
(1961) 07 MAD CK 0013
In the Madras High Court

Madurai Municipality

APPELLANT

Vs

Abdul Razack Sahib

RESPONDENT

Date of Decision : 12-07-1961

Acts Referred:

Citation : (1962) 1 MLJ 47

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—Abdul Razack was charged with having committed an offence falling under Sections 175 and 313 of the District

Municipalities Act. He was tried by the Judicial Sub-Magistrate of Madurai who held that the prosecution was barred by limitation. Since I

propose to confine myself to only this question, the other conclusions reached by the learned Magistrate that in addition to the above defect there

was no valid sanction for the prosecution and further that the case did not fall within the scope of Section 175 of the District Municipalities Act, are

not being dealt with herein. On the acquittal of the accused, Special Leave to appeal was applied for and granted by this Court. In this appeal the

correctness of the view taken by the learned Magistrate in acquitting the accused is being-canvassed.

2. For a consideration of the question of limitation, it would be sufficient to state that the accused purported to sell his land in certain plots and those

sales had been effected on 9th September, 1958. Sanction to prosecute is said to have been granted on 13th May, 1959 and the prosecution itself

was launched only on 29th July, 1959.

3. Section 347 of the District Municipalities Act provides that no person shall be

tried for any offence against the provisions of the Act except on the complaint of a proper authority made within three months of the commission of the offence.

4. There is a proviso to this section which singles out ""failure to take out a licence, obtain permission or secure registration under this Act shall, for the purposes of this section, be deemed a continuing offence"" and normally in such cases complaint may be made at any time within twelve months from the commencement of the offence. It would accordingly appear from the main part of Section 347, that the prosecution should be launched against a person offending against the provisions of the Act within three months of the commission of the offence, that is to say, the complaint itself should be laid before the Court competent to deal with the trial of such offences within that period. Prima facie it does not appear that the complaint in this case was so laid. If the sale of the property in violation of the specific requirements of Section 175 of the Act, to which I shall presently refer, is the offence complained of and that was effected on 11th September, 1958, the filing of the complaint some time in July, 1959, is obviously hopelessly out of time. Learned Counsel, however, seeks to get over this bar of limitation by relying upon the proviso, which I have referred to, and to make out that the present offence is one of a continuing type, in the case of which the period of limitation is twelve months from the commencement of the offence.

5. I am unable to accept this contention. The main body of Section 347 provides what may be called the normal period of limitation for a variety of offences against the provisions of the Act. What the proviso does is to take out some types of offences and provide a longer period of limitation in such cases. A careful scrutiny of this proviso indicates that only three such types of offences are treated as continuing offences for the purpose of this section. They are plainly listed out in the proviso and unless the learned Counsel can establish that the offence of non-compliance with the provisions of Section 175 is an offence which would come within the categories mentioned in the proviso, he cannot, with any substance, plead that it is a continuing offence entitling him to depend upon the longer period of limitation. In order to understand, therefore, whether the alleged offence can be brought within the scope of this proviso, the nature of the offence

contemplated by Section 175 of the Act has now to be examined.

6. Section 175, in so far as it is material for our purpose, states thus:

If the owner of any land...sells...such land or any portion or portions of the same as sites for the construction of buildings, he shall...lay down and

make a street or streets or road or roads giving access to the site or sites and connecting with an existing public or private street.

What the section lays down is, therefore, that where a person purports to sell land belonging to him as sites for the construction of buildings, he has

to provide either street or streets in order to give access to the site or sites sold from any existing public or private street. Section 313 of the Act

makes the non-compliance with the provisions of Section 175 a punishable offence. The substance of the offence u/s 175 is the sale of land as sites

for construction without making provision for a street or streets. If a sale, which would be impugned in that manner, is the incident which lays the

owner open to a prosecution u/s 313, the question is, whether we can regard it as a continuing offence for the purpose of Section 347, proviso. In

his argument on this head the learned Counsel for the Municipality claims that before a person could sell any portions of his land as sites for the

construction of buildings, he has to plot them out and lay out the streets in conformity with the provisions of Section 175. When a person makes

new private streets of that description, he has to comply with the requirements of Section 176 of the Act which lays down that the owner laying out

a new private street shall make a written application to the Municipality with plans and other full particulars and obtain the sanction of the

Municipality for the making of such a street. According to the counsel therefore, the permission of the Municipality is required and when such

permission has not been obtained, that should be sufficient to attract the application of the Proviso to Section 347, which gives an extended period

of limitation to an offence constituted by a failure to obtain permission. I do not propose to enter into a discussion of the validity of this argument

for the simple reason that there is no charge against the accused for failure to obtain any permission for any particular purpose. The only complaint

that was made against the accused and that was entertained by the lower Court was that he had failed to comply with the provisions of Section

175, that is to say, that he had sold portions of the land as sites for the

construction of buildings without making any provision for streets. It is not necessary for me now in this particular case to consider whether if an owner of land had sold portion of the land as sites for construction of buildings, having made due provision for the streets, but had failed to obtain the permission of the Municipality u/s 176, whether, even in such an event, he would be liable for prosecution and if so, under what provision of law. Here is a simple case where the only charge that the accused was called upon to meet was that he had sold the land as building site without making due provisions for roads. That is obviously not an offence which comes within the scope of any of the three categories of offences for which the Proviso to Section 347 appears to have been enacted. That apart, if the sale, under those circumstances, is the offence complained of, I can hardly see how it can be treated as a continuing offence if the offence is completed the moment the sale takes effect. There is no meaning in saying that if the sale is the offence, it can still be a continuing offence after the sale itself has been effected. But for the specific purpose of coming within the scope of the Proviso to Section 347, it is not every continuing offence that can be so brought within that provision. It is only such of those offences which are listed in this Proviso that are deemed to be continuing offences for the purpose of that Proviso. The present case is not one such.

7. I am accordingly satisfied that the bar of limitation u/s 347 fully applies to the case and the learned Magistrate was correct in the view he took.

The appeal fails and is dismissed.