

1960

Present : T. S. Fernando, J.

M. SEVVANTHINATHAN, Petitioner, and V. NAGALINGAM
and 3 others, Respondents

S. C. 338 of 1959—Application in Revision in M. C. Mallakam, 4107

Revision—Application against an order of acquittal—Requirement of proof of positive miscarriage of justice.

Prevention of Social Disabilities Act, No. 21 of 1957—Sections 2 and 3—Applicability only to obstruction of rights existing at the time when the Act became law—Defilement of a place of worship—Question of mixed fact and law—Penal Code, ss. 290, 292.

In an application in revision against an order of acquittal, the petitioner must make out a case showing something in the nature of a positive miscarriage of justice.

Sections 2 and 3 of the Prevention of Social Disabilities Act, No. 21 of 1957, do not have the effect of conferring on the followers of any religion a right of entering, being present in or worshipping at any place of worship which they did not have before the Act came into force.

The question whether there has been a defilement of a place of worship within the meaning of section 290 of the Penal Code is one of mixed fact and law.

APPPLICATION to revise an order of acquittal made by the Magistrate's Court, Mallakam.

C. Ranganathan, with S. Sharvananda, R. R. Nalliah, V. K. Palasuntheram, K. Palakidnan and Miss S. Wickremasinghe, for the complainant-petitioner.

N. Satyendra, for the accused-respondents.

Cur. adv. vult.

September 28, 1960. T. S. FERNANDO, J.—

The complainant-petitioner instituted a private prosecution in the Magistrate's Court against the accused-respondents alleging that they had committed offences punishable under sections 290 and 292 of the Penal Code. The charges as framed in the Magistrate's Court alleged (1) that the accused defiled the Saivite temple at Chankanai East with the knowledge that all the Vellala and other high caste Saivites are likely to consider such defilement as an insult to the Saiva religion and (2) that the accused committed trespass in the said Saivite temple by entering the flagstaff mandapam therein with the knowledge that the feelings of the Vellala and other high caste Saivites are likely to be wounded, offences punishable under the said sections 290 and 292 respectively.

After a lengthy trial in the course of which a scholar said to be an expert in the exposition of the Agamas or the gospel was called for the prosecution, the learned Magistrate acquitted all the accused. An appeal from this acquittal was not competent except with sanction obtained from the Attorney-General. Such sanction was sought unsuccessfully by the petitioner who thereupon presented this application in revision to this Court claiming a retrial before another Magistrate. It is now settled that before this Court can grant a prayer like that of the petitioner on this application in revision, the petitioner must make out a case showing something in the nature of a positive miscarriage of justice in the Magistrate's Court.—*The King v. Noordeen*.¹

The learned Magistrate has recorded certain findings in his judgment which are reproduced below :—(1) that the accused entered the temple in entering the inner courtyard by climbing over the parapet wall on the southern side, and that they entered the flagstaff portion and then went out of the inner courtyard through the kopuram entrance when they were chased by the complainant; (2) that the temple has been built in conformity with the Saivite Agamas and is a place of worship for Saivites and is held sacred by them; (3) that the evidence led by the prosecution is not sufficient to say beyond doubt that there was defilement of the temple by the act of the accused in entering it; (4) that the accused were denied their right to worship at the temple; and (5) that it cannot be said that the act of the accused was intended to insult the Saivite religion or wound the feelings of Saivites.

There is force in the argument of learned counsel for the petitioner that the Magistrate has misdirected himself in regard to one of the elements in the charges requiring proof on the part of the prosecution in that the charges only alleged knowledge on the part of the accused that Vellalas and other high caste Saivites are likely to consider the defilement as an insult to their religion or that the feelings of such people are likely to be wounded whereas the finding of the Magistrate relates not to the proof of knowledge which was alleged but to the proof of intention which was not alleged in the charges. Also, there is point in the argument that in denying any right in the accused to worship by entering the inner courtyard there was no denial of a right to worship at the temple because the only right which the accused had was alleged to be the right to worship in the outer courtyard. I am inclined to agree also with the argument of Mr. Ranganathan that sections 2 and 3 of the Prevention of Social Disabilities Act, No. 21 of 1957 do not have the effect of conferring on the followers of any religion a right of entering, being present in or worshipping at any place of worship which they did not have before the Act came into force; in other words, the Act penalised only the prevention or obstruction of the exercise of a right which was an existing right at the time the Act became law.

¹ (1910) 13 N. L. R. at page 118.

My agreement with the arguments of petitioner's counsel on the two points referred to above and the findings of fact reached by the Magistrate and described above as findings (1) and (2) do not avail the petitioner in his present application unless I can say with confidence that by entering the inner courtyard of this temple the accused defiled the temple. This is a question of mixed fact and law, and the learned Magistrate has answered this question against the petitioner. It is no doubt true, as petitioner's counsel contended, that the important question arising upon this application is what do people believe in as their religion. Whether a place is holy or not and whether a place that is holy has been defiled are also matters of belief. Having listened to the exhaustive arguments of counsel for both parties before me and having examined with care the evidence adduced by the petitioner and the expert before the learned Magistrate, I find myself unable to say with any confidence that the latter's finding that the prosecution failed to establish a defilement of the temple is unsupportable. In this state of affairs it follows that I cannot say that the Magistrate's order has resulted in a miscarriage of justice and this application must be dismissed.

Application dismissed.
