

**Hurmat Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/465933](http://sooperkanoon.com/465933)

**Court :** Allahabad

**Decided On :** Sep-03-1931

**Reported in :** AIR1932All109

**Appellant :** Hurmat

**Respondent :** Emperor

**Judgement :**

**Sulaiman, J.**

1. This is a criminal reference by the Additional Sessions Judge of Agra recommending that the recurring fine of Re. 1, per day imposed on the accused should be set aside.
2. A notice was issued by the Municipal Board to the accused for removal of certain constructions. The accused failed to comply with the notice and was prosecuted. The learned Judge has agreed that his conviction was proper.
3. The Magistrate however, in addition to imposing a fine of Rs. 20, for the offence has ordered that if the construction be not removed within ten days the accused shall farther pay a fine of Re. 1, per day.
4. The learned Sessions Judge has rightly referred to the case of Amir Hasan Khan v. Emperor [1918] 40 All. 569 in which a learned Judge of this Court held

that such a recurring fine should not be imposed at the time of the first conviction itself.

5. Section 307, Municipalities Act (Act 2 of 1916) provides that the person shall be liable

on a conviction before the Magistrate to a fine which might extend to Rs. 500, and in case of a continuing breach he shall be liable to a further fine which might extend to Rs. 5 for every day after the date of the first conviction during which it might be proved against him that he had persisted a the offence.

6. The expression 'first conviction' suggests that the recurring fine is to be imposed on the second conviction. This conclusion is quite clear when it is borne in mind that before the recurring fine is imposed the offender must be 'proved' to have persisted in the offence. It is obvious that in this trial there is no evidence, much less any proof that the offender has persisted in the offence or that he would persist in the offence. The Magistrate was therefore not justified in presuming that he might persist and imposing on him the fine in advance. If the accused daes persist in the offence he is of course liable to be prosecuted a second time, on which occasion the recurring fine can be imposed. We accordingly accept this reference and set aside that portion of the order of the Magistrate which imposed the daily fine.