

In Re: Hassan Sahib

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Court : Chennai

Decided On : Oct-11-1915

Reported in : AIR1916Mad1028(1); 30Ind.Cas.1004

Judge : William Ayling, J.

Appellant : In Re: Hassan Sahib

Judgement :

ORDER

William Ayling, J.

1. This reference involves the question of whether sand falls within the category of 'other building material' in Bylaw No. 45 of the Ootacamund Municipality.
2. The By-Law runs as follows: 'Every vehicle used within the Municipality for the conveyance of bricks, stone, metal, or other building materials shall be so constructed that the contents shall be duly secured therein during transit through the public streets. Owners of vehicles failing to secure such conditions shall be liable to a fine not exceeding Rs. 20.'
3. The majority of the Bench were of opinion that sand should be regarded as 'other building material'. One member of the Bench, Mr. Parsons, in a very able minute of dissent took the opposite view, in which he is supported by the Sessions Judge, who has referred the case under Section 438 of the Criminal Procedure

Code. The question is one by no means easy of decision: but on the whole it appears to me that the view of the dissenting Magistrate is correct. As has been pointed out, sand may be used for many purposes unconnected with building and in the present case there appears to be no evidence to show for what purpose the sand in the cart was destined. Apart from this, the object of the section is obviously the protection of the public streets from the obstruction caused by the accidental falling out of the contents of moving carts. In the case of bricks, stone and metal (by which is presumably meant road-metal) this obstruction is obvious, inevitable and a serious nuisance. So much cannot be predicated of sand. No doubt the upsetting of a cartload of sand in the road would be a nuisance and obstructive to traffic, but the falling of sand in such small quantities as would be due to the absence of a back board to the cart (the defect in the present case) could hardly be either, I think the dissenting Magistrate was right in holding that the 'other building material' must be 'ejusdem generis' to bricks, stone, and road-metal in its potentially deleterious effect on the public thoroughfares, and that sand does not satisfy this requirement.

4. The conviction and sentence are reversed and the fine, if paid, will be refunded.

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