

**(1960) 11 KL CK 0039**

**High Court Of Kerala**

**Case No:** Criminal Appeal No. 43 of 1960

Municipal Health Officer,  
Kozhikode

APPELLANT

Vs

Moidu and Another

RESPONDENT

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**Date of Decision:** Nov. 8, 1960

**Citation:** (1961) KLJ 322

**Hon'ble Judges:** P.T. Raman Nayar, J

**Bench:** Single Bench

**Advocate:** V. Rama Shenoi and R. Raya Shenoi, for the Appellant; S.K Khader and P.K. Shamsuddin, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

P.T. Raman Nayar, J.

The two accused persons in this case were charged u/s 313 (1) read with section 249 and Schedule VIII of the Madras District Municipalities Act, 1920 for having stored timber without the license enjoined by section 249 read with item (n) of Schedule V, the storing of timber, otherwise than for private use, being one of the purposes notified by the Municipal Council concerned, namely, the Municipal Council, Calicut, in the District Gazette - Ext. P. 7 is a copy of the notification-under section 249(1). They were acquitted by the learned Magistrate, apparently in the view that the timber was stored by them for private use, storage for such use being a purpose exempt from a license by the penultimate proviso to Schedule V enumerating the purposes for which premises may not be used without a license u/s 249. (Hence the saving in the notification). The complainant, namely, the Municipal Health Officer, Calicut has come up on appeal by special leave granted u/s 417(3) of the Criminal Procedure Code. The 2nd accused is admittedly both the owner and occupier of a shed within the Calicut Municipality where timber is stored, according to the evidence for the prosecution, in large quantities. The evidence for the prosecution is that the timber is stored for the purpose of making carts, as also for sale, but that

does not seem to have been accepted by the learned Magistrate. However that might be, this much was admitted by the 2nd accused in Exts. P. 3 and P. 5, the replies sent by him to the Municipality when he was called upon to take a license, namely, that he was storing the timber for the purpose of repairing carts for the public and that was repeated by him when examined u/s 342 of the Criminal Procedure Code. The evidence of the two witnesses he examined in his defense was also to the same effect. Therefore, it is both proved and admitted that timber was stored for the purpose of repairing carts for the public at a place of which the 2nd accused was the owner and occupier, and the question therefore is whether it can be said that the storage was for private use.

2. I do not think it can. Doubtless, when the 2nd accused repairs carts for the public with the timber stored by him, he does use the timber but I do not think that so long as the carts repaired do not belong to him but belong to others, it can be said that the timber is for his private use. He utilizes it for the general public and not for his own consumption, and that seems to me enough to take the storage out of the saving in the proviso to Schedule V. Moreover the use is for a commercial purpose, and that puts the matter beyond doubt. A commercial use cannot be a private use though the converse may not always hold. I am fortified in this view by an unreported decision of Balakrishna Ayyar J. in Criminal Appeal Nos. 643 to 661 of 1952 of the Madras High Court, a decision which is directly in point. There it was held that the storage of timber for making furniture to be sold (not even in the premises in which timber was stored but elsewhere) was not storage for private use within the meaning of the proviso to Schedule V.

3. It is clear that the 2nd accused is guilty of the offence with which he was charged and that his acquittal was wrong. I allow the appeal so far as the 2nd accused is concerned, set aside his acquittal, and convict him of that offence. I sentence him to pay a fine of rupees fifty; in default to suffer simple imprisonment for two weeks. So far as the 1st accused is concerned, he is neither the owner nor the occupier of the shed in question, and all that appears in the evidence is that he helps the 2nd accused in the latter's business. That being so, section 249(2) of the Act imposes no obligation on him to take out a license, and his acquittal was proper; I dismiss this appeal so far as the 1st accused is concerned.