

(1996) 10 AHC CK 0123

Allahabad High Court

Case No: Criminal Revision No. 66 of 1996

Sankatha Prasad

APPELLANT

Vs

Vimal Kumar Kappor and
Another

RESPONDENT

Date of Decision: Oct. 11, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 3, 397, 398
- Sarais Act, 1867 - Section 9

Hon'ble Judges: G.S.N. Tripathi, J

Bench: Single Bench

Advocate: V. Malaviya, for the Appellant; R.C. Shukla and Sankatha Rai and G.A., for the Respondent

Final Decision: Dismissed

Judgement

G.S.N. Tripathi, J.

This revision is being finally disposed of.

2. The facts of the case are very simple.

3. Under the provisions of the Sarai's Act, 1867 (Act No. 22 of 1867), a licence has been granted by the District Magistrate, Varanasi in favour of the revisionist to operate the Sarai. Some people of the Mohalla look objections to that, including the Respondent. They moved an application before the learned District Magistrate, Varanasi alleging that the provisions of the Act are not being complied with. In fact, the licence should not be granted to the revisionist.

4. Notice was issued to the revisionist by the District Magistrate in pursuance to the objections raised by the neighbours. Against the order of issuing notice, a revision was tiled before the learned I Ind Addl. Sessions Judge, Varanasi, being Criminal Revision No. 471 of 1995, Vimal Kumar Kappor v. State of U.P. and Anr. It was

brought to the notice of the learned Addl. Sessions Judge that if the Sarai is allowed to operate, that will cause immense nuisance to the local inhabitants, because there is no parking place near the said building and occasionally public functions may disturb the peace of the locality. It has been further contended that there are schools, temples, etc. near the said building and other places of public importance and that these public functions may disturb normal working as well if the Petitioner is allowed to operate the Sarai. In absence of any arrangement for parking of the vehicles near the building, in question, which itself is situated in a densely populated residential area, the interest of the public shall be immensely hampered.

5. Before the learned I Ind Addl. Sessions Judge, originally it was urged that he had no jurisdiction. But later on, this objection was given up as is apparent from the order of the learned I Ind Addl. Sessions Judge at page 3. which is as follows:

"No other point has been discussed before me."

Therefore, this plea that the learned I Ind Addl. Sessions Judge has no Jurisdiction to entertain the revision cannot be entertained at this stage.

6. Not only this, u/s 3 of the Code of Criminal Procedure, Sub-clause (4)(b), it has been provided that a Magistrate who docs the duty of an administrative or executive nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution shall be known as Executive Magistrate. u/s 397 of the Code of Criminal Procedure, there is a clear provision that all the Magistrates whether Executive or judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge, for the purposes of this Sub-section and of Section 398.

Therefore, It Is immensely clear now that after passing of the present Code of Criminal Procedure, which is operative since 1.4.74, every Executive Magistrate, while discharging the functions of an Executive Magistrate in the matter of grant of a licence, etc., is an inferior court to that of the Sessions Court. Therefore, any order passed by the Executive Magistrate is revisable before the learned Sessions Judge of the District. Hence, I reject the learned Counsel's argument that the Sessions Judge has no Jurisdiction to entertain the revision against the order of the District Magistrate.

7. The other limb of the argument of the learned Counsel is that before trial, the revisionist has been hanged. He means to say that the licence has been cancelled by the learned I Ind Addl. Sessions Judge, which amounts to hanging. I do not agree to this interpretation.

8. A specific right has been granted to the public u/s 9 of the Act No. 22 of 1867 referred to above to challenge the licence if a nuisance is likely to be caused or Is being caused. The learned Counsel says that this power of the general public can be exercised by them only after the licence has been granted in favour of the revisionist

and not before that. I refuse to accept this contention. A person, who has a right to object on the operation of the Sarai on the ground of nuisance, etc., can also go to the District Magistrate and say that the proposed license is likely to be used for creating nuisance in the locality and it should not be granted. Therefore, I reject the contention of the learned Counsel that before the grant of license, neighbours and other members of the locality had no right to go to the District Magistrate.

9. The question is only this that a serious dispute has been raised by the neighbours that the operation of the licence and permission to hold the Sarai to the Petitioner will amount to nuisance. Further, it was pointed out that the building was located in a very densely populated residential area. Therefore, its commercial use will cause immense hardship to the inhabitants of the area.

10. I think the learned I Ind Addl. Sessions Judge simply noted the objections of the objectors and sent the matter to the District Magistrate, Varanasi to decide the matter in the light of the directions given by him and also in the teeth of objection filed by public. Not only that, learned I Ind Addl. Sessions Judge has further found that the District Magistrate has placed his signatures over the dotted lines. He has not applied his judicial mind to the facts and circumstances involved in the case. It means that the learned I Ind Addl. Sessions Judges want that after hearing the parties, suitable orders should be passed by the learned Magistrate. Thus no illegality or impropriety can be said to have been committed by the learned I Ind Addl. Sessions Judge while passing the Impugned order.

11. The revision is accordingly dismissed. The parties are directed to appear before the learned Magistrate concerned, along with the copy of this order within a period of two months from today. Who shall pass a speaking order after hearing the parties and also in the light of observations made in this judgment.