
(1929) 07 CAL CK 0046
In the Calcutta High Court

K.T. Hing

APPELLANT

Vs

I.N. Silas

RESPONDENT

Date of Decision : 31-07-1929

Acts Referred:

Penal Code, 1860 (IPC) — Section 268, 290

Citation : AIR 1930 Cal 713

Hon'ble Judges : Suhrawardy, J; Jack, J

Bench : Full Bench

Judgement

Jack, J.—The petitioner is one of the proprietors of the Chinese Theatre Studio on Chittaranjan Avenue. He has been convicted u/s 290, I.P.C., of committing a public nuisance by the annoyance caused by the sounds made by his theatre band, in connexion with performances at the theatre from 12 noon to 4 p. m. and 8 p. m. to midnight every day.

2. The only ground for revision seriously urged is that the prosecution has failed to prove the existence of a public nuisance inasmuch as it has not been shown that annoyance has been caused to the public or to the people in general who dwell or occupy property in the vicinity in accordance with the terms of Section 268, I.P.C. defining "public nuisance." On this point the finding of the learned Chief Presidency Magistrate is as follows:

It is suggested that this is not a public but a private nuisance. Some Mahomedans have been called by the complainant to help him over the difficulty. I doubt if their grievance is very genuine. I imagine they are less susceptible to noise. But, in the peculiar circumstances of this case, as shown by the plans, the complainant and his tenants, represent substantially the public in general who dwell and occupy property in the vicinity. The complainant's house is at present the only substantially inhabited property in the neighborhood. The rest is mostly open space, or covered by small huts. If these were occupied by buildings inhabited by people who would say they did not mind the noise (e.g., Chinese) the matter might be different. But the accused has not called a single person

living in the vicinity to contradict the evidence given by the prosecution.

3. The learned Magistrate finds that:

partly owing to the proximity of the theatre to the complainant's building and partly owing to the unusual nature of the sounds which constitute Chinese music, the complainant and his tenants have a genuine grievance.

4. On the findings, it appears that the only persons affected are those occupying the end of the complainant's building "next the theatre. Not more than seven or eight persons in all occupy these rooms. Of these four including the complainant, have been examined and say that they are annoyed by the noise from the theatre especially at night. The question then is whether the annoyance of these few residents of a single house is sufficient to show that the noise made by the theatre band constitutes a public nuisance, i.e., whether it can be said to cause annoyance to the people in general who dwell or occupy property in the vicinity. There are practically no other people occupying property in the vicinity except the occupants of some huts, the nearest of which is 30 or 40 yards from the front of the theatre. That the other people are affected I do not believe on the evidence or findings of the Magistrate. Taking it for granted that, at the time complained of, the noise was sufficiently loud to seriously annoy the residents of the end rooms of the Silas building, which is built almost right against the stage end of the theatre, it does not follow that it would necessarily cause annoyance to the residents of other buildings in the vicinity, except those very close to the stage end of the theatre. But there are in fact no other people dwelling in the vicinity within unpleasant range of the noise or music of the band. In these circumstances the noise can hardly be called a public nuisance.

5. In the case of *Soltau v. Da Held* (1851) 2 Sim. (S.N.) 133, the Vice-Chancellor held that a peal of bells which caused a nuisance to the residents of the adjoining house could not be called a public nuisance. "If," he says,

the thing complained of is such that it is a great nuisance to those who are more immediately within the sphere of its operation but no nuisance or inconvenience whatever, or is but advantageous or pleasurable to those who are more removed from it, it does not, I conceive, come within the meaning of the term "public nuisance."

6. In the case of *Allen v. Lloyd* (1802) 4 Esp. 200 it was held that the noise made by a tinman which was a nuisance to occupants of three sets of chambers of Clifford's Inn close by, did not constitute a public nuisance, not being sufficiently general in extent to support an indictment. This decision is authority for the contention that where only a very limited number are affected the nuisance does not amount to a public nuisance.

7. The learned advocate for the prosecution has referred the case of *Lallu Ram Vs. Emperor*, . This was a case apparently under a Municipal Act affecting people passing along a public thoroughfare and has no application to the facts of the

present case. It is not, in my opinion sufficient to say that the complainant and three or four of his tenant represent the people in general who occupy property in the vicinity. To constitute a public nuisance as contemplated by Section 290 the annoyance must actually be caused to people in general occupying property in the vicinity. Because the residents of a single house are annoyed by the noise of a theatre, the house holder is not entitled to prosecute, unless he can show that the noise annoys other people living in the vicinity. There is not sufficient proof of this in the present case. I therefore think that the conviction and sentence should be set aside, the accused acquitted and the fine if paid refunded.

Suhrawardy, J.

8. I agree with my learned brother, though not without some hesitation. It may be argued that the evidence falls short of establishing an indictable nuisance.