

(1966) 02 MAD CK 0007

In the Madras High Court

Case No : Criminal Revision Case No. 483 of 1965 (Crl. Revision Petition No. 469 of 1965)

Municipal Commissioner, Nagarcoil

APPELLANT

Vs

M. Chinnammal

RESPONDENT

Date of Decision : 18-02-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 417(3), 439(5)
Tamil Nadu District Municipalities Act, 1920 — Section 175, 313, 347

Citation : AIR 1966 Mad 479 : (1966) CriLJ 1461

Hon'ble Judges : M. Anantanarayanan, O.C.J.

Bench : Single Bench

Judgement

(1) There are two grounds on which this revision proceeding by the Nagarcoil municipality represented by its Commissioner, seeking to assail the propriety of an acquittal of the respondent u/s 175 read with S. 313 of the Madras District Municipalities Act, will have to fail. The first is the ground of the maintainability of a revision from acquittal of this character and it is governed by the juxtaposition of the respective spheres of operation of S. 439(5) Crl.P.C. and S. 417(3) Cr.P.C. u/s 417(3) Cr.P.C., if an order of acquittal is passed in any case instituted on complaint, if he desires to further prosecute his remedy in respect of such an order of acquittal of the accused, will have to apply to the High Court for special leave to appeal. u/s 439(5) Crl.P.C., where a remedy by way of an appeal from acquittal is provided for, and no such appeal is brought, the party who could have appealed is barred from prosecuting a remedy by way of revision.

(2) In the present case, admittedly, leave was not obtained under S. 417(3) Cr.P.C. and this is not an appeal from the acquittal of the respondent.

The argument on maintainability is that in two proceedings of this court (S.R. Nos. 30183 and 1083 of 1965 (Mad) and Cr.R.C. No. 724 of 1964

(Mad) Sadasivam J. & Natesan J. have both respectively held that the party could not prefer a criminal revision, and that his true remedy was only

to prefer an appeal, after obtaining the necessary leave under S. 417(3) Cr.P.C. Certain observations of a Bench of this court in In Re: Seeni

Ammal, to which decision I was a party, have been cited for a contrary view. But, as the learned Judges have pointed out in their judgments, the

decision in In Re: Seeni Ammal, does not touch upon this matter at all, and, the scope of S. 439(5) Cr.P.C. did not come up for consideration in

that judgment. That was not a case instituted on private complaint, and hence, on the point of maintainability, it would appear that the revision, in

this form, is not maintainable.

(3) Even apart from this question, and on the merits, it seems to be clear that the sale of a house site for the construction of a building without

making any provision for a street, is a single offence, and does not constitute a continuing offence. This was already held by Srinivasan J. in

Madurai Municipality Vs. Abdul Razack Sahib, . It is true that S. 175 has been listed as one of the offences which could be treated as a continuing

offence under Sch. VIII of the District Municipalities Act. As shown by the last column of that schedule, in respect of such a continuing offence, a

fine of Rs. 5 could be imposed for each day of the continuance. But, as pointed out by Srinivasan J. in the decision earlier referred to. the proviso

to S. 347 of the Act makes it clear that only offences specified under law, or enumerated as a type of continuing offence, could be treated as such.

The learned Judge observed:

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"".

(4) I may here observe, by way of elucidation, that S. 175 really relates to three categories of conduct, without making a provision for a access to

a street or road from the concerned house site. The first is utilisation, the second is sale, and the third is lease. It will immediately be obvious that,

with regard to both utilisation and lease, there could be continuing offences by the same owner, for the simple reason that the ownership in the

same individual will persist throughout. But, where there has been a sale of the

building site without providing for the required access, this act of sale is no doubt an infringement and punishable as such. But, once the sale has been effected, the ownership ceases, and it is the vendee who may be further liable for prosecution for utilisation or lease, or a subsequent sale, if effected, of the concerned property without providing the required access, if the original owner is to be prosecuted for the offence, as a continuing offence, even after the sale, he will have the simple defence that he is no longer the owner of the property within the meaning of the opening words of S. 175, "if the owner of any land utilises, sells, leases..... Hence the sale cannot be a continuing offence in respect of the vendor who ceases to be the owner after the title passes to the vendee. For this reason, the acquittal in the present case would appear to be perfectly proper, and to call for no interference. The revision is dismissed.

(5) Revision dismissed.