

(1982) 06 MAD CK 0005

In the Madras High Court

Case No : Criminal Appeal No. 906 of 1979

Special Officer, Namakkal Municipality, Namakkal

APPELLANT

Vs

S. Krishnaveni

RESPONDENT

Date of Decision : 17-06-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Tamil Nadu District Municipalities Act, 1920 — Section 205, 205(1), 205(2), 205(3),
317

Citation : (1982) 06 MAD CK 0005

Hon'ble Judges : M.N. Moorthy, J

Bench : Single Bench

Advocate : K. Sengottaian, for the Appellant; J. Raja Kalifulla, for K.N. Balasubramaniam, for the Respondent

Judgement

M.N. Moorthy, J.—This is an appeal preferred by the Special Officer, Namakkal Municipality, against the order passed by the Learned

Judicial Second Class Magistrate, Namakkal, in S.R. No. 311 of 1979 acquitting the respondent who was charged for an offence u/s 205(1), (2)

and (3) read with 317(a) of the Tamil Nadu District Municipalities Act, 1920, hereinafter referred to as the Act.

2. To bring home the guilt of the accused, the prosecution has examined Thiru Chellamuthu Town planning Inspector, Municipal Office, Namakkal,

as the only witness.

3. According to the prosecution, the respondent applied to the Municipality on 1-6-1977 for constructing a cattle shed and sent Ex. P-1 plan. Ex.

P-1 was approved by the Municipality by Ex. P-2 dated 28-6-1977. As the authorities wanted certain alternations to be made, Ex. P-3 dated 25-

7-1977 was served on the respondent. On 8-8-1977 by Ex. P-4 the respondent

sent a petition for modification of the original plan. The modified plan in marked as Ex. P-5. On 30-9-1977, the Municipality approved the plan submitted by the respondent and licence was granted. As the plan was approved for constructing a cattle shed and the respondent was using the said premises for running a school, the Municipality sent Ex. P-6, dated 30-12-1977 u/s 205 of the Act to the respondent directing her to do the necessary alteration within a week. By Ex. P-7 dated 11-1-1978, the respondent asked for a month's time to give a detailed reply to the Municipality. As the respondent has not complied with the directions issued by the Municipality, the Municipality passed a final order on 3-1-1979 by Ex. P-8 to comply with the directions given in Ex. P-6 within three days.

As the respondent has not complied with the said order it is the prosecution case that she has contravened Section 205(1), (2) and (3) read with

S. 317(a) of the Act.

4. When the respondent was asked to explain the case against her as alleged by the Municipality, she filed a written statement under S. 313,

Criminal P.C. According to her the premises in question was constructed after the plan submitted was approved by the Municipality. She had not

made any alteration from the plan approved by the Municipality. She further asserted that the Municipality had no power to direct her to use the

premises in a particular manner. According to her, this case has been foisted on her because of ill feeling between her and the Municipality. Finally

she submitted that u/s 468(2), Criminal P.C. the prosecution is launched beyond the limitation period.

5. The learned Magistrate found on the facts of the prosecution case the Section 205 of the Act does not apply and consequently no offence u/s

317 is made out :

6. Mr. Sengottaian learned counsel appearing for the appellant, the Special Officer of Namakkal Municipality, contended that even though the

respondent may not be liable for contravention of Section 205(1), (2) and (3) or for an offence under S. 317(a), still she has contravened some of

the rules framed under the Act which make her liable for an offence under S. 317(c). He brought to my notice Sections 191 and 303(1) of the Act

which give power to the State Government to make rules and drew may attention to Rr. 8, 10 and 11 framed thereunder. He particularly stressed

Clause 5 of the Rule 11 which provides for permission of the executive authority to be obtained before a building or a portion of the building is

proposed to be used as dwelling house. Contravention on this rule, according to him, is made an offence u/s 317(c) of the Act. As far as the

prosecution being launched within the limitation period prescribed under the law is concerned, he placed before me the following decision :

1. Palaniappan v. Commr, Salem Municipality, 1966 Mad LW Cri 108 ; Subramaniam v. Commr. Salem Municipality, 1971 Mad LW Cri 167.

Kannian v. Commr. Municipal Council Chidambaram, 1973 Mad LW Cri 46.

7. The learned counsel appearing for the respondent contended that the prosecution is not for contravention of any rule framed under the Act but

specifically for contravening S. 205(1), (2) and (3) of the Act. According to him, Schedule V of the Act deals with purposes for which the

premises may not be used without a licence u/s 249 of the Act and as the prosecution against his client is not for contravening any condition after

obtaining licence under S. 249 of the Act, the present prosecution is without any foundation.

8. It is conceded by the learned counsel for the appellant that Section 205(1), (2) and (3) of the Act does not apply to the facts of the present

case. I am inclined to agree with the learned counsel for the respondent that Schedule V of the Act which deals with the premises which may not

be used without a licence under S. 249 of the Act is more appropriate to the facts of the present case. Without the respondent being asked to face

a charge for contravention of some of the rules framed under the Act, it is difficult to make him liable for an offence under S. 317(c) of the Act as

strenuously contended by the learned counsel for the appellant. Suffice it to say, the case as put forward in the lower court against the respondent

for contravention of S. 205(1), (2) and (3) punishable under S. 317(a) is not applicable to the facts of the present case, as has been admitted by

the learned counsel for the appellant. I am not inclined to go beyond the case the respondent was asked to meet in particular in the trial Court. The

final order Ex.P.B. dated 3-1-1979 passed by the Municipality clearly makes out an unauthorised construction by the respondent and not for using

the premises for a different purpose. The Municipality has not bestowed sufficient attention before they launched the prosecution against the

respondent. It is not for me, in an appeal against acquittal, to rectify the defence in the prosecution case and make the respondent liable. Under the circumstances, it is not necessary for me to deal with the point whether the prosecution was launched within the limitation period prescribed under the law. The lower Court is justified under the law in acquitting the respondent for the offence as put forward by the prosecution. I find no reason to interfere with the order of acquittal and the appeal against acquittal, therefore, stands dismissed.

9. Appeal dismissed.