

(1989) 05 RAJ CK 0023

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 22 of 1983

Smt. Ajeet Mehta and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-05-1989

Acts Referred:

Citation : (1990) CriLJ 1596 : (1990) 3 RCR(Criminal) 559 : (1989) 1 RLW 598 : (1989) 2 WLN 273

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Advocate : M.M. Singhvi, for the Appellant; N.N. Mathur, M.C. Bishnoi, (for Nos. 2 and 3) and S.K. Mathur, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, J.—This revision petition is directed against the order dated 4-9-1982 passed by the learned Additional Sessions Judge No. 2, Jodhpur City Jodhpur.

2. The brief facts giving rise to this revision petition are that a complaint was filed by Shri M.M. Mehta a resident of P.W.D. Colony, Jodhpur to the effect that the non-petitioners are doing business of fodder and are stocking this fodder namely, Chipta, Pala, Kutrar Khakla and grass at plot No. 113-C, P.W.D. Colony, Jodhpur. It was also alleged that in the course of their business the non-petitioners bring different kinds of fodder in huge quantity through truck and tractors and stock on this plot. The residents on account of stocking of the fodder suffer physical discomfort and it is a health- hazard for the residents of whole of the colony. Therefore, it was prayed that this nuisance should be removed from the area.

3. A return was filed by the non-petitioners and it was alleged therein that the complainant is not the neighbour to the place of their business and they are doing this business since 1979-80. They also denied the allegation of bringing of

the fodder every day in trucks, tractors and trollies. It is also alleged that there is 10 wall in between the house of the complainant and the place of their business, where the fodder is kept and the complainant is not likely to be inconvenienced. It was also denied that it is going to cause nuisance to all the residents of the locality. It is also alleged that this plot was taken by the non-petitioners on a monthly rent of Rs. 600/-. It was also alleged that when in the year 1980 Mr. Mehta complainant constructed his house, they vacated half of the plot voluntarily.

4. In support of his case, the complainant examined himself as P.W. 3, Ms. B. Joseph P.W. 1, Mr. B.K. Mathur P.W. 2 who was Deputy Town Planner and Dr. Ashwini Kumar Chhangani Dy. Chief Medical and Health Officer (Health) Jodhpur as P.W. 4. The non-petitioners examined Goru Ram, Ram Chandra, Kheta Ram, Ganpat Lal and Dr. P.D. Modiani.

5. The learned City Magistrate, Jodhpur after perusing the pleadings, recording the necessary evidence and hearing both the parties passed a detailed order on 4-6-1982 and held that the non-petitioners business in fodder is causing a health hazard to the neighbours. Therefore, he modified his conditional order and directed the non-petitioners to remove their business within 15 days and they should not do this business on this plot again. Aggrieved against this order, a revision was preferred by the non-petitioners before the learned Sessions Judge, which came to be disposed of by the learned Additional Sessions Judge No. 2, Jodhpur and the learned Additional Sessions Judge reversed the order. Hence, the present revision petition has been filed by the wife of the complainant Mr. M.M. Mehta and his son along with other persons as Mr. M.M. Mehta died during this period.

6. Mr. Singhvi, learned counsel for the petitioners submits that the learned Additional Sessions Judge has not approached the matter in correct perspective and has acted as an appellate court. Learned counsel submitted that it is clear that stocking of the fodder has created a great health hazard to the residents of the area as the whole atmosphere is polluted on account of fine dust of the fodder and inhaling of the same causes number of health problems. Learned counsel in this connection has specifically invited my attention to the statement of Dr. B. Joseph as well as the statement of Dr. A. K. Chhangani who is a qualified public health man. In this connection, learned counsel has also specifically invited my attention to a decision of their Lordships of the Supreme Court in Gobind Singh Vs. Shanti Sarup,

7. As against this Mr. Mathur, learned counsel for the non-petitioners, urged before me that there is no ground for interference with the order of the learned Additional Sessions Judge.

8. I have considered, the arguments of the learned counsel for the parties and have also gone through the record. It is true that by stocking of various kinds of fodder, some of them are of fine cutting piece of fodder and some are of large

