

(1938) 03 MAD CK 0031

In the Madras High Court

In Re: Syed Mustafa Sahib and Others

Date of Decision : 25-03-1938

Acts Referred:

Citation : AIR 1938 Mad 910 : (1938) 48 LW 350 : (1938) 2 MLJ 382

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The three petitioners have been convicted under Sections 178 and 339 of the District Municipalities Act for failing to comply

with an order of the Municipality requiring them to metal the streets and lanes constructed on their site and to do other things undertaken to be

done by the petitioners when the issue of a licence was sanctioned to them by the Municipality to erect houses and to sell them.

2. The petitioners jointly petitioned the Municipality to grant them sanction to sell certain plots of land as building sites and they undertook to metal

the roads, cut side drains, and to make provision for scavenging lanes. Roads were laid but nothing else was done. On 24th February, 1937,

notices were sent to the petitioners requiring them to do what they had undertaken to do on pain of prosecution. The petitioners soon afterwards

wrote to the Municipality offering to give up the roads and making them over to the Municipality. The Municipal Council sanctioned the taking over

of the roads; but they were never formally taken over because it was discovered that the petitioners did not metal the roads and put them in a

condition to be taken over by the Municipality. Several notices were issued to them but with no effect. Three cases were laid against the three

petitioners for disobeying the orders. The Sub-Magistrate has convicted them and the convictions have been confirmed in appeal.

3. Section 178 appears to be primarily intended for the proper maintenance of private streets; and the Municipality is given power, in case the streets are not in a satisfactory condition, to issue notices requiring the owners or occupiers of buildings or lands fronting or abutting the streets to carry out the necessary repairs. The persons who are liable under this section seem to be the owners or occupiers of the houses or lands abutting the streets and not the owners of the streets themselves. It would therefore seem necessary, in order to sustain a conviction under this section, that the petitioners are owners or occupiers of the lands abutting the roads. Evidence has been let in to the effect and no objection has been taken to it in the Courts below.

4 The petitioners were also charged u/s 339, and for a conviction under that section it would not be necessary to prove that the petitioners had any ownership in the land abutting the road. They were bound to metal the road and to carry out the various stipulations contained in their agreement with the Municipality and upon failure to do that after receiving notice, they would be liable u/s 339.

5. Objection has been taken to the trial on the ground that various breaches of the agreement have been taken together in the charge; but I do not see any objection to that, because the agreement must be taken as a whole and except as to the laying out of road the petitioners have done nothing to satisfy the agreement.

6. A more important objection is that the Magistrate has adopted the objectionable practice in trying the three cases together and recording evidence in all the cases together. Where there are three cases, those three cases should be kept distinct, evidence let in in each case separately, and conclusions drawn on the evidence let in in each particular case. However, in considering whether the revision petition should be allowed on that ground, one has to consider whether the petitioners suffered any prejudice by these three cases being clubbed together. In most cases of improper clubbing together of cases it would undoubtedly be held that the accused had suffered prejudice by being called upon to meet three cases at the same time; but the present case is particularly simple. It was only necessary to produce a few documents and to examine one witness. I have little doubt that the three petitioners could have been tried together in one case;

and I do not think that their defence has been rendered more difficult because the case against them has been split up into three parts - one against each person. The accused applied together to the Municipality for permission to divide their lands into plots for house sites and to sell them; and they seem at all times to have acted together.

7. In the particular simple circumstances attending this case, I do not find sufficient reason to interfere in revision. The petitions are accordingly dismissed.