
(1953) 12 AP CK 0003
In the Andhra Pradesh High Court

Mohd. Karim Khan

APPELLANT

Vs

Commr. Hyderabad Municipal Corporation

RESPONDENT

Date of Decision : 02-12-1953

Acts Referred:

Hyderabad Municipal Corporation Act, 1955 — Section 338, 338(1)(d)(i), 338(1)(d)(ii)

Citation : (1954) CriLJ 1176

Hon'ble Judges : M.S. Ali Khan, J

Bench : Single Bench

Judgement

M.S. Ali Khan, J.—This is revision petition No. 54, register No. 6 of 1953. The First Court, City Criminal Courts, by judgment dated 31-3-1953, has fined the revision-petitioner, Mohd. Karim Khan, Rs. 15/- for contravention of Section 338 of the Hyderabad Municipal Corporation Act. Hence this revision petition. I have heard the arguments of the learned advocate, Shri Mohd. Aslam Khan, for the revision-petitioner and Shri Syed Ahmed All Khan for the Hyderabad Municipal Corporation. I record my opinion below.

2. The learned advocate for the revision-petitioner argued that his press has been in existence since 1346F. in accordance with the permission granted by the Home Department in consultation with the Municipality and the Police; that the Hyderabad Municipal Corporation Act is applicable to new presses as has been laid down in a similar case in - "12 Nazaer-e-Osmania 337 (A)" and, therefore, as his press is an old one, the sentence of fine passed against him is incorrect and should be quashed. He argued further that the press is in the compound of the Jame Masjid, Charcaman that there are no houses surrounding it and it causes no nuisance whatsoever to anybody, either to the denizens of the locality or the public which passes on the road. The learned advocate for the Municipality argued that the liability is u/s 338(1) (d) (ii) of the Act which prohibits carrying on any trade on a premises, likely to cause a nuisance; that the press does make noise and is a nuisance. It also uses a lot of paper and ink and thus causes a lot of dirtiness and, therefore, now that the Hyderabad Municipal Corporation Act is

enforced, there is the obligation on the part of the revision-petitioner to pay a licence fee to the Corporation for his running the press. He argued that the noise causes annoyance not only to the denizens of the locality but also to the persons who come to pray in the mosque; that the fine could have been upto Rs. 500/- but only Rs. 15/- have been imposed and, therefore, it should not be set aside.

3. I have considered the arguments of the learned advocates. As already stated, the learned advocate for the Municipal Corporation stated that the liability of the revision-petitioner rested on Section 338(1)(d)(ii). I will quote this provision:

338. (1) Except under and in conformity with the terms and conditions of a license granted by the Commissioner no person shall-

(d) carry on, or allow to be carried on, in or upon any premises-

(i) any of the trades or operations connected with any trade specified in the rules:

(ii) any trade or operation which in the opinion of the Commissioner is dangerous to life or health or property or likely to create a nuisance either from the nature, or by reason of the manner in which, or the condition under which the same is, or is proposed to be, carried on;

It is evident that under this provision the liability to carry on any trade or operation upon any premises rests on that trade or operation being in the opinion of the Commissioner dangerous or likely to create a nuisance. The learned advocate argued that working an electrical printing press is a nuisance. Assuming without holding that it is so, it should be noted that the assessee is to be informed that it is so in the opinion of the Commissioner. This is expressly provided in Section 338(2) which runs as follows:

A person shall be deemed to have known that a trade or operation is, in the opinion of the Commissioner, dangerous or likely to create a nuisance within the meaning of para. (ii) of Clause (d) of Sub-section (1) after written notice to that effect, signed by the Commissioner, has been served on such person or affixed to the premises to which it relates.

A perusal of the file will show that no such notice was served upon the revision-petitioner. A notice was served on 4-11-1952. It is signed by P. R. Padukone, who was then the Commissioner of the Municipal Corporation. The content of this notice is devoid of any expression of opinion by the Commissioner that running of the press is a nuisance. It only intimates that the press is being run without taking a licence, and that the revision-petitioner should within a week obtain a licence, in this context even assuming without holding that the running of the press is a nuisance, the condition precedent for the incident of liability is absent and, therefore, no liability can attach to the revision-petitioner.

4. It appears to me that it would be rather stretching the word "nuisance" to include the carrying on of an electrical press in it and to hold! that it causes nuisance to the public. No doubt, a press does use ink and cause some rubbish in

the shape of waste paper, and paper cuttings with some noise also, but it will be very incongruous to hold that this is a nuisance; for the last, sub-section, namely, Sub-section (8) of Section 338 itself provides that

nothing in this section shall be deemed to apply to mills for spinning or weaving cotton, jute, wool, or silk or to any other large mill or factory...

To exempt spinning or weaving of cotton from being a nuisance and to include the running of an electrical press within the meaning of "nuisance" will be obviously inconsistent.

To my mind, it is but fair that Municipality should charge a licence fee and control the running of a press with reasonable conditions incorporated in the licence, but this should be not as alleged by the learned advocate u/s 338 (1)(d)(ii) but u/s 338(1)(d)(i). I have already quoted this sub-section above, under which such trades as are specified in the rules are made liable to obtain a licence. Presses may very well be mentioned in the rules to be a trade or operation. Which should require a licence. This means that the Corporation will have first to frame rules and! then to impose liability. It may be that the rules are already framed. Some reference is found in the judgment under revision. But the learned advocate in spite of my request did not produce any such rules. This suggests that the rules have not been framed and before they are framed, I do not think, for the reasons stated above, that any liability can be imposed or any licence fee charged under the provision relied on by the learned advocate for the Municipal Corporation.

It should be noted that in this case particularly, it was stressed by the learned advocate for the revision-petitioner that the press is in an out-of-the-way place and that permission was accorded by the Home Department in consultation with the Police Department and the Municipality indicating that it was not a nuisance either to the residents or to the persons who pray in the mosque. For all these reasons I allow this revision-petition, and set aside the order under revision.