by the Sunnis. The District Judge granted the declaration that they craved, but subject to any order that from time to time the Magistrates might make, and re fused damages. Appeal was taken to the High Court

by the defendants and the plaintiffs raised a cross-appeal asking that the rider as to the power of the Magistrates might be deleted.

3. The High Court reversed the judgment and dismissed the suit, holding that the plaintiffs had not made out any cause for a declaration. They treated the suit as a prayer to be allowed to block absolutely the highway, which, their Lordships considered, could not be allowed.

4. Leave was asked to appeal to the Privy Council and was granted by the Chief Justice and another Judge who had not heard the appeal, and it is abundantly clear from the observations which were made by them that they thought the question one of great importance.

5. The case seems to their Lordships to raise for authoritative decision the question as to the right of religious processions to proceed along the roads in India, practising their religious observances, and the decided authorities in India are certainly conflicting. The first question is :

Is there a right to conduct a religious procession with its appropriate observance along a highway? Their Lordships think the answer is in the affirmative. In *Parthasarathi Ayyangar v. Chinnakrishna Ayyangar (1882) 5 Mad 304* Turner C. J., lays down the law thus :

Persons of whatever sect are entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrates may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace.

6. In *Sundram Chetti v. The Queen* before a Full Bench the position was maintained and it was further laid down that the worshippers in a mosque or temple which abutted on a high road could not compel the processionists to intermit their worship while passing mosque or temple on the ground that there was continuous worship there. At page 217 Turner, C. J., says :

With regard to processions, if they are of a religious character, and the religious sentiment is to be considered, it is not less a hardship on the adherents of a creed that they should be compelled to intermit their worship at a particular point, than it is on the adherents of another creed, that they should be compelled to allow the passage of such a procession past the temples they revere.

7. In *Sadagopachariar v. A. Rama Rao (1903) 26 Mad 376* in a civil case the same ; view was taken, but in a criminal case in the same volume, *Vijiaraghava Chariar v.*

King-Emperor two Judges held that to use a highway as a place of worship was not legitimate. One Judge, who had taken part in the former case, dissented. The first of these cases came to this Board and no doubt was there thrown on the right of religious worship in a highway. Two other questions have, however, emerged. In several cases one sect claimed the exclusive use of the highway for their worship. This has been consistently refused. The other question, which goes deep into what ought to be done in the present case, is this : Does a civil suit lie against those who would prevent a procession with its observances ?

8. Here there is an obvious discrepancy between Bombay and Madras, and Calcutta upholds Madras. The leading Bombay authority is the case in *Satku Valad Kadir Sausare v. Ibrahim Aga Valad Mirza Aga (1877) 2 Bom 457*, Westropp, C. J., and Melvill, J. This was a suit by certain Mussulmans who carried tabuts in procession along a public road. They were disturbed in so doing by Mussulmans of a rival sect. The head-note sets forth the judgment accurately :

Held, in special appeal, the plaintiffs could not maintain a civil suit in respect of such obstruction unless they could prove some damage to themselves personally in addition to the general inconvenience occasioned to the public. The mere absence of the religious or sentiments gratification arising from carrying tabuts along a public road is not as such particular loss or injury as would be sufficient according to English and Indian precedents to sustain a civil action.

9. The judgment really proceeds entirely on English authorities, which lay down the difference between proceedings by indictment and by civil action.

10. In their Lordships' opinion such a way of deciding the case was inadmissible. The distinction between indictment and action in regard to what is done on a highway is a distinction peculiar to English law and ought not to be applied in India.

11. This judgment was followed, as was natural, in *Kazi Sujaudin v. Madhavdas (1894) 18 Bom 693* by two Judges. Nevertheless in the next case, *Baslingappa Parappa v. Dharmappa Basappa (1910) 34 Bom 571 : 7 IC 663 : 12 Bom LR 586*. Sir Basil Scott, C. J., and Batchelor, J., disregarded the authority of their own Court in *Satku Valad Kadir Sausare v. Ibrahim Aga Valad Mirza Aga (1877) 2 Bom 457*. and pronounced a judgment which, without saying that it overruled *Satku Valad*, clearly did so. The lower Court had followed *Satku's* case (*infra*) and dismissed the suit. The head-note is :

On second appeal by the plaintiffs, held, reversing the decree and allowing the

claim, that the suit was not for the removal of a public nuisance but for a declaration of the right of an individual community to use a public road.

12. The Madras cases already cited were all cases (except the criminal one) in which declarations were sought and either granted or, if asking for exclusive right, refused but in none of them was the idea entertained of special damage other than the obstruction of the procession being needed.

13. In *Mohamed Abdul Hafiz v. Latif Hosein (1897) 24 Cal 524* the Madras view was taken. The head-note is :-

" A suit for declaration of right to carry religious emblems in a procession through the streets of a village and for damages for preventing the plaintiffs from doing so, lies in the Civil Court."

14. Their Lordships are of opinion that the views of the Madras Courts are right and that the Bombay judgment is wrong. They think that the appellants are entitled to the declaration granted to them by the District Judge but propose to add to it ; after the word "traffic" line 3, p. 42 of record, the words "to the Magistrate's directions and the rights of the public."

15. If their Lordships were simply to dis miss the appeal the effect would be misunderstood in India. Every different sect or religion when places of worship are upon the routes where the processions of those with whom they do not agree pass, would appeal to the judgment as settling that the functions of the procession should cease as it passed them. But if the declaration as made by the District Judge is granted the magistrates will still be able to make any arrangement they choose, and if they choose, to repeat the order that for bade doing Matam within a certain distance of the mosque. That order would be an order passed in respect of special circumstances, not a general pronouncement as to rights.

16. Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed and the declaration granted as above indicated, and that the appellants should have the costs of the appeal before this Board, but inasmuch as in the Courts below they asked that there should be no declaration as to the Magistrates' right, no costs should be allowed to either party in the Courts below.

Appeal allowed.

Cases Referred.

(1883) 6 Mad 203 (FB)

(1903) 26 Mad 554 : 13 MLJ 171