

M. A. Razack Vs. King-emperor

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Court : Chennai

Decided On : Jan-26-1927

Reported in : AIR1927Mad501

Appellant : M. A. Razack

Respondent : King-emperor

Judgement :

ORDER

Curgenven, J.

1. This is a Criminal Revision Petition against the conviction by the 3rd Presidency Magistrate, Madras, of the petitioner for an offence under S.357 of the Madras City Act 4 of 1919. The complaint made against him was that

on or about the 10th january 1926 he had a shed of inflammable materials in Moore market compound without license from the commissioner, contrary to s. 233.

2. The learned Magistrate has recorded the plea of the accused as guilty and states that he explained at the same time that he had the shed of inflammable materials for the last eight years without paying any fee to the Corporation. In view of this explanation it is impossible to conclude that the accused can have pleaded guilty to an offence which contained the factors required by S.233. According to

that provision no inflammable structure is to be constructed or reconstructed except with the permission of the Commissioner.

3. The word used in the previous Act in lieu of 'constructed' was 'made' and it is quite clear that that word led to a difference of opinion as to whether its meaning was in fact 'constructed' or merely 'composed of.' in *emperor v. Audikesavaloo Naidoo* [1912] M. W. N. 84 *Sundara Aiyar and Spencer JJ.*, held that it meant the former whereas in *The Corporation of Madras v. Varadachariar* [1919] 42 Mad. 7 *Napier and Sadasiva Aiyar, JJ.*, put the latter construction on the term. it has, however, now been made unambiguous and it is clear that the essence of the offence is the act of constructing or reconstructing and not merely that of maintaining an already constructed building in existence. with this section is to be read S.392, which imposes a general period of limitation of 6 months in respect of acts which constitute an offence and a particular period of twelve months in respect of an omission to take out a license. But it is evident from the facts, which do not seem to be disputed, that this period had long expired and therefore the conviction under S.233 cannot be sustained and I must accordingly set it aside.

4. From the minutes of a meeting of the Corporation dated the 16th January 1923, not put in evidence before the lower Court but produced by the petitioner it would appear that the petitioner with the others was allowed to maintain his tea shop without license, and from another notice of the Corporation dated 30th August 1923 that he was permitted to continue occupation until further orders. it is stated that subsequently the Corporation has required him to take out a license in respect of his tea shop structure and that he has refused to do so and that it was this that gave occasion to the prosecution. If that be so, the nature of the prosecution seems to have been misconceived. though it may be true that the Corporation has the means of enforcing the taking out of a license, as to this I express no opinion. But if so, these proceedings will not prevent them from taking the proper steps. The Criminal Revision Petition is allowed and the fine and license fee, if paid, will be refunded.