

Dwarkadas Jivraj Vs. the State

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Court : Mumbai

Decided On : Oct-07-1955

Reported in : AIR1956Bom163; 1956CriLJ380

Judge : Shah, J.

Acts : Bombay Municipal Corporation Act, 1858 - Sections 381 and 381(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 268; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 256, 257 and 342; Bombay Municipal Corporation (Amendment) Act, 1888

Appeal No. : Original Revn. Appln. No. 980 of 1955

Appellant : Dwarkadas Jivraj

Respondent : The State

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : C.C. Shastri, Adv.

Judgement :

1. The Petitioner is the owner of House No. 27, Picket Cross Road, Princess Street, Bombay. A Sanitary Inspector attached to the Bombay Municipality inspected on 8-2-1954 the passage on the ground floor of that building. Thereafter notices were served upon the petitioner and one Kodumal Rewachand under

Section 381 (1) (ii), Bombay Municipal Corporation Act, 3 of 1888.

By the notices the petitioner and Kodumal Rewachand were asked to abate the nuisance committed in the passage by removing articles such as chairs, benches and tables kept in the ' passage on the ground floor. The notices were not complied with.

The Sanitary Inspector again visited the premises on 11-2-1954 and he found the articles in the same position in which they were on 8-2-1954. Thereafter a complaint was filed against the petitioner and the said Kodumal charging them with having committed offences under Section 381 (1) (ii), Bombay Municipal Corporation Act.

The petitioner pleaded not guilty to the charge. He contended that house No. 27, Picket Cross Road, Princess Street, had been purchased by him and at the time of the purchase a part of the passage had been let out by the previous owner to the second accused Kodumal Rewa-chand, and he said Kodumal was utilizing the passage for carrying on the business of a typist, and for that purpose he had put chairs, two tables and a bench in the passage and that two typists were working in the passage.

2. It appears from the evidence that house No. 27, Picket Cross Road, is a building which is largely occupied by lawyers practising in the Court of Small Causes and the clients of those lawyers have to visit the lawyers. In the passage a large number of persons who visit the typists for getting their typing work done also congregate, and the tenants who have to go to the upper floors of the building find it very difficult to pass through the passage because of the obstruction caused by the articles kept by Kodumal Rewa-chand in the passage.

It appears that a complaint was received in 1952 by the Municipality about the nuisance caused by the large number of persons congregating in the passage and obstructing the passage of the persons desirous of going to the upper floors of the building, and thereupon the Assistant Health Officer of the Municipality visited the premises.

Notices were served in January 1953 upon the accused calling upon him to remove the furniture which was put in the passage. But no attempt was made to remove the furniture for more than one year, and thereafter a notice was served upon the accused on 8-2-1954.

3. The learned trial Magistrate on a consideration of the evidence held that the chairs, tables and the bench kept in the passage which is specially meant for persons, especially going to and coming down from the upper floor, constituted nuisance.

He further held that the passage was not meant for keeping odd things by a tenant to whom the premises had been given on a monthly rental. He observed

'The old landlord, for getting more money it seems, had rented out the premises to a typist without caring to see whether the other tenants occupying the upper floors would be inconvenienced or not, and the first accused (the petitioner) had continued to collect rent from accused No. 2. Even after the notice was served upon him he had not taken any steps to evict the second accused from the premises'.

In the view of the learned trial Magistrate therefore the petitioner not having abated the nuisance was liable to be convicted and punished for not having complied with the notice given under Section 381 (1) (ii), Bombay Municipal Corporation Act. The learned Magistrate accordingly convicted the petitioner and sentenced him to pay a fine of Rs. 15/-.

4. In this revision application filed against the order of conviction and sentence passed by the learned trial Magistrate, Mr. Shastri on behalf of the first accused contended that the second accused was a tenant of the petitioner and that he was carrying on a lawful business in the passage as a tenant of the petitioner and the petitioner had no control over the second accused.

Mr. Shastri further pointed out that width of the passage was five feet six inches and the width of the staircase installed in the building was two feet and six inches and under the Building Regulations and By-Laws framed by the Bombay

Municipality, the owner of a building is required to keep the width of the passage equal to the width of the staircase.

Relying upon that Regulation Mr. Shastri contended that so long as there was a passage two feet and six inches in width available to the tenants in the building it was open to the landlord to let out the excess three feet passage.

Mr. Shastri also contended that the learned trial Magistrate did not consider the question whether in fact the congregation of visitors to the second accused in the passage constituted a nuisance, and he accepted the view of the Municipal Commissioner in the notice served upon the petitioner as binding upon him, and in doing so the learned trial Magistrate committed an error.

5. In my view there is no substance in any of the contentions raised. It is clear from the evidence on the record that as early as 1953 the premises were visited by the Assistant Health Officer and the petitioner was required to abate the nuisance. The petitioner does not appear to have taken any steps for abating the nuisance till February 1954.

Even after the notice was served upon the petitioner on 8-2-1954 he did not take any steps against the second accused Kodumal Rewachand. He did not serve a notice upon the second accused requiring him to vacate and deliver possession of the premises. It may be that so long as the tenancy of the second accused continues the petitioner may have no control over the premises occupied by the second accused.

But it is always open to the landlord to terminate the tenancy of his tenant if in carrying on the business in the premises occupied by the tenant nuisance is caused to other occupiers of the building.

6. Mr. Shastri says that the petitioner has now filled a suit after the order of conviction and sentence was recorded by the learned trial Magistrate against the second accused, requiring him to vacate and deliver possession. But that in my Judgment cannot avail the petitioner.

If the petitioner had taken steps immediately after the notice was served upon him by the Municipality in February 1954 requiring the second accused to vacate and deliver possession the Court would have been called upon to consider the question whether in the circumstances the petitioner could be convicted of the offence charged.

7. In the view of the Commissioner putting up of benches, tables and chairs in a passage of the width of five feet and six inches for the purpose of carrying on the business of a typist constituted a nuisance; and in my view the opinion of the Commissioner under Section 381 of the Act would be binding unless it is challenged as arbitrary, capricious or mala fide. In the present case no such allegation has been made in the trial Court.

8. Mr. Shastri contended that the petitioner desired to lead evidence for the purpose of showing that the opinion of the Commissioner was arbitrary and capricious. No such suggestion was however made in the statement of accused under Section 342, Criminal P. C.

It appears that an application was made to the learned trial Magistrate after the evidence of the witnesses for the prosecution was closed and the case was adjourned for judgment, for examination of the defence witnesses. The learned trial Magistrate rejected the application, and in my view properly rejected the application.

9. The accused had ample opportunity to cite and examine witnesses; and not having availed himself of that opportunity the petitioner could not have asked the learned trial Magistrate to reopen the proceedings after the case stood adjourned for judgment. The petitioner having failed to take any steps to abate the nuisance as required by the notice, in my view, he was properly convicted by the learned trial Magistrate.

10. It is true that under the Building Regulations the width of the passage in a building must not be less than the width of the staircase, but that does not lead to the inference that the landlord is entitled to utilize the width of the passage in excess of the width of the staircase, and to commit nuisance in that excess width.

11. The rule is therefore discharged.

12. Rule discharged.

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