
(1988) 02 MAD CK 0056
In the Madras High Court
Case No : Criminal M.P. No. 5852 of 1983
In Re : Badrudeen

Date of Decision : 25-02-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1988) 02 MAD CK 0056

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : S. Nadanarajan and N. Sundaram, for the Appellant; Thenkodi Nelson and Mr. G. Natesan and Sri N. Kannappa Rajendran, (Government Advocate, Criminal Side), Amicus Curiae., for the Respondent

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—The petitioner against whom the respondent has filed a complaint, now pending before the XX Metropolitan Magistrate, Nungambakkam, Madras-34 for an offence under S. 287 r/w. 357 of the Madras City Municipal (Corporation) Act, 1919 (IV of 1919) (hereinafter referred to as the Act), invokes the inherent powers of this Court under S. 482, CrI. P.C., to quash the above complaint.

2. The above prosecution has been instituted against the petitioner on the allegation, that he is the representative of Buhari & Sons Private Ltd., Egmore, Madras-8 and that the said Buhari & Sons, was found running Mill for grinding flour, Condiments and soapnut power, using 10 H.P. Motor at premises No. 1, First Main Road, Shastri Nagar Madras-20, without obtaining the necessary licence from the Commissioner, Corporation of Madras, as required under the above Act.

3. Thiru S. Natana Rajan, learned Counsel for the petitioner contended that the prosecution against the petitioner had to be quashed on the ground that, he is not the representative of Buhari & Sons Private Ltd., Egmore, Madras-8 and he has nothing to do with the above business concern and since it was Buhari & Sons that was found running the said mill without necessary licence, the

prosecution should have been launched only against Buhari & Sons Private Ltd., and that the present prosecution launched against him, as representative of Buhari & Sons Private Ltd., is not maintainable. According to the learned Counsel, the Act does not contemplate any representative to be prosecuted for either the owner of the occupier.

4. Per contra, Tmt. Thenkodi Nelson appearing for Thiru G. Natesan, learned Counsel for the respondent, contended that the petitioner has received the notice that was served on Buhari & Sons Private Limited, requiring them to obtain the necessary licence under the Act for running the Mill, and that therefore the petitioner is the agent of Buhari & Sons and, hence the prosecution as launched, is proper.

5. Thiru N. Kannappa Rajendran, Government Advocate (Criminal Side) was requested to assist the Court as Amicus Curiae. He stated that the Act does not contemplate a representative of an owner or occupier as being considered as an owner or occupier and that, therefore, the question whether the petitioner could be prosecuted as the representative of the Buhari & Sons Private Limited has to be decided in the light of the definition of the terms "occupier" and "owner" as found in Ss. 3(15) and 3(17) respectively of the Act.

6. The question that arises for consideration is whether the representative of an "owner" or "occupier" could be prosecuted under the Act?

7. The complaint as well the notice that has been sent to Buhari & Sons Private Ltd., by the respondent show, that Buhari & Sons Private Ltd., No. 6, Gandhi-Irwin Road, Egmore, Madras-8 was found running a Mill for grinding flour, condiments and soapnut powder using 10 H.P. Motor at No. 1, First Main Road, Shastri Nagar, Madras-20. The definition of "owner" as found in S. 3(17) is as follows:-

"Owner" includes (a) the person for the time being, receiving or entitled to receive, whether on his own account, or as agent, trustee, guardian, manager or receiver for another person, or for any religious or charitable purpose, the rent or profits of the property in connection with which the word is used, (b) the person for the time being in charge of the animal or vehicle in connection with which the word is used.

8. The definition of "occupier" as found in S. 3(15) of the Act is as follows:

"Occupier" includes (a) any person for the time being, paying or liable to pay to the owner, the rent or any portion of the rent of the land or building or part of the same in respect of which the word is used or damages on account of the occupation of such land, building or part; and

(b) A rent-free occupant.

9. S. 287 of the Act requires that for using any place, within the City of Madras, for any one of the purposes mentioned in Schedule VI of the Act, a licence has to

be obtained from the Commissioner and the place could be used for the above purpose, only in accordance with the conditions specified in the licence. S. 287(3) of the Act requires, the owner or occupier or every such place to apply for the licence, not later than forty-five days and not more than ninety days, before the place is used for such purpose. Sch.VI of the Act, contains a list of business that cannot be carried on, without a licence under S. 287 of the Act. Selling, storing, packing, pressing, cleaning, preparing or manufacturing by any process whatever flour, is included in Schedule VI of the Act. Manufacturing condiments is also included in the Schedule. S. 357 of the Act, is the penal provision for contravening any provision of any section, specified in the first column to Sch.VII of the Act includes S. 287. The case of the prosecution, therefore, is that Buhari & Sons Private Ltd., either as owner or occupier of premises No. 1, First Main Road, Shastri Nagar, Madras-20, was running the mill for grinding flour, condiments and soapnut powder without the necessary licence as, required under S. 287 of the Act.

10. It has now to be determined, whether a "representative" is included either, within the definition of "owner" or within the definition of "occupier". It is not the case of the respondent that the petitioner is running the mill. On the contrary, it is the positive case of Petitioner, that it is Buhari & sons Private Ltd., which is running the mill without licence. The definition of the term "owner" as found in S. 3(17) of the Act is inclusive in nature. Besides the actual owner, it includes any person, who either is receiving or is entitled to receive, the rent or profits of the property, whether on his own account or as agent, trustee, guardian or receiver. It is not the case of the respondent that the petitioner is receiving or is entitled to receive any rent or profits from the mill of Buhari & Sons Private Ltd. On the contrary, it was submitted that the petitioner had received the notice that was sent to Buhari & Sons, by the respondent, requiring Buhari and Sons to get the necessary licence and is therefore its representative or agent. The definition of "owner" clearly indicates that for bringing one who is not the owner, within the definition of "owner", the said person must receive or be entitled to receive, the rents or profits of the property, in any one of the capacities mentioned in the definition. Such a person is sought to be brought within the definition of "owner", in view of the pecuniary benefits he receives or is entitled to receive from the owner. A person who merely receives a notice, on behalf of the owner, is not included in the definition of "owner". The petitioner therefore, cannot be brought within the definition of "owner" as found in S. 3(17) of the Act. Nor can the petitioner be said to be "occupier" as defined in S. 3(15) of the Act, since it is not the case of the respondent, that the petitioner, either pays or is liable to pay to the owner, the rent for the premises used for running the Mill. The petitioner, therefore, will not come within the definition of "occupier" as found in S. 3(15) of the Act. The prosecution launched against the petitioner as representative of Buhari & Sons Private Ltd., therefore, is not legally sustainable and has to be quashed.

11. In the result, the petition is allowed and the proceedings in S.T.C. No. 2520

of 1983 (SM) pending before the XX Metropolitan Magistrate, Nungambakkam, Madras-34 are quashed. It is unfortunate that such prosecutions have to fail due to lack of application of mind by the prosecuting agency, to the relevant provisions of the Act.