

Emperor Vs. Har Prasad

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Court : Allahabad

Decided On : Apr-28-1932

Reported in : AIR1932All673

Appellant : Emperor

Respondent : Har Prasad

Judgement :

1. This is a reference by the learned Sessions Judge of Mainpuri recommending that a conviction and sentence passed by a Magistrate under Section 307, U.P. Municipalities Act, 1916, be set aside. The facts are that there was a certain plot 2357 situated within the limits of the Mainpuri Municipality.

2. In this plot there is a nallah through which the drainage of that locality passes. The accused Har Prasad alias Lallu is alleged to have started making a certain construction which encroached upon the nallah, partly blocking it up and interfering with the drainage. The Municipal Board issued a notice to him under Section 186, Municipalities Act, which was served upon him on 30th October 1928, requiring him to stop immediately the construction which he was making without permission. The accused did not comply with this notice which admittedly was served upon him.

3. On 21st June 1929, a second notice was served upon him by the Municipal Board under Section 211 ordering him to remove the construction, which was

encroaching upon the public drain, within one month. The accused neglected to comply with this notice also. The Municipal Board thereupon instituted the prosecution under Section 307, for failure to comply with the two notices. The case was tried summarily. It was proved and admitted that the accused had been served with the two notices issued by the Municipal Board. It was also proved that he had not complied with the notices. The accused maintained that he had not made any encroachment on the public drain and therefore the Municipal Board had no jurisdiction to issue the notices. This was his only ground of defence. The trial Court held, that, as the accused was entitled under the Municipalities Act, to appeal to the District Magistrate under Section 318, if he had any objection to complying with the notices served upon him, and as he had failed to avail himself of that remedy, the criminal Court was precluded under Section 321 from considering the question whether the notices were valid or invalid. The result was that the accused was fined Rs. 15 for each offence.

4. The learned Sessions Judge was of opinion that the trial Court was not precluded from going into the question whether the notices were legal and valid and held that the Magistrate should have taken evidence to show that the construction made by the applicant was an illegal construction to which the provisions of Sections 186 and 211 were applicable. The learned Sessions Judge therefore has made this reference recommending that the conviction and sentence be set aside and the Magistrate be directed to proceed with the case according to law. This reference first came before a learned single Judge of this Court who considered that it raised an important question of law and directed that it be laid before, a Bench of two Judges. The Municipal Board has been represented before us by counsel. No one appears on behalf of the accused. The main question which we have to consider is whether the Magistrate was bound, or authorized, to go into the question whether the notices served by the Municipal Board upon the accused were legal and valid. Section 318 gave to the accused a remedy by way of appeal to the District Magistrate (or to such officer as the Local Government may appoint for such purpose) to challenge the legality of validity of the notices served upon him under Sections 186 and 211, Municipalities Act. The accused neglected to avail himself of the remedy prescribed by statute. It appears to us that, in these circum-stances, the Magistrate was perfectly right in holding that, under the

provisions of Section 321, he was precluded from questioning the legality or validity of the notices. Sub-section (1), Section 321 runs as follows:

No order or direction referred to in Section 318 shall be questioned in any other manner or by any other authority than is provided therein.

5. The language seems to us to be perfectly clear. Section 318 expressly lays down that:

Any person aggrieved by any order or direction made by a Board under the powers conferred upon it by Section 186 or Section 211 may, within thirty days from the date of such direction or order, appeal to the District Magistrate.

6. Section 321 clearly shows that this is the only method by which the person served with a notice can challenge the validity of that notice and, if he fails to do so no other authority such as a criminal Court can question the validity of the notice. The learned Sessions Judge referred to a ruling of this Court; *Emperor v. Piare Lal* A.I.R. 1914 All. 41. In that case it was held that no one can be convicted of disobedience of a written notice of a Municipal Board for demolition of certain constructions unless the Court is satisfied that, what he had disobeyed, is a notice lawfully issued by the Board under the powers conferred upon it by the Municipalities Act. The Court relied upon the language of Section 147, U.P. Municipalities Act of 1900 (Act 1 of 1900). That section provides a penalty for any person who disobeys any lawful direction given by the Board by public notice lawfully issued by it under the powers so conferred, etc. In view of the language of that section it was held that it was incumbent upon the trial Court to satisfy itself that the notice had, in fact, been lawfully issued by the Board under the powers conferred upon it by the Act. That decision clearly proceeded on the language of Section 147 of the old Municipal Act. The legislature has introduced important changes in the language of Section 307, Municipalities Act of 1916, which corresponds to Section 147 of the old Act. Under Section 307 it is laid down that:

If a notice has been given under the provisions of this Act...to a person requiring him to execute a work, or do or refrain from doing anything within a time specified in the notice, and if such a person fails to comply with such a notice, then the said

person shall be liable, on conviction....

7. It will be noticed that in the present Section 307, the word 'lawfully' has been omitted. There is nothing in the language of Section 307 which indicates that it is the duty of the Court to satisfy itself that the notice was 'lawfully' issued by the Municipal Board; probably this change of language was intentional, in order that it should be consistent with the provisions of Section 321 which prohibits any authority, other than the appellate authority specified in Section 318, from questioning the validity of the notice. The view which we take of the present law is supported by a decision of this Court in the case of Mannu v. Emperor A.I.R. 1920 All. 236. In our opinion, the view taken by the trial Court was perfectly right and the learned Sessions Judge has not appreciated the effect of the amendment of the statute. We accordingly reject the reference and maintain the conviction and sentence, Let the record be returned.

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