
(1911) 03 BOM CK 0009

In the Bombay High Court

Case No : Criminal Application for Revision No. 419 of 1910

Emperor

APPELLANT

Vs

Noor Mahomed Suleman

RESPONDENT

Date of Decision : 06-03-1911

Acts Referred:

Citation : (1911) 13 BOMLR 209

Hon'ble Judges : N.G. Chandavarkar, J;Heaton, J

Bench : Division Bench

Judgement

N.G. Chandavarkar, Kt., J.—The facts of this case are shortly these. The petitioners, manager and servant respectively of a toyshop in Shekh Memon Street, exhibited in the windows of the shop, overlooking the public road, certain clockwork toys during the last Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys. The Magistrate finds on the evidence that there were dangerous rushes in consequence; people were knocked down; and great obstruction and danger were caused to those using the road. The petitioners were asked by the Police to stop the exhibition but they would not obey.

2. There can be no doubt upon these findings on the evidence that there were obstruction, danger, and injury to the persons using the public way; which amounted to a public nuisance.

3. The only question is whether that nuisance was caused by the petitioners.

4. The efficient cause of the nuisance was the act of the petitioners. It consisted in the manner in which they worked the toys in their shop; their object was to attract a crowd ; they knew that a crowd would be, and as a matter of fact was, attracted by what they did, and they must be regarded as having intended that consequence. It follows that the nuisance was caused by them.

5. But it is urged that what they did was in the course of reasonable user of their

business on their own premises. The question of reasonable user is one of time, place, and circumstance. It must be decided with reference to all the facts of the case in which it arises. Ordinarily, every shop-keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. As was said by Romer L. J. in *Attorney General v. Brighton and Rove Cooperative Supply Association* [1900] 1 Ch. 276: "It does not follow that, because the user is necessary or useful for the purpose of carrying on the business, it must of necessity be held to be a reasonable user." And the law, as explained by Lindley M. R. in the same case, is that "in a case of doubt or difficulty, the private reasonable right of a householder to carry on his business must yield to the public right of user of the street."

6. In the present case, the petitioners were aware that their act was causing danger and obstruction to the public way. They were warned and yet did not desist. And it can hardly be said that the manner of the exhibition complained of as a nuisance was necessary for the purposes of their business in the sense that without it they could not carry it on reasonably.

7. The rule must, therefore, be discharged and the conviction and sentences confirmed.