

Husain Vs. Notified Area

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SooperKanoon Citation : sooperkanoon.com/472266

Court : Allahabad

Decided On : Jul-27-1926

Reported in : AIR1927All131; 97Ind.Cas.432

Appellant : Husain

Respondent : Notified Area

Judgement :

Banerji, J.

1. This is an application in revision under the following circumstances:

Husain, the petitioner, was served with a notice on the 15th December 1925, that he should demolish within 24 hours certain construction. I must say that the notice was a most unreasonable one in that the petitioner was asked to demolish the house within 24 hours; but I have got nothing whatever to do with that. All that I have got to see is whether Husain has been rightly convicted.

2. It has been argued on behalf of Husain that the prosecution is incomplete, because no person has filed the complaint and has been examined as prosecution witness, who had been authorized by the Notified Area of Mahoba under Section 314 of the Municipalities Act. In my opinion there is no force in this contention. I have examined the record, and I find that on the 2nd February 1926, the Notified Area of Mahoba did pass a resolution unanimously that the petitioner should be

prosecuted for disobeying the notice, which was served on him on the 15th December 1925. I have looked at the notice. It is a notice signed by the President of the Notified Area, and, therefore, the petitioner can have no legitimate ground for complaint that the notice is not legally a proper notice. It appears that the Chairman of the Municipality sent a copy of the resolution of the Municipal Board to the Magistrate of the District, and thereupon the case against Husain was started. I am of opinion that there is a substantial complaint within the provisions of Section 314, in that section requires 'upon information received from the Board' a prosecution could be started. The Municipal Board could not send information except through some officer, and I am of opinion that the President was proper officer to inform the Magistrate of the resolution of the Board. I am, therefore, of opinion that the conviction of Husain is correct.

3. After inflicting a fine on Husain, the learned Magistrate, who tried the case went on to impose a daily fine of Re. 1. This order offends against a number of rulings of this Court, see *Kashmiri Lal v. Emperor* [1921] 43 All. 644 and *Amir Hasan Khan v. Emperor* [1908] 40 All. 569. An application for revision was put in before the learned District Magistrate of Mahoba, and he has got behind these rulings by saying that this is really of second conviction. I have searched the record all over, and I find that this statement of the Magistrate is absolutely incorrect. I, therefore, set aside that part of the order of the Magistrate, which imposes a daily fine. The application is otherwise dismissed.