

open to get access into it. The lower Court, no doubt, holds that the second and third accused should also be considered to have been in possession of the liquor, because they were the owners of the shed ; but I think this finding cannot be accepted, for in section 55 (a) the word "possession," I think, does not mean constructive possession but actual possession. It is only people who are actually in possession of contraband liquor without licence that can be punished under the section. In the circumstances of the case there is no clear evidence that accused 2 and 3 had anything to do with the liquor and the only point against them is that they were the owners of the cattle shed, which, I think is not sufficient to justify a conviction as regards them.

The conviction will therefore be set aside as regards accused 2 and 3 and the fines, if paid, will be refunded.

K.U.L.

*In vs.*  
JAYARAMULU  
NAIDU.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Krishnan.*

RAMASAMI CHETTY (COMPLAINANT), PETITIONER,

*v.*

MUTHUVELU MUDALI AND TWO OTHERS (ACCUSED),  
RESPONDENTS.\*

1922,  
September 1.

*Towns Nuisances Act (Madras Act III of 1889), sec. 3 (12)—  
Criminal Rules of Practice, r. 16 (2)—“Conservancy clauses of  
Police Acts”—Bench of Magistrates—Jurisdiction—Consent.*

A complainant who invoked the jurisdiction of a Court is not prevented from questioning it in Revision. A Court cannot get jurisdiction, if it had not any in law, merely because parties invoke it.

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\* Criminal Revision Case No. 263 of 1922.

RAMASAMI  
CHETTY  
v.  
MUTHUVELU  
MUDALI.

Bench Magistrates have jurisdiction to try offences under section 3 of the Madras Towns Nuisances Act as those offences fall under the classification "Offences under Municipal Acts and the conservancy clauses of Police Acts" in rule 16 (2) of the Criminal Rules of Practice.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Bench of Magistrates at Cuddalore, South Arcot District, in Summary Trial No. 1027 of 1921.

The facts are briefly these: On a complaint brought by one R, the accused were tried by the Bench Magistrates at Cuddalore, South Arcot, for an offence under section 3 (12) of the Madras Towns Nuisances Act; and were acquitted. The complainant preferred this Criminal Revision Case to the High Court and contended that the order of acquittal should be set aside on the ground that the Bench had no jurisdiction to try the offence.

*T. R. Srinivasa Ayyangar*, vakil for the petitioner.

*M. Patanjali Sastri*, vakil for the respondents.

*Public Prosecutor* for the Crown.

#### JUDGMENT.

This is a revision petition by the complainant against the acquittal of the accused by the Bench Magistrate of South Arcot. The ground taken is that the Bench had no jurisdiction to try an offence under section 3, clause 12 of Act III of 1889. Curiously enough, the objection is taken by the complainant himself who invoked the jurisdiction of the Bench. This does not, however, prevent him from doing so in Revision; for a Court cannot get jurisdiction, if it had not any in law, merely because complainant invoked its jurisdiction.

On the question of jurisdiction it is argued that the Bench had jurisdiction only to try offences under

sections 5, 6 and 7 named in rule 1, clause 5 (e) of the rules framed by the Government for the guidance of Bench Magistrates under section 16 of the Code of Criminal Procedure. The answer to this argument is that section 3 is not mentioned in clause 5 (e), because it falls under the earlier clause (2) as an offence against the conservancy clauses of a Police Act punishable only with fine or with imprisonment for a term not exceeding one month. Though section 3 is in the Towns Nuisances Act, section 11 of that Act directs that the section is to be read with and forms part of Act XXIV of 1859, the Police Act. It was ruled in *Queen-Empress v. Oolaganadan*(1), that all the clauses in section 48 of the Police Act fell within the term "conservancy clause." Section 3 (12) of the Towns Nuisances Act is practically the same as clause 6 and part of clause 7 of section 48 of the Police Act. That case is therefore an authority for holding that an offence under section 3 (12) of the Act III of 1889 falls within clause 2, rule 1 of the rules for the guidance of Bench Magistrates and the Magistrates had jurisdiction to dispose of the present case.

RAMASAMI  
CHETTY  
v.  
MUTHUVELU  
MUDALI.

The petition fails and is dismissed.

K. U. L.

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(1) (1890) I.L.R., 13 Mad., 142.