

Tufail Ahmad Vs. Emperor

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Court : Allahabad

Decided On : Nov-01-1927

Reported in : AIR1928All60

Appellant : Tufail Ahmad

Respondent : Emperor

Judgement :

ORDER

Dalal, J.

1. This is an application for revision of an order of a Magistrate of the first Class at Budaun. The applicant has been convicted under Section 265(c), Municipalities Act, and sentenced to a fine of Rs. 50 for exposing fruits for sale so as to cause obstruction in a street belonging to the Municipal Board, Budaun. He occupied a shop abutting on the street and kept a wooden bench on the pavement in front of his shop. He was prosecuted for causing obstruction to the street and convicted. The evidence on the record satisfactorily proves that he was found keeping a bench on the pavement without the permission of the Municipal Board. But there is absolutely no evidence to show that he exposed any articles for sale or that the bench kept by him caused any obstruction in the street. The gist of the offence under Section 265 is the obstruction to the free passage of any street. There is no evidence to prove that he caused any obstruction by his act. No presumption

against him can be made merely from his putting a bench temporarily on the pavement adjoining the road. It lay on the prosecution to prove all the elements that constituted the offence but it failed to do so. His conviction under Section 265, Municipalities Act cannot be sustained. The sentence passed on him by the learned Magistrate is also unduly severe. The record does not show that any notice was ever sent to him requiring him to remove the bench which was placed on the pavement only temporarily. The Municipal Board could have easily called upon him to remove it by means of a notice and prosecuted him for his failure to comply with it. But the Municipal Board thought it fit to prosecute him without giving him any opportunity of removing it. Under these circumstances the proper sentence would have been a nominal fine of Rs. 1 or 2. The case did not call for the imposition of the maximum penalty of Rs. 50 prescribed by the section. As his conviction is illegal and the sentence is abnormally heavy I am constrained to refer the case to the Hon'ble High Court.

2. The case is referred to the Hon'ble High Court with a recommendation that the applicant's conviction and the sentence passed against him be set aside. Any explanation offered by the learned Magistrate be submitted along with the record.

[When the reference came up for hearing the following judgment was delivered by Dalal, J.].

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