

(1965) 10 KL CK 0007

High Court Of Kerala

Case No: Criminal R. P. 538 of 1964

Damodaran

APPELLANT

Vs

Health Assistant, Shertallai
Municipality

RESPONDENT

Date of Decision: Oct. 29, 1965

Acts Referred:

- Kerala Municipalities Act, 1960 - Section 284, 355

Citation: (1965) KLJ 1185

Hon'ble Judges: P. Govinda Menon, J

Bench: Single Bench

Advocate: P.C. Chacko, for the Appellant; V. Rama Shenoi and R. Raya Shenoi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Govinda Menon, J.

The petitioner was tried by the Additional First Class Magistrate of Shertallai for an offence u/s 355 read with Section 284 of the Kerala Municipalities Act 1960 (shortly stated the Act), for failure to take out a licence for working a lathe in building No. 244 B within the Shertallai Municipality using a 20 horse power motor. It was contended by the accused that he was using the lathe when he was having the oil mill, that it was working till 31-3-62 and that he had transferred his rights in, the mill to one Sugathan on 29-6-62 under a sale deed Ext. P.3, and since then he had not used the motor and worked the lathe and he is not therefore liable to take out a licence. That the petitioner had used the lathe in the front verandah of the same building where the mill is situated is well proved. P.W. 2 the Health Assistant of the Municipality has deposed that on 26-4-62 when he visited the accused's oil mill he found the lathe being operated with the aid of an electric motor. He has deposed

that subsequently on several occasions when he happened to visit the building he had seen the accused working the lathe and that he had asked the accused to take out a licence. P.W. 4, the Health Inspector of the Municipality has given evidence that in the course of his routine inspection of premises requiring licence he had gone to this building in May 1962 and seen the lathe being operated in the building. There is then the evidence of P.W 5 that even though the mill was not working the meter fitted in the premises has recorded consumption of electric current during the months of April to August 1962. P.W. 6 is an employee under the accused and there is also his evidence that even after the oil mill ceased working the accused was continuing to work the lathe. Learned First Class Magistrate has carefully considered the evidence of these witnesses in great detail and also the evidence led on the side of the accused and has come to the correct conclusion that the accused was in fact operating the lathe using a 20 horse power motor.

2. Admittedly, the accused had not taken out a licence. The contention of the accused is that he is neither the owner nor the occupier who alone was bound to take out a licence. I cannot agree. Section 284 of the Act deals with purposes for which places may not be used without licence. The section says that the Council may publish a notification in the Gazette that no place within the Municipal limits shall be used for any one or more of the purposes specified in Schedule III without the licence of the Commissioner. Section 355 is the penal section and cl. (1) says, whoever contravenes any provision of any of the sections or rule specified in the first column of Schedule 5. Schedule 5 makes using a place for any of the purposes specified in Schedule 3 without a licence or contrary to the licence an offence punishable with a fine which may extend to Rs. 100/-. Therefore, if the accused is proved to have used the place for any of the purposes without a licence he would be clearly guilty. Either the owner or the occupier should take out the licence. Even if the accused had sold his rights, so long as he works the lathe in the front verandah of the building he would be an occupier. Section 3(22) says, "occupier" includes a licensee in occupation of any land or building. The conviction and sentence have therefore, only to be confirmed.

The revision petition is devoid of merits and it is dismissed.