

**In Re: P. Natesa Mudaliar**

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**SooperKanoon Citation :** [sooperkanoon.com/797317](http://sooperkanoon.com/797317)

**Court :** Chennai

**Decided On :** Sep-22-1926

**Reported in :** AIR1927Mad156; (1926)51MLJ704

**Appellant :** In Re: P. Natesa Mudaliar

**Judgement :**

1. The appellant has been convicted of erecting without the permission of the Commissioner of the Madras Municipal Corporation machinery by the use of which smell, noise, vibration, etc., are produced. This is an offence by virtue of Sections 288 and 357 and Scheduel VII of the Act. Admittedly he has put up an electric motor-driving mill and the evidence shows that this machinery emits disagreeable odours and produces considerable noise.

2. It is contended first that this is not machinery. This contention deserves no consideration.

3. Next, it is urged that the appellant had only substituted this motor for an oil engine for which he had taken out permission. But even so, it is obvious that he had erected this machinery.

4. Finally, it is urged that the machinery is not a nuisance. But that is no defence to the case. The wording of Section 288 is plain that the question whether the machinery is or is not a nuisance is one for the Commissioner alone, and if he finds that it is a nuisance he may refuse permission altogether. Whether it is a

nuisance or not a nuisance is immaterial, permission has to be obtained in either case and may be withheld in the former case.

5. It is, however, brought to our notice that one learned Judge of this Court has in a ruling reported in *Smith, In re* : (1923)45MLJ731 taken a different view, namely, that it must be proved that the machinery is a nuisance before any part of the section comes into operation. With all deference we are unable to agree with this view. To hold so would result in this, that the section empowers the Commissioner to grant a licence for what is a public nuisance and what he himself considers a public nuisance. The learned Judge was constrained to support his reading of the section by referring to the marginal note, but it has been frequently held that that is not a legitimate canon of interpretation see the Privy Council case in *Balraj Kunwar v. Jagatpal Singh* (1904) I.L.R. 26 A 406 (P C). The section as it stands is to our minds perfectly plain; any one erecting machinery must get the permission of the Commissioner (whether permission is equivalent to licence is a matter which we need not consider in this case) and the Commissioner may refuse permission if the machinery in his opinion constitutes a nuisance to the neighbourhood. The section is a very salutary one in the interests of the general public. We can therefore see no reason to interfere and we dismiss this Appeal.

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