

APPELLATE CRIMINAL.

Before Mr. Justice Curgenvven.

M. A. RAZACK (ACCUSED), PETITIONER,

v.

KING-EMPEROR, RESPONDENT.*

1927,
January 26.

Madras City Municipal Act (IV of 1919), ss. 233, 357 and 392—Essence of an offence under section 233—Maintaining an already constructed building without licence—Conviction under section 233 read with section 357—if legal—Omission to take out licence—Limitation under section 392.

The essence of an offence under section 233 of the Madras City Municipal Act is the act of constructing or reconstructing and not merely that of maintaining an already constructed building in existence.

Hence the period of limitation under section 392 for a prosecution in respect of an omission to take out a licence under section 233 is twelve months from the date of construction or reconstruction.

Where a complaint was made against the accused that he had a shed of inflammable material without a licence contrary to section 233 and the magistrate recorded the plea of the accused as guilty and added that the accused explained at the same time that he had had the shed of inflammable material for the last eight years without paying any fee to the Corporation, held that in view of the explanation of the accused it was impossible to conclude that the accused could have pleaded guilty to an offence which contained the factors required by section 233.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Third Presidency Magistrate, Madras, dated 27th May 1926, in Calendar Case No. 10143 of 1926.

K. S. Jayarama Ayyar and S. Nagaraja Ayyar for petitioner.

* Criminal Revision Case No. 735 of 1926.

P. Govinda Menon for Crown Prosecutor for the Crown.

RAZACK
v.
KING-
EMPOROR.

JUDGMENT.

This is a Criminal Revision Petition against the conviction by the Third Presidency Magistrate, Madras, of the petitioner for an offence under section 357 of the Madras City Municipality Act, IV of 1919. The complaint made against him was that on or about the 10th January 1926 he had a shed of inflammable materials in Moore Market compound without licence from the Commissioner, contrary to section 233. The learned Magistrate has recorded the plea of the accused as guilty and states that he explained at the same time that he had the shed of inflammable materials for the last eight years without paying any fee to the Corporation. In view of this explanation it is impossible to conclude that the accused can have pleaded guilty to an offence which contained the factors required by section 233. According to that provision no inflammable structure is to be constructed or reconstructed except with the permission of the Commissioner. The word used in the previous act in lieu of "constructed" was "made" and it is quite clear that that word led to a difference of opinion as to whether its meaning was in fact "constructed" or merely "composed of." In *Crown Prosecutor v. Audikasavalu Nayudu*(1), SUNDARA AYYAR and SPENCER, JJ., held that it meant the former, whereas in *Corporation of Madras v. Varadachariar*(2), SADASIVA AYYAR and NAPIER, JJ., put the latter construction on the term. It has however now been made unambiguous and it is clear that the essence of the offence is the act of constructing or reconstructing and not merely that of maintaining an already constructed building in

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

(2) (1919) I.L.R., 42 Mad., 7.

RAZACK
v.
KING-
EMPEROR.

existence. With this section is to be read section 392, which imposes a general period of limitation of six months in respect of acts which constitute an offence and a particular period of 12 months in respect of an omission to take out a licence. But it is evident from the facts, which do not seem to be disputed; that this period had long expired and therefore the conviction under section 233 cannot be sustained and I must accordingly set it aside.

From the minutes of a meeting of the Corporation, dated the 16th January 1923, not put in evidence before the lower Court but produced by the petitioner, it would appear that the petitioner with others was allowed to maintain his tea-shop without a licence, and from another notice of the Corporation, dated 30th August 1923, that he was permitted to continue in occupation until further orders. It is stated that subsequently the Corporation has required him to take out a licence in respect of his tea-shop structure and that he has refused to do so and that it was that that gave occasion to the prosecution. If that be so, the nature of the prosecution seems to have been misconceived, though it may be true that the Corporation has the means of enforcing the taking out of a licence. As to this I express no opinion, but if so, these proceedings will not prevent them from taking the proper steps. The Criminal Revision Petition is allowed and the fine and licence fee, if paid, will be refunded.

B.C.S.
