

Maiku Vs. Emperor

Maiku Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/465346

Court : Allahabad

Decided On : Dec-15-1935

Reported in : AIR1936All149

Appellant : Maiku

Respondent : Emperor

Judgement :

Sulaiman, C.J.

1. This is an application in revision in respect of a pending prosecution. It appears that the accused had a house adjoining an open piece of land belonging to Government under the control of the Municipal Board at Banda. Sometime before 1924 he opened a window (or a small door) in his own wall facing the Government land. The Municipal Board served a notice upon the accused to close the door. On his failure to do so he was prosecuted in 1924, but the complaint filed by the Municipal Board was dismissed for want of prosecution. Presumably the accused was acquitted as laid down in Section 247, Criminal P.C. The Municipal Board remained quiet for about nine years and then in 1933 it again served a fresh notice on the accused in respect of the same window calling upon him to close it. As he failed to close it another complaint was filed against him under Section 307, Municipalities Act. This also was again dismissed for want of prosecution and the accused must have been acquitted. The Municipal Board then waited for nearly two years and served a fresh notice on the ' accused in December 1934 again

calling upon him to close the said window. As he did not do so a complaint was filed on 3rd January 1935, under Section 307, against him on the ground that he had failed to comply with the notice of the Municipal Board.

2. We are not called upon to examine the propriety of the notice, but it may be said that it is not quite clear whether the opening of a window or a door in one's own existing wall would be an erection of a new building or new part of a building or a re-erection or making material alteration to or in a building within the meaning of Section 178, Municipalities Act. If the accused had no right of way over the public land, the accused could be prosecuted for committing trespass if he walked over the land or a suit might have been filed in the civil Court for an injunction restraining him from coming out of his house through that door over the Municipal land. Instead of that the Municipal Board have successively filed complaints in the criminal Court and allowed two such complaints to be dismissed and the accused acquitted. Now a third complaint, which is a belated one, has been filed in respect of the same matter although it is based on a third notice served on the accused. We would not say that a fresh notice, if served, would not entitle the Board to file a fresh complaint. But it seems to us that this is a case which should not be allowed to proceed any further because it amounts to a harassment of the accused and raking up a rather stale matter. The Municipal Board clearly has a remedy by way of a civil suit and we do not think that it should be allowed to find a short-cut by getting the accused convicted by a criminal Court. We think that in the interests of justice the proceedings should be quashed. We accordingly order that the criminal proceedings pending against the accused in the Court of the Bench Magistrate at Banda be quashed.