

Jankiballabh Vs. State

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Court : Rajasthan

Decided On : Sep-27-1951

Reported in : AIR1952Raj103

Judge : Sharma, J.

Acts : Jaipur City Municipalities Act, 1943 - Sections 203, 203(1) and 203(4)

Appeal No. : Criminal Ref. No. 109 of 1951

Appellant : Jankiballabh

Respondent : State

Advocate for Def. : R.K. Rastogi, Government-Adv.

Advocate for Pet/Ap. : C.L. Agarwal, Adv.

Disposition : Reference accepted

Judgement :

ORDER

Sharma, J.

1. This is a reference by the learned Sessions Judge, Jaipur City recommending that the conviction and sentence of Jankivallabh applicant under Section 203(4) of Jaipur City Municipalities Act by the First Assistant City Magistrate, Jaipur beset

aside and he be acquitted.

2. The applicant was prosecuted on a report by the Building Inspector, Jaipur City Municipality dated 31st October 1950 that he was running a factory with an electric Motor machine of 11 1/2 H. P. in his house without a license.

3. It was not denied by the applicant that he was using an electric motor machine of 11 1/2 H. P. in his house without a license, but he pleaded that he had thereby committed no offence under Section 203 (4). The learned First Assistant. City Magistrate, Jaipur held that the accused was guilty of the contravention of Section 2 of the Dangerous and Offensive Trade Bye Laws and convicted him under Section 203(4) of the Jaipur City Municipalities Act 1943 (hereinafter to be referred as the Act) and sentenced him to a fine of Rs. 30/- only and in default to undergo 15 days simple imprisonment.

4. Against this order a revision was filed in the Court of learned Sessions Judge, Jaipur who has held that simply because the applicant, was using an electric motor machine of 11 1/2 H. P. in his house without a license, he could not be convicted under Section 203(4). The prosecution has further to prove that the building was used or intended by the applicant to be used for one of the purpose given in Section 203(1) of the Act. As no such purpose was proved, the applicant could not be convicted under Section 203 (4).

5. I have heard the learned counsel for the applicant and also the learned Govt. Advocate. The learned counsel for the applicant's argument is that even if it be supposed that the building in question was being used as a manufactory or place of business of any other kind, it was necessary for the prosecution to prove that offensive or unwholesome smells fumes or soot or dust arise therefrom or it may involve risk of fire. It was further necessary to prove that by reason of such use and of its situation the building is or is likely to be nuisance to the neighbourhood or is so used or is so situated as to be likely to be dangerous to health, life or property. Unless these things are proved, simply because a building is used as a manufactory, without a license, no offence under Section 203 (4) can be committed.

6. The learned Government Advocate argues that the words 'from which offensive or unwholesome smells, fumes, soot or dust arise or which may involve risk of fire' do not attach to the word manufactory in Clause (q) of Sub-section (1) of Section 203. Therefore, the mere use of the building as a manufactory without a license is punishable under Sub-section (4) of Section 203.

7. I have considered the arguments of both the learned Counsel and have very carefully read the provisions of Section 203(4) of the Act. To my mind an offence under Sub-section (4) of Section 203 can be said to be committed only if the accused uses any place in the municipality without a license for any purpose mentioned in Sub-section (1). The learned Government Advocate says that the building was being used as a manufactory and, therefore, it can be said that it was being used for a purpose mentioned in Sub-section (1). In case of manufactory, it is not necessary to prove that offensive or unwholesome smells, fumes or soot or dust arise therefrom or that its use as a manufactory may involve risk of fire as it is necessary in a case of place of business of any other kind.

8. Sub-section (1) (q) says that the building or place should be used as a manufactory or place of business of any other kind, from which unwholesome or offensive smells, fumes or soot or dust arise or which may involve risk of fire. Unless it is shown that the building or place is used as a manufactory or place of business of any other kind from which offensive, or unwholesome smells, fumes or soot or dust arise or which may involve risk of fire provisions of Sub-section (4) of Section 203 cannot be applied. The argument of the Government Advocate that the words 'from which offensive or unwholesome smells.....risk of fire' do not qualify the word manufactory, but only the words 'place of business of any other kind' does not appeal to me. The punctuation mark of comma after the whole phrase 'as a manufactory or place of business of any other kind' clearly shows the intention of the legislature that they go with both and not only with the orders 'place of business of any other kind.'

Under these circumstances, it was necessary for the prosecution to show that the building was used as a manufactory from which offensive or wholesome smells, fumes or soot or dust arise or which may involve risk of fire. The learned

Government Advocate further argued that it was not for the Courts to see whether the manufactory was such from which offensive or unwholesome smells etc. arise or which may involve risk of fire, but it was for the satisfaction of the Municipal Board. I do not think that such an inference is warranted from the wordings of Sub-section (4) of Section 203. Of course for the purpose of issuing, a notice under Section 203, it is the satisfaction of the Municipal Board which is required but when an accused is charged under Sub-section 4, it is for the prosecution to prove that the place was being used for the purpose mentioned in Sub-section (1). Sub-s. (4) does not say that the accused would be guilty simply because he is being found to be using a building, without a license, if the Municipal Board is satisfied that he was using it for any purposes mentioned in Sub-section (1). It is for the Court to see that the prosecution satisfied it that the building is being used for such purpose.

9. In my opinion, the conviction and sentence cannot be maintained. The learned Government Advocate also argued that in case conviction and sentence are set aside, the case should be remanded for retrial. I, however, do not think that under the circumstances of the case, retrial is necessary. It was for the prosecution to prove all the ingredients of the offence and if it failed to prove it, it would not be fair to the accused if I make any order as to his trial after his conviction and sentence are set aside.

10. The reference is accepted, the conviction and sentence are set aside and the applicant is acquitted. The fine, if paid, shall be refunded.

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