

**(1921) 08 AHC CK 0006**

**Allahabad High Court**

**Case No:** None

Juggan

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Aug. 13, 1921

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 438, 537

**Citation:** AIR 1921 All 162 : 65 Ind. Cas. 447

**Hon'ble Judges:** Sulaiman, J

**Bench:** Single Bench

**Final Decision:** Disposed Of

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### **Judgement**

Sulaiman, J.

This is a reference u/s 438 of the Criminal Procedure Code by the District Magistrate of Meerut. It appears that while Baraut was a notified area, Juggan accused applied to the Notified Area Committee for permission to build a wall. On the 9th of January 1921 the Committee by a resolution ordered that a space of 9 1/2 feet should be left between the wall and an adjoining drain. On objections having been raised by the accused and a report having been sailed for, the Committee by a second resolution, dated the 16th February 1921, modified its previous order and reduced the width of the open space from 9 1/2 feet to 5 feet. The accused, however, built the wall without leaving the required space of 5 feet. The Notified Area Committee accordingly on the 26th of March 1921 issued a notice to him to remove the wall within fifteen days. After this, the notified area was converted into a Municipality with effect from the 1st of April 1921. The accused replied to the notice, saying that the land was his own and intimated that he would institute a suit in a Civil Court. On the 15th of April 1921 the Tahsildar, purporting to act u/s 333 of the Municipalities Act, II of 1916, as the officer in charge, Municipal work, sanctioned prosecution u/s 185 of the Municipalities Act.

2. The learned Magistrate did not accept the Committee's case that a public right of way existed over the land which was to be left open on the other hand, he found that the land did not belong to the Committee at all, but was the private property of the accused and, in fact, considered that the order of the Committee was not justifiable. He, however, convicted the accused as, in his opinion, he had contravened the order of the Committee, and sentenced him to pay a fine of Re. 20.

3. On the 15th of April 1921 the Notified Area Committee had ceased to exist and the Municipality had come into existence, but there is nothing on the record to show that this was so.

4. In my opinion this reference must be accepted and the conviction set aside. There is in fact, no evidence to show that the Tahsildar had been empowered u/s 333 of Act II of 1916 to exercise the powers of the Board. But assuming that he had such powers, in my opinion, he would have no authority u/s 333 of Act II of 1916 to sanction a prosecution. Under that section his powers are limited and he can exercise them only (1) for the purpose of making preliminary arrangements for the holding of first elections or otherwise, and (2) generally of expediting the discharge of the Board of its duties when established. It is quite clear that sanctioning a prosecution is neither for the purpose of making preliminary arrangements for the holding of first elections, nor is it any step towards expediting the discharge of the Board of its duties when established. Section 333 of the Municipalities Act, II of 1916, therefore, gave him no such power. u/s 314 of that Act it is provided that no Court shall take cognizance of any of the offences punishable under this Act or under any rule or bye-law, except on the complaint of, or upon information received from, the Board or some person authorised by the Board by general or special order in this behalf." It, therefore, follows that without a proper sanction the conviction was illegal. The irregularity in the sanction, as required by Section 314 of the Act, cannot be cured by the provisions of Section 537 of the Code of Criminal Procedure, which are not applicable to the sanction under this section.

5. There are other legal objections also, for instance, (1) that the order of the Committee requiring the appellant to leave a space of 5 feet was in itself illegal, inasmuch as the previous resolution had been passed within six months of it and the Committee could not modify its own resolution within that period, and (2) that there is nothing on the record to show that there are any regulations under which the Board is empowered to prohibit the erection of a wall on private land and not abutting on a public street. In the view which I have taken as to the want of a proper sanction it is unnecessary for me to go into these other questions.

6. I accordingly accept this reference, set aside the conviction and sentence and direct that the fine, if paid, be refunded.