

In Re: Ramaswamy Aiyar

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SooperKanoon Citation : sooperkanoon.com/773458

Court : Chennai

Decided On : Jan-18-1937

Reported in : (1937)1MLJ310

Appellant : In Re: Ramaswamy Aiyar

Judgement :

ORDER

Pandrang Row, J.

1. The petitioner in this case is a seller of a gramophone records in Madura Town. He has been convicted under Section 3, Sub-section 5 of the Town Nuisance Act of 1889, the act alleged against him being that he was having some gramophone records played inside his shop which attracted a crowd in the street outside and thereby caused obstruction. This statement of the case is enough to show that there can be no justification for the conviction. Section 3, Sub-section 5 clearly shows that it is only when wilful obstruction is caused, in any public street, road, thoroughfare or place of public resort that an offence is committed. In this particular case it is clear that there was no act done by the accused in any public street, road, thoroughfare or place of public resort. What he did was inside his own shop and it would also appear that he had the records played on the gramophone for the benefit of a prospective buyer and there is nothing to show that he wilfully did it in order to cause obstruction in the street outside. In an almost similar case Criminal Revision Case No. 476 of 1935 King, J., held that the conviction under

Section 3, Sub-section 5 of the Act cannot stand. There the act alleged was the playing of gramophone music inside the accused's house attracting a crowd in the street in front of his house. This is a case in which there should have been no charge by the police and certainly no conviction by the Magistrates. It should have been obvious that no offence had been committed and it is astonishing to find the police charging the accused and the Magistrate convicting the accused in respect of an act which cannot possibly be an offence. The accused had done nothing criminal and yet he has been harassed by a prosecution and a trial which underwent 6 or 7 adjournments and put to considerable vexation and expenses. The Magistrates have thought it fit to observe that the accused 'could have politely given his name' to the Sub-Inspector when he questioned him about the matter and 'avoided all the sensation.' The Bench Magistrates must know that their duty lies in administering the law as it stands, and that in the performance of this duty they should not allow their minds to be diverted by irrelevant considerations such as want of politeness on the part of the accused in his behaviour towards the Sub-Inspector of Police. The case discloses a state of affairs which is very disquieting and it is to be hoped that these words of mine will prevent such harassment of innocent persons in future. The conviction and the sentence are set aside and the accused is acquitted; the fine, if paid, must be refunded.