

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

THE PUBLIC PROSECUTOR (APPELLANT),

1918,
August 6.

v.

NARAYANA REDDI AND OTHERS (ACCUSED), RESPONDENTS.*

Madras District Municipalities Act (IV of 1884), ss. 207 and 264-A—Non-compliance with notice to provide latrines in houses—Duty of Municipality to call upon owners to provide movable receptacles or itself construct latrines before prosecution, whether any.

It is not obligatory on a Municipality under the Madras District Municipalities Act (IV of 1884) either to call upon a house-owner to provide movable receptacles under section 217 of the Act or to construct a latrine itself, before prosecuting the house-owner under section 264-A for non-compliance with a notice to construct a latrine.

An owner cannot be convicted of not providing a latrine in the backyard of his house when there is no backyard to his house.

APPEAL under section 417 of the Code of Criminal Procedure preferred against the acquittal of the accused by the Court of the Bench of Magistrates of Tirupati in Bench Cases Nos. 414 to 452 of 1917.

The Municipality of Tirupati gave notice under section 207 of the Madras District Municipalities Act (IV of 1884) to owners of certain houses to provide suitable latrines at the backyards of their houses. Some of them had backyards and some not. On non-compliance with the notice, the Municipality prosecuted all of them under section 264-A of the Act. The Bench of Magistrates acquitted all the accused. The Public Prosecutor preferred these appeals against the order of acquittal.

The arguments appear from the judgment.

The Public Prosecutor for the appellant.

A. Ramachundra Ayyar for the respondent.

The JUDGMENT of the Court was delivered by—

SADASIVA AYYAR, J.—The notices so far as they require persons having no backyards to their houses to provide latrines in

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* Criminal Appeals Nos. 146 to 184 of 1918.

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their non-existing backyards are clearly bad and we dismiss the appeals in which the respondents are owners of houses having no backyards. Criminal Appeal No. 176 of 1918 is also dismissed, the respondent being dead.

It appears that the respondents in the twelve appeals Nos. 158, 164 to 167, 171, 174, 175, 177, 181, 182 and 184 of 1918 do own backyards to their houses and could have complied with the notices issued under section 207 of the District Municipalities Act (IV of 1884) to provide latrines in their several backyards.

We are unable to follow the reasoning of the majority of the Bench that the municipal council ought to have called upon the accused to provide movable receptacles under section 217 of the Act before proceeding to take action under section 264-A. We are also unable to accept the argument of the respondents' learned vakil that the municipal council ought to have constructed the latrines themselves under section 264 (1) before prosecuting under section 264 (a) for failure to comply with the notice under section 207. We are unable to find any such duty imposed by the Act on the council as a necessary condition precedent to the institution of prosecutions under section 264 (a).

We, therefore, convict the respondents in these twelve appeals and impose a fine of one rupee on each of them, dismissing the other appeals.

N.B.