

In Re: Abdul Razack Sahib

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SooperKanoon Citation : sooperkanoon.com/792068

Court : Chennai

Decided On : Feb-22-1938

Reported in : (1938)1MLJ809

Appellant : In Re: Abdul Razack Sahib

Judgement :

ORDER

Horwill, J.

1. The Presidency Magistrate has found that the petitioner has been keeping a tea-shop without a license. On the 5th of June, the petitioner received a letter from the Corporation informing him that Ms license would not be renewed because he had not provided proper drainage. He replied explaining that he had supplied proper drainage and asked that a license should be granted to him. He also deposited the license fee. No answer was sent by the Corporation; and as the petitioner continued to conduct the tea-shop this prosecution was launched. The Presidency Magistrate has found the accused guilty of contravening the bye-laws and fined him Re. 1, at the same time finding that the Corporation acted unconscionably in refusing the renewal of the license as there has been no laches on the part of the petitioner.

2. On these findings, the conviction is not sustainable. Although under Section 365(6) of the City Municipal Act, the petitioner must be deemed to have been

without a license from the first of April until he received his new license; yet that rule is subject to Sub-rule 10 by which, if the applicant does not receive orders from the Corporation refusing his license within 45 days, the application should be deemed to have been allowed for the year for which the application is made. As the petitioner applied for a license for the whole of the year from the first of April and did not receive a reply within 45 days, the application must be deemed to have been granted for the whole year; and if the license was granted for the whole year, the petitioner should not have been convicted of having conducted the tea-shop without license.

3. After dictating the above, it was asserted by the learned Crown Prosecutor, that no proper application was made for the license; but I find it impossible from the materials before me to say that this was so. The case before the lower Court seems to have proceeded on the assumption that a proper application was made.

4. The petition is therefore allowed and the conviction and sentence set aside. The fine, if paid, is ordered to be refunded.