

The Public Prosecutor Vs. Pachappa Mudalia and ors.

The Public Prosecutor Vs. Pachappa Mudalia and ors.

SooperKanoon Citation : sooperkanoon.com/815105

Court : Chennai

Decided On : Aug-16-1923

Reported in : AIR1924Mad397; 75Ind.Cas.760

Judge : Krishnan, J.

Appellant : The Public Prosecutor

Respondent : Pachappa Mudalia and ors.

Judgement :

Criminal Appeal No. 516 of 1923. (C.C. No. 2 of 1923).

Krishnan, J.

1. The accused has been prosecuted by the Union Board of Arni under Section 129 of the Madras Local Boards Act, XIV of 1920, for having allowed his sewage water to run over the adjoining Union road. The Magistrate has found that the sewage water runs into the street and that apparently it gets into of a drain on the other side of the street, because the Magistrate says that there is a drain on the side of the street opposite to where the accused's house stands. The Magistrate has acquitted the accused on the ground that he cannot be expected to construct a culvert or a channel to let the sewage water from his house to flow into the opposite channel without spreading into the street. The Magistrate thinks that it is the duty of the Union to construct such a channel and as they have not done so,

the accused must be acquitted.

2. Now, my attention has not been drawn to any section in the Madras Local Boards Act which imposes upon the Union any obligation to construct a drain or cesspool in every street, though ordinarily one would expect that such a work would be done by the Union for the benefit of the inhabitants of the Union. The absence of a drain does not seem to me to be any excuse or justification under the Act for letting one's sewage water flow over the neighbouring road. Section 129 which runs thus, 'No owner or occupier of any premises shall allow the water from any sink, drain, latrine or stable, or any other filth to flow out of such premises to any portion of a public road except a drain or a cesspool' is not governed by any condition that he can do this if there is no drain or a cesspool in the street. Apparently, the idea is that if there is no drain into which the sewage water of the house can be led into without overflowing into the neighbouring road, some arrangement must be made by the house owner to have some place in his own premises to collect and retain the sewage water and either with the help of the Taluk Board or the Union Board under Section 127 of the Act or by some other means, see that it is disposed of so that it does not cause nuisance to the neighbours.

3. A similar question had to be considered with reference to Section 222 of the District Municipalities Act, IV of 1884 in two cases the first reported in *Queen-Empress v. Sevudappayyar* 15 Mi. 91 : 1 Weir 747 : 5 Ind. Dec. (N.S.) 412 and the second in *Emperor v. Nagan Chetty* 30 M. 221 : 17 M.L.J. 372 : 6 Cri. L.J. 235. In both these cases it was held that the absence of a drain or cesspool did not justify the owner of the premises to let his sewage water overflow on the road. The obligation is placed upon him by that section just in the same manner as it is placed by Section 129 of the Madras Local Boards Act, XIV of 1920, to see that the neighbouring roads are not spoiled by his sewage water, it was held that if the house-owner broke that obligation he was liable to be convicted and punished though the absence of a drain or a proper place into which the drainage or the sewage water might be allowed to flow could be taken into consideration in assessing the penalty. The position is just the same under Section 129 of the Madras Act, XIV of 1920, with which I am now dealing.

4. I must, therefore, hold that the Magistrate was wrong in acquitting the accused on the ground he took and that the accused is really guilty of an offence under Section 129. In the circumstances of the case, I think a (sic) nominal fine is sufficient. I would, therefore, convict him of an offence under Section 129 and impose upon him a fine of one rupee. criminal appeal No. 517 Of 1923.

5. In this criminal appeal the circumstances are exactly the same as in the previous appeal, and, for the same reasons, I convict the accused of an offence under Section 129 and sentence him to pay a fine of rupee one.

Criminal appeal No. 518 of 1923.

6. In this case the finding of the Magistrate is that the back door of the house opens upon a street which is three feet lower in level than the adjoining street and as there is no way of carrying the water which flows into the street, it must be necessarily soaking there and the accused is not responsible. But that consideration is quite irrelevant in this matter, for the obligation that is vested upon the accused is, that he should not let his drainage or sewage water run into the street at all and if he does run it there, he is guilty of an offence under Section 129. It is not necessary to consider, therefore, what happens to the water after it flows into the street. He is also convicted under Section 129 and sentenced to pay a fine of one rupee.