

## KERALA HIGH COURT

Krishnan Moothan

Vs.

V.K.A. Krishnankutty Moothan

Criminal Revn. Petn. No. 296 of 1959, Palghat in CrI. A. No. 75 of 1958

(P.T. Raman Nayar, J.)

17.02.1960

### JUDGMENT

#### **P.T. Raman Nayar, J.**

1. This petition is by a person who has been convicted under Section 447 of the Indian Penal Code, and it is directed against an order made by the appellate court under Section 522 of the Criminal Procedure Code, 4 1/2 months after it had confirmed the conviction in appeal. The order was made on an application presented three months after the confirmation.

2. I am satisfied that the order complained against cannot stand for the simple reason that the essential requirement of the offence having been attended by criminal force or show of force or by criminal intimidation, and of dispossession having been effected by such means, is not present. The conviction is based on the finding that the accused, who had an easementary right of passage through the property in question (the verandah of a building) squatted there; and from this both courts inferred that his intention must have been to intimidate, or at least to annoy, the complainant. Neither in the complaint, nor in the sworn statement, was there any allegation of criminal force or show of force; nor was there any evidence to this effect. In fact, the order under revision expressly states that counsel for the complainant admitted that there was no criminal force or show of force, and there is a definite finding therein that the conviction was not attended by criminal force or show of force. (See paragraphs 6 and 7). Nevertheless the appellate court thought that Section 522 of the Criminal Procedure Code applied "because the conviction was attended with sufficient ingredients to constitute criminal intimidation".

3. Counsel for the complainant has taken me through the judgments of both the courts in the main proceedings, and even through the evidence, in a vain search "for sufficient ingredients to constitute intimidation". There appears to be not a whisper anywhere of the accused having threatened any person with injury, either in committing the offence or before or after the commission. The most that counsel has been able to discover is a statement by the complainant in his evidence that he questioned the accused regarding the propriety of his conduct. From this it is said that criminal intimidation is a necessary inference, and the decisions in *Berankutty Haji v. C. I. Raman*<sup>1</sup>, *Mahabir v. Rex*<sup>2</sup>, *Harakanta Biswas v. Suvak Singh*<sup>3</sup>, and *Alakal Senappa v. State of Mysore*<sup>4</sup>, are cited in support of this argument. It is sufficient to say that none of these

decisions countenance such a proposition. All of them insist on the accused displaying a readiness to use force and thus scaring away the victim of his offence.

4. I might also deal briefly with the contention of the accused that the order complained against was made out of time. I have already mentioned that even the application on which the order was passed, was made three months after the appellate court had confirmed the conviction in appeal. The question is whether the one month's time limit in sub-section (1) of Section 522 binds a court making an order under sub-section (3) of the section.

5. In my view it does. Doubtless sub-section (3) is not very happily worded, and its construction is a matter of some little difficulty. It seems to me that three constructions are possible. The first, and perhaps the strictly literal construction, would be the practically impossible construction that the order under sub-section (3) must be made within one month from the date of the original conviction. So far as I am aware no court has taken this view. The second construction is that an order under sub-section (3) is altogether untrammelled by the time limit imposed in sub-section (1), and this construction appears to have found favor with many High Courts.

It is not necessary to refer to all the decisions on the point, but I might mention that *Hari Sahu v. Pasori Sahu*<sup>5</sup>, which adopts this construction contains a more or less exhaustive review of the case law on the point; and there are two subsequent decisions in *Yusuff Cossim v. Maya Rani*<sup>6</sup>, and in *Basanta Kumar v. Kenaram*, AIR 1953 Calcutta 393, which take the same view.

6. The third construction, and the construction which seems to me the true construction is that a court acting under sub-section (3) of Section 522 must make an order under that section within one month of the date on which it confirms the conviction in appeal, reference or revision. When sub-section (3) of Section 522 says that an order under that section may be made by any "court of appeal, confirmation, reference or revision", it obviously has in mind an order under sub-section (1), and such an order can be made by the court only when convicting the person concerned or at any time within one month from the date of the conviction. On an ordinary and natural construction of the section, this limitation must apply also to a court which, acting under sub-section (3), wants to pass an order under sub-section (1). And, in relation to such a court, the words, "when convicting such persons or at any time within one month from the date of the conviction" obviously mean, "when upholding the conviction of such person, or within one month from that date". With great respect it does not seem to me quite right to say that because sub-section (3) does not expressly refer to any limitation, a court of appeal or revision is free to make an order under the section at any time. As I have said, what it can do is to make an order under sub-section (1) and such an order is subject to the limitation mentioned. In fact, when a limitation is placed on the trial court which has heard the evidence and is therefore

<sup>1</sup> AIR 1949 Mad 191

<sup>3</sup> ILR 1951-2 Cal 357

<sup>5</sup> AIR 1951 Ori 30

<sup>2</sup> AIR 1949 All 228

<sup>4</sup> 1959 Mad LJ (Cri) 889 : AIR 1960 Mys 24

<sup>6</sup> AIR 1953 Cal 308

in the best position to decide whether the offence was attended by criminal force or show of force or criminal intimidation, I can think of no reason why a court of appeal, confirmation, reference or revision should be free to pass such an order, not merely at the time when it has considered the entire matter in the main case before it, or within the reasonable period of one month thereafter, but at any time whatsoever.

7. The view I am taking was taken in the Division Bench ruling in *Subramonia Chetty v. Ganesan Pillai*<sup>7</sup>, and it seems to have been assumed in *Usman Miya v. Amir Miya*<sup>8</sup>,

8. I allow the petition and set aside the order made by the appellate court under Section 522 of the Criminal Procedure Code.

Petition allowed.

<sup>7</sup>(1950) 1 Mad LJ 670 : AIR 1950 Mad 665

<sup>8</sup> AIR 1927 Nag 131 and AIR 1949 Mad 191