

(1971) 02 MAD CK 0009

In the Madras High Court

Case No : Criminal R.C. No. 516 of 1970 (Crl. R.P. No. 515 of 1970)

S. Chattanatha Karayalar

APPELLANT

Vs

The Executive Officer, Puthalam Panchayat

RESPONDENT

Date of Decision : 09-02-1971

Acts Referred:

Tamil Nadu Panchayats Act, 1958 — Section 181

Citation : (1971) LW(Cri) 122

Hon'ble Judges : K.N. Mudaliyar, J

Bench : Single Bench

Advocate : K.L. Krishnan, for the Appellant; S. Padmanabhan and S. Jagadeesan for the Public Procecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Mudaliyar, J.

This revision petition is directed against the conviction of Chattanatha Karayalar, Proprietor, S.M. K.M. Along, the petitioner herein, for an

offence under S. 111 read with S. 181 of the Madras Panchayats Act, 1958. Briefly the facts are as follows:

P.W.1 is the Executive Officer of Puthalam Panchayat. The Allen named as S.M.K.M. Allen was within the Panchayat limits of Pathalam where

two electric motors of 15 and 5 H.P. were being used. That it falls within the jurisdiction of Pathalam panchayat area is not controverted by the

learned counsel for the petitioner by reason of the judgment of this High Court (Ex. D-5 dated 7-12-1962). The gravamen of the complaint by the

panchayat against the petitioner is that he was using the two electric motors without taking a licence as per law for the year 1968-69. On these

facts, he was convicted for an offence under S.111 read with S 181 of the Madras

Panchayats Act.

The learned counsel for the petitioner argued that the conviction of the petitioner is vitiated on the ground that the prosecution failed to prove the

notification issued under S. 111 of the Act. The relevant Cls, (1) and (2) (1) of S. 111 are extracted below:

111. (1) the Government may, by notification specify the purposes which, in their opinion, are likely to be offensive or dangerous to human life or health or property.

(2) (i) The Panchayat union council in the case of panchayat villages may, with the previous approval of the prescribed authority notify that no

place within the limits of any panchayat village in the panchayat development block or within the limits of such panchayat village or, villages as may

be specified in the notification shall be used for any of the purposes specified in the notification issued under Sub-S. (1) without a licence and

except in accordance with the conditions specified in such licence.

There is no doubt that the prosecution has not produced nor proved the notification issued by the Government under S. 111 of the Act. But, the

notification issued by the panchayat union council under S. 111 (2) (i) of the Act is marked by the prosecution as Ex. P-8 in English and P-7 in

Tamil. The learned counsel did not raise any argument that the Executive Officer of Pathalam panchayat chose to exercise the powers in the

absence of any notification issued by the Government under S. 111 (1), In fast notification of the Executive officer, Pathalam panchayat in Ex.F-8

in dated 13th December, 1962. A reading of the two parts of S. 111 would discuss that "both the parts of the section are so integrated that the

Executive Officer of the panchayat would not have acted on his own without the existence of a notification issued by the Government under S. 111

(1). It would have been better if the prosecution had marked the G.O. number 113, R.D.L.A. dated 12th January, 1961 which mentions the

purposes which are likely to be offensive or dangerous to human life. In the said G.O. there is mention of the ""machinery (other than such

machinery as may, by notification, be exempted by the State Government, from time to time, using for any industrial purpose"". No attack was

made to the effect that in view of each an entry regarding the purposes notified by the Government under S. 111(1), the running of the two electric

motors would not come under "say of the purposes specified in the notification issued under sub-S. (1) without a licence". His main attack was

about the want of legal proof of the notification issued by the Government under S. 111. This argument can be easily met when one remembers the

contents of Ex. D 1, marked on behalf of the accused-petitioner. In fact the judgment in C.C. 1022/64 in which the defence rated, mentions about

the issue of the Government notification dated 12th January 1961 in page 390 of the Fort St. George Gazette, wherein the Pathalam panchayat

was made a town panchayat. The learned trial magistrate in the judgment marked Ex. D. 1 states as follows:

Ex. P. 1 is the notification. In it, it was specified as to what are the trades while are classified as dangerous to human life. One of the items is

machinery running with electric power,

Who accused-petitioner is fully aware of the existence of the notification issued by the Government under S. 111 of the Act and the said document

containing a mention about the existence of the notification under S. 111 of the Act is filed on behalf of the defence itself. Than apart, in view of S.

57 of the Indian Evidence Act, the Court can take judicial notice of the existence of the notification under S. 111 of the Act. Public Prosecutor v.

Thippayya ILR 1940 Mad 372), the learned Judge (Sabba Rao, J) observed that-

Under S. 57 (1) of the Indian Evidence Act, the Court should take judicial notice of all Indian laws. "Indian Law" is defined by the Council Clauses

Act and under S. 3 (27-a) includes any law, ordinance, order, bye-law, or regulation passed or made of any time by any competent Legislature

, authority or person in British India.

