PUBLIC PROSECUTOR v. KANDASAMI THEVAN.

his first offence and I, therefore, think that the proper sentence is a sentence of rigorous imprisonment for three years.

WALLER, J.

WALLER, J.—I entirely agree. There can be no doubt whatever that Muniammal was not paid the money on the alleged date, but about two months later after she had received a letter from her daughter. It is clear that her supposed thumb-impression on the acknowledgment is really that of the accused and that the signature of the attesting witness is a forgery. There is, however, no appeal against the acquittal on the charge of forgery but only against the acquittal under section 409, Indian Penal Code. I agree that the acquittal should be set aside and the accused should be convicted of an offence under section 409, Indian Penal Code. I entirely agree in the opinion which the learned Chief JUSTICE has expressed as regards the ruling in *Bazari Hajam* v. *King-Emperor*(1).

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Odgers and Mr. Justice Madhavan Nayar.

In re MUTHU BALU CHETTI AND OTHERS (ACCUSED).* 1926, August 26.

District Municipalities Act (V of 1920), ss. 249 and 250—Permission under sec. 250 obtained—If licence under sec. 249 necessary.

Permission obtained under section 250 of the District Municipalities Act (Act V of 1920) to construct or establish a factory or instal machinery does not absolve a person from

(1) (1922) I.L.R., 1 Pat., 242.

* Criminal Revision Case No. 377 of 1926.

MUTHU BALU CHETTY, *In re.*

taking out a licence under section 249 to work the same. The object and scope of the two sections are entirely different. Section 249 contemplates an annual payment for the use of the machinery, while section 250, a payment once for all, for installing it.

In re Smith, (1920) 45 M.L.J., 731, approved.

In re Ramachandra Rao, (1920) 45 M.L.J., 555, referred to.

Criminal Revision Case No. 503 of 1925, dissented from.

CASES referred for the orders of the High Court under section 438 of the Criminal Procedure Code by the Sessions Judge of Madura in Criminal Revision Petitions Nos. 49 to 76 of 1925 on his file.

F. S. Vaz for the Municipality.

S. T. Srinivasa Gopala Chari for the accused.

Public Prosecutor for the Crown.

JUDGMENT.

ODGERS, J.

ODGERS, J.—This batch of criminal revision cases has been referred by the Sessions Judge of Madura. The First-class Bench of Magistrates, Madura Town, convicted the persons concerned under section 338 of the District Municipalities Act on the ground that they had not taken out licences under section 249 of the same Act. Permission had been obtained under section 250 and it was contended before the Bench of Magistrates and before us in revision that if such permission is obtained it is unnecessary to take out a licence under section 249. Reliance is placed on the ruling of a Bench of this Court in Criminal Revision Case No. 503 of 1925 and the learned Sessions Judge has referred the matter to this Court on the ground that the convictions are illegal having regard to that ruling. The Magistrates found as a fact that the working of the rice mills in question is likely to be dangerous to human life or health or property and would therefore fall

within the mischief of schedule V (*q*) of the Act. So we must take it that the persons concerned have been found to be doing in the course of an industrial process something which is likely to be dangerous to human life or health or property.

The sole question is whether permission obtained under section 250 absolves the persons concerned from taking out licences under section 249. This portion of the Act beginning at section 249 is headed "Industries and Factories" and section 249 deals with "Industries" and section 250 with the construction or establishment of factories, workshops or workplaces in which it *is proposed* to employ steam power, water power or other mechanical or electrical power or with the installation of any machinery or manufacturing plant driven by steam, water or other power as aforesaid. The person intending to construct a factory or instal machinery must before beginning such construction, establishment or installation apply to the municipal council for permission to undertake the work. This section says nothing about the kind of trade or industry to be carried on in the factory or on the premises in which machinery, etc., is to be installed and in my opinion the proviso in 3 (*a*) of the section is not intended to apply to matters of this kind. The permission is to construct or establish a factory or to instal machinery. Section 249 deals with a wholly different state of things. It gives the council power to notify that all or some of the trades or industries enumerated in schedule V may not be carried on within municipal limits or at a distance of three miles outside without the chairman's licence. They are all noxious or more or less objectionable trades or occupations. Many of them may be carried on without the establishment of a factory or workshop or the installation of any machinery. In the case referred to (Criminal

MUTHU BALU CHETTI, *In re.*

ODGERS, J.

Revision Case No. 503 of 1925) DEVADOSS and WALLER, JJ., recognize the distinction pointed out above in the Act between industries and factories. But they seem to have been impressed by the fact that the council was to grant the permission under section 250, whereas the chairman is to grant the licence under section 249. I cannot with deference see the anomaly. The council regulates the construction or user of buildings within the municipality as factories, the chairman in the first instance regulates their working if it is desired to carry on one or more of the scheduled occupations or trades therein. There is always an appeal to the council from the decision of the chairman. But much or most of the discussion in the judgment turns on the construction of clause (*q*) of schedule V as to which as observed we must accept the finding of fact by the Bench.

