

Mohammad Yusuf and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jul-31-1929

Reported in : AIR1929All901

Appellant : Mohammad Yusuf and ors.

Respondent : Emperor

Judgement :

Sen, J.

1. Mohammad Yusuf, Hafiz Bachchan and Aminuddin were convicted by the City Magistrate of Benares under Section 262, Municipalities Act (Act 2 of 1916) and sentenced to a fine of Rs. 2 each and in default to one day's simple imprisonment. The applicants moved the learned Sessions Judge of Benares in revision upon the ground that the sentences and findings were bad in law and ultra vires and that the prosecution of the petitioners without the permission of the Municipal Board was null and void under the law.

2. The learned Sessions Judge considered that the plea advanced by the petitioners was well founded and referred the case to this Court with a recommendation that the conviction and sentence be set aside.

3. Section 314, Municipalities Act, contains the following provision:

Unless otherwise expressly provided, no Court shall take cognizance of any offences punishable under this Act (whereof a list is given in Sch. 8 for the purpose merely of easier reference) or any rule or bye-law, except on the complaint of, or upon information received from, the Board or some person authorized by the Board by general or special order in this behalf.

4. Schedule 8 of the Act, includes Section 262, under which the applicants have been convicted.

5. The prosecution was initiated at the instance of a Sub-Inspector of Police. The learned Magistrate in his explanation draws the attention of this Court to a resolution of the Municipal Board No. 2518 dated 8th July 1917, whereby it has empowered the police to prosecute for certain offences including the one under Section 262, Municipalities Act. The Superintendent of Police of Benares was requested to issue instructions to officers in charge of police stations accordingly. Where the prosecution has been started on the report:

or on the complaint of some person authorized by the Board by general or special order on this behalf

either with reference to all offences or particularly in regard only to specified offences or offences of a specified class, the complaint must be taken to have been properly instituted and the Court was bound to take cognizance of it and to act upon it. The attention of the learned Sessions Judge was not drawn to this resolution of the Municipal Board at the time when the reference was made. I reject the reference.