A full Bench of Madhya Bharat High Court in State v. Gopal Singh AIR 1956 MP 138, held that-

But there can be doubt that if a notification is a part of any Act, Ordinance as Order, It would be within the definition of law or existing law.....

Judicial notice, can, therefore, be taken of a notification issued by the Government or and competent authority is the exercise of delegated power

of legislation as such a notification is a part of the law itself. Judicial notice case not, however, be taken of a notification issued by any authority in

the exercise of its executive functions.

There is a further report in Secretary M.M.Committee v. Bapputty (1962) 2 Cri. L.

J. 549, that-

Bye-laws framed by a Market Committee under S. 19 of the Madras Commercial Cross, Markets Act are framed in the exercise of delegated

power of legislation and have the force of law and as such courts can take judicial notice of them under S. 57 of the Evidence Act.

Ana Chandy, J. has cited an AIR 1965 S.C. 25, AIR 1951 S.C. 318 and AIR 1956 MP 138 in support of this proposition of law. I need hardly

add that the notification issued under S. 111 of the Act is a part of the law itself as the same has been issued by the competent authority, seems by

the Government, in the exercise of the statutory power vested in it under S. 111 (1).

The learned counsel relied on the division in Chacko Pyli v. State of Kerala 1966 M.L.J. Cri. 413, for his proposition that under S. 57 of the

Evidence Act, a Court is not entitled to take judicial notice of a notification issued by the Government. In view of the existence of Ex. D1

containing the mention of the existence of the relevant G.O. It is necessary for me to look out for production of the gazette as indicated in the

Kerala ruling. I find no substance in this argument.

The learned counsel relied on a decision Salekh Chand and Another Vs. The State of Uttar Pradesh, But that was a case where there was need of

legal proof of the controlled price which is payable or being proved only by a notification. If any witness speaks about price that may be even

tantamount to hearsay. Therefore, their Lordships of the Supreme Court insisted on the legal proof of the controlled price in the peculiar facts and

circumstances of that case. In another case in Chandrasekharan v. State 1965 M.L.J. Cri. 806 against the proof of the controlled price was

necessitated upon by production of legal evidence. The same observations made by me in regard to the ruling of the Supreme Court would apply

to the peculiar facts of this ruling. I do not accept the argument of the learned counsel for the petitioner in regard to this need for the legal proof of

the notification issued by Government under S. 111 of the Act. This Court takes judicial notice of the existence of the notification, more particularly

by reason of the contents of Ex. D1 filed on behalf of the accused-petitioner.

The learned counsel relied on paragraph 11 of the judgment of the appellate Court and argued that there is no positive evidence as to what actual

use in the process of manufacture in that Allom these two electric motors were being installed and used. The petitioner knows beet as to what use

he is putting the two electric motors in his salt pans. It is not has case that they have fallen into disuse or demoted, as it were. The learned appellate

Judge observed that one of the Ingredients and material in the manufacture of salt is being pumped or conveyed through with the said meters. The

learned judge was justified in finding no force in the argument that the said two motors were not engaged in a manufacturing process. I reject this

argument.

The last argument advanced by the learned counsel was that Ex. D1 is a judgment which acquitted the accused-petitioner in the year 1964. There

have been no change of circumstances as proved by the prosecution and therefore apart from the doctrine of autrefois acquit availing the accused-

petitioner, there is also the doctrine of estoppels. The learned counsel relied on the judgment of the Supreme Court in State of Andhra Pradesh Vs.

Kokkiliagada Meerayya and Another, . A part of the relevant paragraph 7 of the trial Court judgment Ex. D1 is extracted below:

In the Pantheist Act one finds that if a person installs machinery or applies for renewal, he has to obtain licence by paying the prescribed fee. In this

case the accused has not installed any machinery in order to apply for licence and he has also not applied for renewal. The contention of the

defence counsel that State Government cannot divert the right which has already accrued appears to reason.

The trial Magistrate has erred in not realising that there is a statutory duty laid on the shoulders of the accused-petitioner to take out licence or

apply for renewal if two electric motors are in use. A combined reading of the two parts of S. 111 of the Madras Panchayats Act read with the

contents of Ex. P8 would impose a statutory duty on the part of the accused-petitioner to apply for a licence if not for renewal even assuming the

two electric motors were installed sometime back. The extracted passage does not sum up the position of law in the context of 8. 111 read with S.

181 and in view of Ex. D1 which contains a reference of the existence of Ex. P1 and Ex. P 8. I find no substance in this argument.

I am under deep obligation to Thiru K. Alagiriswamy for the able and excellent assistance rendered to the Court by reason of his special

knowledge of the working of the Madras Panchayats Act.

The Criminal revision petition is dismissed.