

**Mt. Chanchal Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/464832](http://sooperkanoon.com/464832)

**Court :** Allahabad

**Decided On :** Aug-25-1931

**Reported in :** AIR1932All70

**Appellant :** Mt. Chanchal

**Respondent :** Emperor

**Judgement :**

ORDER

**Sulaiman, J.**

1. This is an application in revision from an order convicting the accused under Section 299, U.P. Municipalities Act, for having committed a breach of a Municipal by-law. On 13th July 1925, the Municipal Board of Hathras got a notification published in the Government Gazette under which the following bylaw, among others, was announced:

No public prostitute shall reside within the areas or in the streets specified below, provided that public prostitutes who at the end o March 1925, owned and resided in houses and streets in areas mentioned below may continue to reside in those houses.

2. Then followed a list of no less than 13 items containing roads, bazaars, abadi, lanes, etc. The by-law was expressly not made applicable to public prostitutes who

had owned and resided in houses and streets in the areas mentioned at the end of March 1925. It was intended to apply to newcomers only.

3. This notification was replaced by another notification of 27th April 1927, which contained the same by-law.

4. The applicant, although she denied the fact, has been found by both the Courts below to be a public prostitute and to have been carrying on her profession as such. This finding must be accepted in revision. There is no doubt that she has committed a breach of the by-law mentioned above because the house occupied by her is situated in one of the streets which had been prohibited.

5. The learned advocate for the applicant impugns the validity of the by-law and urges that the conviction is illegal because the by-law itself was invalid.

6. Under Section 298(1) a Board is empowered to make by-laws applicable to the whole or any part of the Municipality for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the Municipality, and for the furtherance of municipal administration. Group H in the list I appended to the section provides in Clause (e) for

prohibiting, in any specified street or area, the residing of public prostitutes and the keeping of a brothel, or the letting or other disposal of a house or building to public prostitutes or for a brothel.

7. There is no doubt that the prohibition against public prostitutes from residing in a particular street or area given may be for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the Municipality, and that therefore such a by-law can be validly made.

8. But the by-law must aim at prohibiting in specified streets or areas the residing of public prostitutes or the keeping of a brothel, etc. It must not be discriminating in its effect. It would be illegal for a Municipal Board to single out any individual prostitute and prohibit her from residing in a particular area. Similarly, it would be illegal to pick out a group of prostitutes and prohibit them from residing in a particular area. The by-law must be general and must prohibit the residing of

public prostitutes in that area. The prohibition must be aimed against the residence of public prostitutes in general and not the residence of individual prostitutes or any particular class of prostitutes. It is obvious that when a discrimination is made, the object for which the by-law was framed would be nullified, and there would be no promotion or maintenance of the health, safety and convenience if the inhabitants. Such a by-law will merely create an invidious distinction and be beneficial to one class of prostitutes and injurious to the others. I am perfectly satisfied that this is not what is contemplated by the legislature. The prohibition must be general and of universal application within a specified street or area, and must not hit particular prostitutes, while leaving other prostitutes free to ply their trade.

9. The language of the by-law as quoted above not only permits prostitutes who owned and resided in houses in March 1925, to continue to live there as before, but even perhaps permits prostitutes who merely resided in the streets in the areas to carry on their profession undisturbed. Such a by-law was not in accordance with the provisions of Section 298 because it did not amount to a prohibition of the residence of public prostitutes but merely to a prohibition against a particular class of prostitutes.

10. In *Emperor v. Balkishan* [1902] 24 All. 439 a learned Judge of this Court declined to give effect to a by-law made by the Naini Tal Municipal Board where it appeared that an invidious and unreasonable distinction was drawn between a person who is a servant and a person of a similar degree who is not a servant.

11. I accordingly accept this revision, and setting aside the conviction, of the accused, acquit her of the offence with which she was charged, and direct that the fine, if paid, be refunded.

12. The Municipal Board of Hathras would be well advised to redraft this by-law so as to make it of general application.