cutting of the fodder and their loading and unloading, the particles of the fine cutting fodder pollute the whole locality and inhaling of these particles by the residents of that area certainly causes a health hazard. It is unfortunate that a little care is now bestowed to the pollution problem and a very lackadaisical approach is taken to this pollution problem. Very rarely the people come forward and resist the same. They are normally discouraged on account of the slow moving of the State machinery as well as the Court. But this is one of the unique case in which the petitioner has taken the whole exercise and brought this motion to put an end to this problem of pollution of the area. Every individual has a right to have fresh air and water. But on account of poor sanitary arrangements by the Municipalities a very little care is taken to keep the atmosphere clean. In view of the statements of Dr. Joseph and Dr. A.K. Chhangani I am convinced that the statements of these witnesses squarely establish that stocking of the fodder constitutes pollution of the atmosphere. Dr. A. K. Chhangani, who was working at the relevant time as Dy. Chief Medical and Health Officer (Health), Jodhpur has deposed that he is a qualified public health person and he has inspected the site. According to him, dust leads to a health hazard and causes a filinotis disease of lungs known as Pneumomycosis. Filinotis results to crippling a man by reducing lungs working capacity and related phenomina. He was cross-examined at length and he has answered all the questions which are relevant. My attention was also invited to the statement of Dr. Joseph who is one of the residents of that area. She as a layman has deposed that the fodder particles when inhaled causes them great inconvenience and affects the health. My attention was also invited to the statement of Mr. B. K. Mathur, who is an architect and Dy. Town Planner. He has also deposed that the fodder is daily brought to this area by trucks, bullock carts, tracters and they are loaded and unloaded every day. He has also deposed that on account of the particles of the fodder the life of the residents have become misreable. My attention was also invited to the statement of Mr. M.M. Mehta who was living besides this fodder depot and according to his statement, it is established that dust particles of the fodder make their living uncomfortable. It is also deposed by the witnesses that on account of stocking huge quantity of fodder, which is also inflamable would cause a serious problem of fire at any time. In this background the learned Additional Sessions Judge was not correct in appreciating the evidence and reversing the finding of fact recorded by the learned Magistrate on the basis of this material.

9. In this connection, I may also like to refer to the celebrated observations made by their Lordships of the Court of Appeal (Sir Wilfrid Greene, M.R., Romar and Scott, L. JJ;) in *Andrea v. Selfridge & Company Ltd.* (1937) 3 All ER 255 which reads as under :--

"But that the complaints were substantial complaints I, for one, am satisfied, and I certainly protest against the idea that, if persons, for their own profit and convenience, choose to destory even one nights rest of their neighbours they are doing something which is excusable. To say that the loss of one or two nights

rest is one of those trivial matters in respect of which the law will take no notice appears to me to be quite a misconception, and, if it be a misconception existing in the minds of those who conduct these operations, the sooner it is removed the better."

Therefore, if one works for his own benefit and causes any inconvenience to others, he would not be excused. Whatever may be the nature of the nuisance, be that as it is, a trivial or major, the individual's freedom and liberty cannot be compromised by any other person except in accordance with law. If one works for gain and causes discomfort to any individual, that cannot be countenanced. In this connection I may also usefully quote the following observations of their Lordships of the Supreme Court in *Gobind Singh Vs. Shanti Sarup*, wherein the chimney of a bakery was emitting smoke on a public road affecting health of the people and the oven could cause conflagration; therefore it was held that where health, safety and convenience of the public at large are involved, the safer course would be to accept the view of the Magistrate who himself had seen the hazard. The Magistrate's order was upheld.

"It is clear from the judgment of the learned Sub Divisional Magistrate that the evidence disclosed that the smoke admitted by the chimney constructed by the appellant was "injurious to health and physical comfort of the people living or working in the proximity" of the appellant's bakery and that there was no justification on the part of the appellant for discharging the smoke from the chimney on the G.T. Road. The learned Magistrate had made a local inspection on the basis of which he prepared a report dated February 11, 1970. That report and the photo print Ex. A. show that the upper horizontal part of the chimney constructed by the appellant just out into the G.T. Road to the extent of about six feet. Considering the nature of this construction and the volume of smoke emitted by it the learned Magistrate concluded that the chimney was not only an encroachment upon a public place but its construction led to a graver consequence. Allowing the use of the oven and the chimney was, according to the Magistrate, "virtually playing with the health of the people." A strong wind, according to the learned Magistrate could carry the flame over a distance and cause a conflagration."

In the aforesaid case, even emitting smoke from a chimney was found to be polluting the area and therefore it was ordered to be removed by the learned Magistrate and the same was affirmed by their Lordships of the Supreme Court. Therefore, it is clear that public health cannot be allowed to suffer on account of personal business of any individual. Thus, the view taken by the learned Additional Sessions Judge in reversing the order of the learned Magistrate does not appear to be correct. I am satisfied that the order passed by the learned Magistrate is based, on material and there was no occasion for the learned Additional Sessions Judge to have reversed the finding, inasmuch as no cogent reason has been recorded by the learned Additional Sessions Judge for reversing such a finding of fact.

10. In the result. I allow the revision petition, quash the order of the learned Additional Sessions Judge No. 2 Jodhpur dated 4-9-1982 and direct the non-petitioners Nos. 2 and 3 shall remove the stocking of the fodder and shall not do any business of fodder from Plot No. 113-C P.W.D. Colony near Riktya Bheruji. However, the non-petitioners Nos. 2 and 3 are given six months" time to remove the fodder and for searching out a new place for their business.