

(1871) 07 CAL CK 0007

Calcutta High Court

Case No: None

The Municipal
Commissioners for the
Suburbs of Calcutta

APPELLANT

Vs

Amanat Ali and Another

RESPONDENT

Date of Decision: July 17, 1871

Judgement

Norman, J.

It is necessary that we should in the first instance consider the power under which the Magistrate acted, in order to determine what is the function of this Court upon the question which is brought before it by the reference of the Sessions Judge. The 308th section of the Criminal Procedure Code enacts that, whenever the Magistrate of a district considers that any trade or occupation, by reason of its being injurious to the health or comfort of the community, should be suppressed or removed to a different place, he may issue an order to the person carrying on such trade or occupation, calling on him, within a time to be fixed in the order, to suppress or remove such trade or occupation, or to appear before himself or some other officer, and show cause why such order should not be enforced."

2. Section 310 "provides that the person to whom such order is issued shall be bound, within the time specified in the order, to obey the same, or to appear before the Magistrate before whom he was required by the order to show cause, or he may apply to such Magistrate for an order for a jury to be appointed to try whether the order is reasonable and proper."

3. We cannot say much for the constitution of the jury, which u/s 310 is to consist of five members, and to decide by a majority, the foreman and two of the members of which are to be nominated by the Magistrate, and the other members by the applicant. It is difficult to see why this jury should not be taken by ballot from the jurymen in the ordinary list. The fact that such is not the law may account for the defendants not having applied to the Magistrate to have the question whether the order was reasonable and proper referred to

a jury.

4. By section 311," if the person to whom the order mentioned in section 308 is issued does not obey such order, or show cause against the same as in the Act provided, or apply for a jury, &c., he shall be liable to the penalty prescribed by section 188 of the Indian Penal Code."

5. By section 313, "if the person to whom the order of the Magistrate is addressed appears and shows cause against it, so as to satisfy the Magistrate that it was not reasonable and proper, no further proceedings shall be taken in the case."

6. To impeach the order of the Magistrate, Mr. Montriou has therefore now to establish, either that there was no reasonable evidence to show that the trade was injurious to the health and comfort of the community, or that the cause shown was such as ought to have satisfied the Magistrate that his order for suppressing the trade was not reasonable and proper.

7. We may observe that we are not sitting as a Court of Appeal from the decision of the Magistrate on points of fact, and therefore we must take the findings of fact by the Magistrate to be correct, unless we see that there is not on the record any evidence to warrant such findings.

8. Dr. Tonnerre proved (reads the evidence as set out in the judgment of the Magistrate).

9. Dr. Hallan gave similar evidence. He considered that the noxious gases arising from the slaughter-house, the reservoir, and the bamboo grove, must be injurious to the health of the community.

10. Dr. Shircore gave similar evidence. He proved that the neighbourhood is thickly populated; and that the slaughter-house, as carried on, is productive of unhealthiness.

11. Several native witnesses, Tarini Charan Dutt, Tarini Charan Ghatak, and Khudu Ostagur, proved that the health of themselves and their families had been affected by the stench from the slaughter-house.

12. Witnesses were called for the defence. Dr. Tamiz Khan and Dr. George proved that they visited the shambles, and found that, at the time of their visit, there was not any stench arising from the shambles likely to be injurious to health. But they admitted that, if the place were not kept as clean as when they saw it, it would be injurious to health.

13. There was evidence before the Magistrate that special efforts had been made to clean up the premises and prepare them for the visits of the medical witnesses called for the defendants.

14. The defendants attempted to prove that the lessee caused the blood and offal to be carted off daily to Dhappa; but the Magistrate, apparently for very good reasons, disbelieved the evidence.

15. Mr. Hogg, who was called as a witness for the defence, proved that Saadat Ali, the lessee, had voluntarily taken him to the bamboo grove, and told him that all the filth from the slaughterhouse was taken to that place and thrown there.

16. Dr. Tonnerre also observed a man carrying the stomach of an animal from the shambles, and another man carrying a large basket, about two feet or two feet and a half broad, full of dung to the bamboo grove. What is the connection of the mehter who breeds maggots in the bamboo grove with the owner of the slaughter-house does not very clearly appear. He says he rents his land from Karamat Hossein, but did not produce his lease. He was himself at one time the lessee of the slaughter-house, and he says there is no bad smell either from the slaughter-house, or from the collection of dung and blood where the maggots are bred in the bamboo grove.

17. The Magistrate is of opinion that there is a close connection between the slaughter-house and the place used for breeding maggots. The bamboo grove seems in fact to have been used as a place of deposit for the filth and offal of the slaughterhouse.

18. The Magistrate visited the slaughter-house on two occasions. He says that on the first occasion, which was a dry day, the stench from the masonry floor was excessive, such as would be produced by the decomposition of blood and other animal matter that had percolated between the tiles. On the second occasion, the stench was not so bad, but the place was very filthy, and appeared to answer the description given by Drs. Tonnerre, Shircore, and Hallan, rather than that given by Dr. George and Dr. Tamiz Khan.

19. The evidence of the witnesses for the prosecution goes to show that this slaughter-house, constructed as it is, could not be carried on without creating a nuisance.

20. Looking at the whole evidence, we think it cannot be said that the cause shown ought to have satisfied the Magistrate that his order ought not to have been made.

21. We cannot say that in point of law he was not fairly justified in coming to the conclusion, upon the evidence before him, that the trade of slaughtering cattle, as carried on by the defendants at the Kurya slaughter-house, was injurious to the health of the community; nor can we say that his order that such trade should be suppressed, was not a legal and proper order. We therefore cannot interfere with the order.

¹ The other depositions are not given, because the Court held that they could not weigh or compare the evidence : they treated it as an ordinary Civil Special Appeal--Reporter.

² This case is given at p. 499, ante. An effort was there made, on the opening of the argument, to treat the letter of reference as a judicial opinion which (almost, if not quite) dispensed with argument against the conviction in the first instance. The Court, however, repudiated this view, and called upon counsel to impeach the conviction, which was to be held good prima facie.--Reporter.