

**Prasad Vs. State of Mysore**

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**Court :** Karnataka

**Decided On :** Dec-23-1959

**Reported in :** AIR1960Kant230; AIR1960Mys230; 1960CriLJ1225

**Judge :** K.S. Hegde, J.

**Acts :** Mysore Police Act - Sections 56

**Appeal No. :** Criminal Revn. Petn. No. 409 of 1959

**Appellant :** Prasad

**Respondent :** State of Mysore

**Judgement :**

ORDER

(1) The petitioner has been convicted under clause (k) of S. 56 of the Mysore Police Act, by the learned Additional First Class Magistrate, Bangalore, in C. C. No. 11717 of 1959 and sentenced to pay a fine of Rs. 20.

(2) The case for the prosecution is that the petitioner is the owner of a ferocious dog and he had let the same at large without a muzzle on the afternoon of 19-8-1959. It is further alleged that the said dog bit P.W. 1 at about 2.30 P. M. on that day. P.W. 1 and accused live in the same compound. The accused lives in the main bungalow and P.W. 1 with her family lives in one of the outhouses in that compound. It may be taken as proved that P.W. 1 was bitten by the dog as

deposed to by her in her evidence. Her evidence on this point is corroborated by the medical evidence adduced and has been believed by the trial court.

(3) It is contended on behalf of the petitioner that the biting in question had taken place inside the compound and the dog was let at large without a muzzle within the compound and that being so, no offence under cl., (k) of S.56 of the police Act is made out. Sri Srikantiah, the learned counsel for petitioner further contends that the said Section 56 applies only to acts which have been committed in a street or in a public place. I do not think Sri Srikantiah is right in this contention. There are no words in the main part of the section which indicate that the offences mentioned in that section should have been committed either in a street or in a public place.

There are several clauses in that section which make acts referred therein offences when committed in a street or in a public place, vide clauses (a)(c), (d) etc. But clause (k) is not one such clause. Sri Srikantiah has relied in support of his contention on the first marginal note to S. 56. That marginal note reads as follows :

'Punishment of certain street offences and nuisance'.

A marginal note to a section cannot control the section. Moreover, S. 56 is an omnibus section and it provides for various offences and there are several marginal notes to that section. It is true that that section mainly concerns itself with the offences committed in streets and public places. But it is not correct to say that it is solely concerned with the offences committed in streets and public places. There is no reason to restrict the operation of clause (k) to offences committed only in streets and public places. For these reasons, I am unable to accept the contention advanced on behalf of the petitioner on this point.

(4) But, Sri Srikantiah is right when he contends that on the facts of this case the prosecution has to establish, before it can ask for a conviction, the following facts : (1) that the dog in question is a ferocious dog and (2) that the petitioner had suffered that dog to be at large without a muzzle. There is no satisfactory evidence in this case to show that the dog in question was a ferocious dog. The learned

magistrate erred in thinking that a dog that barks can be presumed to be ferocious. Dogs are intended for barking and quite clearly, barking is no sign of its ferociousness. Obviously, the learned Magistrate has not much experience of dogs.

Further, the fact that it had bitten P.W. 1 is by itself not sufficient to conclude that it is ferocious. It is true that P.W. 1 in her cross-examination has stated that it had once bitten her child. There is no satisfactory evidence on this point. Nor is there any material to ascertain how her child came to be bitten. The evidence adduced by the prosecution is not sufficient to conclude that the dog in question was ferocious.

(5) In the result, this petition is allowed and the conviction of the petitioner is set aside. The fine if paid will be refunded to him.

GD / K. S.

(5) Conviction set aside.

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