

is no reason why he should get the consideration paid by him, by way of damages and also keep the property. It is open to him to pay the amount due on the decree in respect of which the property is attached and recover it by proper proceedings but his case is that the decree has been satisfied.

The second appeal fails and is dismissed with costs.

VENKATA
SUBBIAH
v.
VENKATA
SESHAIYA.
—
KUMARA-
SWAMI
SASTRI, J.

N.E.

APPELLATE CRIMINAL.

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

THE CORPORATION OF MADRAS (COMPLAINANT),
APPELLANTS,

1918.
July 18.

v.

S. VARADACHARIAR ACCUSED.*

Madras City Municipal Act III of 1904, secs. 262 and 420—Reconstruction of pandal, whether within the section.

The reconstruction of an old pandal with inflammable materials without the written permission of the President of the Corporation is prohibited by section 262 and is an offence punishable under section 420 of the Madras City Municipal Act (III of 1904).

Section 262 of the Madras City Municipal Act (III of 1904) was intended to reproduce section 264 of the Madras City Municipal Act (I of 1894).

APPEAL against the acquittal of E. H. M. BOWEE, the Fourth Presidency Magistrate, Elmore, Madras, in Calendar Case No. 17776 of 1917, under section 417 of the Code of Criminal Procedure (Act V of 1898).

The accused was the owner and occupier of a house, within the municipal limits of Madras, to which was attached a pandal constructed of inflammable materials, originally erected thirty years ago and renewed from time to time. On the 19th of July 1917 he pulled down the pandal, leaving the teak posts planted in the masonry structure of the house standing, and on the 21st of July he rebuilt the pandal partly with the old materials and partly with new of the same kind, without obtaining a licence from the President of the municipality.

* Criminal Appeal No. 285 of 1918.

CORPORATION
OF MADRAS
v.
VARADA-
CHARIAR.

He was charged with having committed an offence under section 262 read with section 420 of the Madras City Municipal Act (Madras Act III of 1904) and was acquitted by the Magistrate on the ground that the reconstruction of an old pandal, such as had been done by the accused, did not fall within the mischief of section 262 which aimed only at entirely new constructions. The Government appealed against the acquittal.

C. Sidney Smith, Ag. Crown Prosecutor, for the appellant.—The learned Magistrate has misconstrued section 262 of Madras Act III of 1904. The words 'shall be made of' is a general expression which would include a case of repairs, as well as original construction.

[NAPIER, J.—Bearing in mind the purpose for which such a provision is enacted—being to avoid danger or nuisance to the public—should we not construe the words 'shall be made of' as meaning 'shall be composed of' ?]

Yes. I submit the ruling in *The Crown Prosecutor v. Audikasavaloo Naidoo*(1) is based upon a misapprehension. The attention of the Court was not directed to the explanation to section 420, and reliance was placed upon the second column of schedule XVI of the Act, which describes the prohibition in section 262 as 'construction of external roof . . .' The present section was intended to reproduce the provisions of section 264 of the old Act in more general terms.

K. S. Krishnaswami Ayyangar for the accused.—The question is one as to the meaning of the words 'shall be made of.' My submission is that 'made' means 'constructed.' Whenever the Legislature wanted to penalize a case of repairs without licence, they have always expressly said so. See section 264 of the old Act I of 1884 and the other Municipal Acts, where 'renewals' are prohibited in express terms. The omission of the word 'renewals' clearly shows that the Legislature did not intend to prohibit constructions other than first constructions.

[NAPIER, J.—There is nothing to show that the change in the language between the old and the new Acts legalized anything

(1) (1912) M.W.N., 84.

which was declared illegal by the old Act—see clause 2, CORPORATION OF MADRAS section 262.]

• This is a penal section, and it must be construed in favour of the subject. The matter is at the best left in doubt, and the judgment ought to stand.

The JUDGMENT of the Court was delivered by

SADASIVA AYYAR, J.—We are quite clear that this section 262 of the Madras City Municipal Act, 1904, read with section 420 of the Act was intended to reproduce section 264 of the old Act (The City of Madras Municipal Act, 1884) which made the new construction of an inflammable pandal or the continuance of an existing pandal, etc., of that character an offence. The pandal in question is clearly unlawful and there is no written permission of the President to legalize it. We think that the language of section 420 (of the Madras City Municipal Act, 1904) 'whoever contravenes' is wide enough to cover an owner and occupier of premises which offends against the section.

We set aside the acquittal and impose a fine on the defendant of Rs. 5 (five rupees).

K.R.

APPELLATE CRIMINAL.

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

In re PYDI RAMANNA AND 5 OTHERS (ACCUSED), PETITIONERS.*
CRIMINAL PROCEDURE CODE (Act V of 1898) Sec. 517—*Confiscation of property found with a vagrant ordered to give security under sections 109 (b) and 118—Validity of order of confiscation—'Enquiry' in section 517, whether includes 'Inquiry' under section 117.*]

1918,
July 22.

Under section 517, Criminal Procedure Code (Act V of 1898), a Court can order confiscation not only of property which has been used for the commission of an offence or regarding which an offence has been committed but also of any other property which has been produced before it.

A proceeding under section 117, Criminal Procedure Code, is an 'enquiry' within section 517.

In re Govindaraja Padayachi (1919) 31 I.C., 827 and *Jagannathan v. Varadaraja Mudaliar* (Criminal Revision Case No. 570 of 1915 unreported) dissented from. *Rassul Bibee v. Ahmed Moosajee* (1907) I.L.R., 34 Calc., 347, followed.

CRIMINAL REVISION Case called for by the High Court on perusal of the order of H. A. B. VERNON, District Magistrate of Vizagapatam, in Criminal Appeal No. 5 of 1917, against the

* Criminal Revision Case No. 209 of 1918.