
(1965) 02 KL CK 0011

In the High Court Of Kerala

Case No : Criminal Appeal No. 130 of 1964

Commissioner, Calicut Corporation

APPELLANT

Vs

Mohanlal Medical Stores

RESPONDENT

Date of Decision : 09-02-1965

Acts Referred:

Calicut City Municipality Act, 1961 — Section 299

Citation : (1965) KLJ 268

Hon'ble Judges : T.K. Joseph, J;P. Govinda Menon, J

Bench : Division Bench

Advocate : V. Balakrishna Eradi, K.P.G.Menon, for the Appellant; M.C. Sreedharan, Heard State Prosecutor also., for the Respondent

Final Decision : Dismissed

Judgement

Joseph, J.—This is an appeal by the Commissioner, Calicut Corporation, against the acquittal of the respondent who was prosecuted for an offence u/s 299 of the Calicut City Municipal Act, XXX of 1961. The complaint was that the respondent, the proprietor of Mohanlal Medical Stores used an electric refrigerator in her shop without obtaining a licence from the Commissioner. Holding that no licence was required for using a refrigerator for storing drugs in the shop, the learned Magistrate acquitted the accused; hence this appeal. A few facts may be stated. On 24-12-1962 the Municipality served a notice on the respondent to show cause why she should not be prosecuted for using a refrigerator at her place of business without obtaining a licence. Within two days thereof the respondent made an application for licence and paid the licence fee of Rs. 15/-. The application however was refused by order dated 4-1-1963 on the ground that she had not applied u/s 300 for permission to instal the refrigerator. On 20-2-1963 the respondent applied for permission to instal the refrigerator and permission was accorded by order dated 17-6-1963. In the meanwhile this prosecution had been launched on 27-4-1963.

2. The facts stated above show that when the requisite permission and licence

were granted, the Municipality would have done well in withdrawing the prosecution. However that was not done and it has therefore become necessary to consider whether the use of the refrigerator without obtaining a licence contravenes section 299 of the Municipal Act.

Section 299 reads as follows:

299. Purposes for which places within the limits of the City may not be used without licence:-

(1) No place within the limits of the City shall be used for any of the purposes mentioned in Schedule IV without a licence obtained from the Commissioner and except in accordance with the conditions specified therein.

(2) The owner or occupier of every place for the use of which for any purpose a licence is required under sub-section (1) shall apply to the Commissioner for such licence not less than fortyfive and not more than ninety days before the place is used for such purpose.

(3) Every application for a licence for the use of any place for the purpose of storing or selling explosives, timber or other combustible materials shall contain a statement showing the boundaries and measurements of such place.

(4) The Commissioner may grant such licence subject to such restrictions and regulations as may be specified by him therein or he may refuse to grant such licence.

(5) Every such licence shall expire at the end of the year for which it is granted, or at such earlier date as the Commissioner may, for special reasons, specify in the licence.

(6) Applications for renewal of such licence shall be made not less than fortyfive and not more than ninety days before the commencement of the year for which the renewal is sought."

Schedule IV of the Act enumerates the "purposes for which premises may not u/s 299 be used without a licence". The relevant item in the Schedule is "Machinery-- other than such machinery as may by notification be exempted by the Government from time to time--Using for any industrial purpose.

3. The question for decision is whether the use of a refrigerator in a chemist and druggist's shop for storing medicines which have to be kept in a cool place to avoid deterioration is using machinery for an "industrial purpose". Relying on the decision of Somasundaram J., in *Krishnaswamy & Co. v. Coimbatore Municipality* (70 L. W. 598) the learned Magistrate held that this was not use of machinery for an industrial purpose. The case cited above was one in which the Coimbatore Municipality prosecuted the proprietor of a chemist's shop for an identical offence under sections 249 and 250 (1) of the Madras District Municipalities Act which correspond to sections 299 and 300 of the Calicut City Municipal Act. Following a decision of Panchapakesa Ayyar J., in *Venkitachala Udayan v.*

Executive Officers, Rasipuram Panchayat Board (62 L. W. 611) in which a provision in the Madras Local Boards Act similar to section 249 of the Madras District Municipalities Act arose for consideration, it was held that the section applied only to installations in premises for the purpose of industries and factories and that it does not apply to a druggist's shop using a refrigerator for storing drugs which have to be kept in a refrigerator. The taking of a licence was therefore held to be unnecessary.

4. Counsel for the appellant argued that the learned Judges of the Madras High Court were mainly guided by the sub-heading "Industries and Factories" under which the relevant sections appeared in the Act and that the term "industry" should be construed in a wider sense. The argument is that the term "industry" includes "trade" also and that the storing of the drugs in a refrigerator for the purpose of sale is an industrial activity. The Oxford Dictionary gives six meanings of the term "industry" and one of these is:

A particular form or branch of productive labour; a trade or manufacture.

This is found in some of the Law Dictionaries also. It is on the word "trade" that the appellant relies. The word "trade" here means an occupation involving productive labour. The prevalent sense of the word "industry" is given in the same dictionary as:

systematic work or labour; habitual employment in some useful work, now especially in the productive arts or manufacture.

5. In our opinion the term "industrial purpose" in the Schedule has to be understood in the popular sense of manufacturing goods from raw materials. The Supreme Court has pointed out in *D.N. Banerji Vs. P.R. Mukherjee and Others*, -- a case under the Industrial Disputes Act--

In the ordinary or nontechnical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools, etc. and for making profit.

It was also pointed out that there was nothing to prevent a statute from giving the word "industry" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a wide variety of fields of activity and that the words "industry" and "industrial dispute" in the Industrial Disputes Act have to be given a very wide meaning. As the objects to be achieved in the Industrial Disputes Act and the Calicut City Municipal Act are entirely different, we would not be justified in construing the words "industry" or "industrial purpose" in the same sense in cases coming under the two Acts, for, as pointed out by Atkinson J., in (1911--Appeal Cases 641):

The same words may mean one thing in one context and another in a different

context. This is the reason why decisions on the meaning of particular words found in other statutes are scarcely of much value when we have to deal with a statute of our own; they may be helpful, but cannot be taken as guides or precedents.

We do not therefore consider it necessary to refer to the later decisions of the Supreme Court under the Industrial Disputes Act. In attempting to understand the meaning of the term "industrial purpose" in the Municipal Act, we have to attach importance to the context in which section 299 appears. It is in Chapter XII which deals with Licences and Fees; and section 299 is under the sub-heading "Industries and Factories". These refer to what the Supreme Court has described as the use of the word in the non-technical sense. Such activities as are dangerous to human life, health or property or are likely to create or cause nuisance are brought within the control of the Municipality by the issue of licences. When we come to Schedule IV it is seen that the sale of certain commodities such as bran, chillies, cotton, flour, hey, etc., are seen included therein, while in respect of other activities, storing, etc. are included. Storing of drugs for sale is not specifically included in the Schedule. Drugs are not produced at the respondent's shop but are only sold, and the storing of the drugs for the purpose of sale cannot be treated as an industrial purpose. We are in complete agreement with the view expressed by Somasundaram J., in the case cited earlier. The learned Magistrate was right in holding that no licence was required for storing medicines in an electric refrigerator. We therefore confirm the order of acquittal and dismiss the appeal.