

In Re: A.E. Smith

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Court : Chennai

Decided On : Aug-28-1923

Reported in : 81Ind.Cas.72; (1923)45MLJ731

Judge : Krishnan, J.

Appellant : In Re: A.E. Smith

Judgement :

Krishnan, J.

1. This is an application to revise an order passed by the Third Presidency Magistrate convicting the accused for not taking out a license under Section 288 of the Madras City Municipalities Act, IV of 1919, for a soda water machinery which he has recently started working in No.50, Thatha Muthiappan Street. The machiner was originally installed in No. 17 Jone's Street, andthe accused obtained the permission of the Comissioner to use the machineryin its new place, but he had not obtained any license under Section 288 forthe purpose of erecting the machinery in that place. The accused has been fined Rs. 5 for this offence and directed to pay the license fee of Rs. 200 to the Municipality.

2. It is argued before me as the first point that, the accused having been allowed to use the machinery in Jone's Street, and it having been merely transferred to the new place, he could not be asked to pay any new license fee for erecting the machinery there. I do not agree with this contention because the two things are

different, the one is an annual payment of the license fee for the use of the machinery and the other is a payment once for all for erecting the machinery and the fact that payment was made in the one case is no excuse for not paying the second case. It cannot be suggested that there was no erection of the machinery in the new place in Thatha Muthiappan Street for it was dismantled and removed from where it was originally and again put together in its new place, It has, however been argued before me that Section 288 does not apply to this case as the machinery erected by the accused is not one which falls under the description of machinery dealt with in that section. The Crown Prosecutor says that there is evidence to show that this machinery caused noise and vibration and so comes under the description. It seems to me that before the section can be used for the purpose of insisting on a license fee being paid for erecting machinery, it must be shown that its use was likely to produce either noise or vibration or any of the other things mentioned in the section which would amount to a nuisance. The marginal note to the section seems to make this clear, though the section by itself is not very clear in its language. In such a case I am inclined to think that it is legitimate to look at the marginal note to see what the drift of the section, itself is. Light is also thrown on the first clause of the section by the second clause which says, 'The Commissioner may refuse such permission if the machinery, in the proposed position will be a nuisance to the inhabitants of the neighbourhood' That shows that it is not every machinery that gives rise to any noise or vibration that is hit at by the section but only such machinery which causes such noise or vibration as would be a nuisance to the inhabitants of the neighbourhood. In this particular case, there is no proof that this machinery does cause so much noise or vibration as would amount to a nuisance. All that the Assistant Engineer for the Municipality says is that it causes as much noise as any soda water machinery. What exactly that means it is difficult to say as he was not asked the further question whether the noise or vibration would be sufficient to cause a nuisance. The Magistrate was wrong in throwing the burden of proof upon the accused to show that the machinery that he worked was such as would not cause noise or vibration amounting to a nuisance. The burden is clearly upon the Municipality; it must prove all the facts necessary to justify a conviction. It is also argued that, at any rate, the machinery is dangerous to the inhabitants of the neighbourhood and,

therefore, it falls under the last part of the first clause of section 288. It is not clear how this machinery can be said to be a dangerous one as the Crown Prosecutor asserts before me. Here again the Magistrate contented himself: with saying that the accused does not deny this possibility nor has he attempted to prove that there is no such danger. The burden is not on the accused on this point either but on the Municipality. It must be proved by 'the evidence in the case that danger to the inhabitants of the neighbourhood is likely to arise by the use of this machinery. After all it is a small soda water machine worked by a small electric motor. I do not think that can be held to fall under the description of machinery where danger is likely to arise to the inhabitants of the neighbourhood, whatever danger there might be to the persons who actually work the machinery. In these circumstances, I have come to the conclusion that it is not established by the prosecution that this is a case which falls under Section 288.

3. There is finally an argument used by the Magistrate in support of his judgment; namely, that, as the accused did not go to the Standing Committee and seek redress before them, it should be taken as settled that the accused is bound to pay the tax imposed upon him, that it has become final under the law and that the Magistrate could not question its legality. I am unable to agree with this view because the accused is being prosecuted for an offence for non-payment of the license fee and he is entitled to say that he is not bound to pay it. There is no kind of estoppel in a criminal case as the Magistrate seems to think. The prosecution must establish affirmatively to his satisfaction that the tax was payable and that there was a default in payment of the tax. The fact that the accused did not appeal to the Standing Committee cannot be treated as in any way preventing him from raising the plea before the Criminal Court, where he is sought to be convicted of an offence by the prosecutor.

4. In the view I take of Section 288 in this case, finding that the accused was not bound to pay the license fee under it because the machinery is not brought within the words of that section, I set aside the conviction and sentence passed by the Magistrate and direct the fine and license fee, if paid to be refunded to the accused.