
(1948) 09 AHC CK 0032
In the Allahabad High Court

Municipal Board

APPELLANT

Vs

Sami Ullah

RESPONDENT

Date of Decision : 02-09-1948

Acts Referred:

Citation : AIR 1949 All 220 : (1948) 18 AWR 362 : (1949) CriLJ 331

Hon'ble Judges : Wanchoo, J;Agarwala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Agarwala, J.—This is a reference made by the Additional District Magistrate of Banaras. The opposite party, Sami Ullah, was prosecuted under Sections 185, 307 and 299, U. P. Municipalities Act. He was convicted and sentenced to a fine of Rs. 15. The Municipal Board, at whose instance the accused was prosecuted, went up in revision to the District Magistrate of Banara⁹. In its view, the fine was too little and should have been Hs. 100 which was the minimum laid down in a bye law framed by it with the sanction of the Local Government u/s 299 (I)i Municipalities Act. The learned Additional District Magistrate before whom the revision came up for hearing has accepted the plea of the Municipal Board and has made this reference.

2. Section 299 (1), U. P. Municipalities Act, empowers Municipal Boards to make rules with the sanction of the Provincial Government directing that a breach of the rules made by it under other sections of the Act shall be punishable with a fine which may extend to five hundred rupees, arid, when the breach is a continuing breach, with a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence. Under the provisions of this section, the Municipal Board of Banaras passed the following bye-law:

In exercise of the power conferred by Section 299 (1) of the Act, the board hereby directs that an; breach of the provision of the above bye-laws shall be

punishable with fine which may extend to Ea. 1,000 and shall in no case be less than Rs. 100.

It is clear that if this bye-law is valid, the imposition of a fine of Rs. 16 only by the learned Bench Magistrates was contrary to it and was, therefore, not proper. learned Counsel appearing for the accused argues that there was no power in the Municipal Board to fix the maximum limit at Rs. 1000 when Section 299 (1), Municipalities Act, laid down the maximum limit as Rs. 500 only and since the Board had attempted to do what it could not do, the bye-law, and a whole, was invalid and could not be enforced. We find that the maximum limit prescribed u/s 299 (1), Municipalities Act, is, indeed, Bs. 600 and that, therefore, the Municipal Board had no power to impose the maximum limit of Rs. 1,000 and, in so far as the bye law did so, it is bad in law and void. In our opinion, however, that does not make the entire bye-law and specially that part of it which says that the minimum fine to be imposed for a breach of the rule shall not be less than Rs. 100 bad in law.

3. The general rule of law applicable to such cases in that where the bad portion of an enactment can be separated from the good portion, the good portion can still be enforced. But where the bad portion cannot be so separated and it is inextricably mixed up, then the whole enactment becomes bad. The test to find out whether the portion which is bad can be separated from the rest or not is to see if after omitting the bad portion, the rest of the enactment is workable and does not frustrate the intention of the rule making body, and is quite independent of the bad portion. In this case, we find that if we exclude from consideration the clause in the bye law which fixes the maximum limit of fine at Rs. 1,000, the rest of the bye-law is workable and is in harmony with the intention of the Board, and is not dependent on the clause which is bad. Under these circumstances, we think that the minimum penalty that should have been imposed by the Bench Magistrates, II grade, who tried the case was Bs. 100.

4. The result, therefore, is that we accept this reference and sentence Sami Ullah, opposite party, to a fine of Rs. 100. In default, he shall undergo a simple imprisonment for fifteen days.