There are two decisions of KRISHNAN, J., both reported in *In re Ramachandra Rao*(1) The first *In re Ramachandra Rao*(1) is referred to by the learned Judges in the case under discussion. That case deals with the construction of clause (*q*) of schedule V. The other case *In re Smith*(2) was not referred to by the learned Judges. In it KRISHNAN, J., was dealing with sections 287 and 288 of the Madras Act IV of 1919 which are closely analogous to the sections now under review, and the learned Judge was of opinion that the licence for the use of machinery and the payment once for all for erecting machinery are different things, and the fact that payment was made in one case is no excuse for not paying in the other. With this opinion I respectfully agree, and on the above considerations I am unable, I regret, to concur with the ruling of the Bench in Criminal Revision Case No. 503 of 1925.

(1) (1920) 45 M.L.J., 555.

(2) (1920) 45 M.L.J., 731.

I must hold therefore that the convictions in these cases were right. I would return all these revision petitions to the District Judge to be dealt with in the light of the foregoing remarks.

ODGERS, J.

MADHAVAN NAYAR, J.—The facts of this reference are not much in dispute. The accused keeps within the municipal limits of Madura Town a rice mill for converting paddy into rice and for this purpose, he uses a rice-hulling machine which is worked by a 20-horse power oil-engine. He has been convicted by the Court of the First-class Bench of Magistrates, Madura Town, under sections 249 and 338 of the District Municipalities Act for having failed to take out a licence for using the engine to work the machine. The main argument advanced on his behalf is that having obtained permission under section 250 of the Act for the installations of the rice mill and the engine, he is not required to take out any further licences for working the engine under section 249. This argument is supported by a decision of this Court in Criminal Revision Case No. 503 of 1925. Mr. Adam argues that this case has been wrongly decided by the learned Judges.

MADHAVAN NAYAR, J.

It may be stated at the very outset that we have been asked by the learned Public Prosecutor to consider this reference on the assumption that the machinery in question falls within schedule V, clause (*q*) of the District Municipalities Act. The District Judge has not expressly stated so in his letter of reference; but the magistrates who have convicted the accused have held that the working of this machinery is dangerous to human life, health or property as mentioned in clause (*q*) of the schedule.

Section 249 of the District Municipalities Act states that no place within the municipal limits shall be used for any one or more of the purposes specified in

MUTHU BALU CHETTI, *In re.*

MADHAVAN NAYAR, J.

schedule V without the chairman's licence. Under this section it is obligatory on any one using a place for working machinery of the description specified in schedule V to obtain a licence. The licence granted under the section shall enure for a year. It is obvious that the object of the section is to make the licensee pay an annual fee for using machinery of the kind described in clause (*q*) of schedule V in his premises. Section 250 of the same Act states that every person intending to construct or establish any factory . . . in which it is proposed to employ steam-power . . . or to instal in any premises any machinery . . . driven by steam, water . . . shall before beginning such construction or installation obtain a licence from the Municipal Council (clauses (*a*) and (*b*)). This section contemplates the levy of a fee before a factory is established or special kind of machinery is installed. The payment is a payment once for all and not annual, as in cases falling under section 249. The object and scope of the two sections are thus, in my opinion entirely different. The one contemplates an annual payment for the use of the machinery, while the other a payment once for all for installing it. The argument advanced by Mr. Srinivasa Gopala Chari, if accepted, would lead to this position, viz., that once permission is granted for installing the machinery, the applicant can work the machinery for ever without making any payment at all. This can hardly have been the intention of the legislature in enacting sections 249 and 250 of the District Municipalities Act. In the judgment already referred to, it is stated that

> "It would be completely anomalous to hold that, after the Council had granted permission for the erection of a mechanical power factory, it is open to the Chairman to refuse a licence for its being worked or to impose impracticable conditions on its working."

With great respect to the learned Judges, I cannot see any anomaly in the situation if the scope and object of the two sections are correctly appreciated. In my opinion, the fact that the industries included in section 249 and schedule V are licensed by the chairman, subject to the control of the Council while the power factories referred to in section 250 are regulated by the Council itself, subject to the orders of the Governor in Council, has no material bearing on the question under consideration.

Sections 287 and 288 of the City Municipal Act may be referred to with advantage in this connexion. Section 287 states that

"The owner or occupier of every place used for any purpose specified in schedule VI shall in the first month of every year, or, in the case of a place to be newly opened, before it is opened, apply to the Commissioner for a licence for the use of such place for such purpose."

Section 288 states that

"No person shall, without the permission of the Commissioner, erect anywhere any steam-boiler or machinery by the use of which smoke, smell, noise, vibration, dust or floating particles of combustible or other matter are produced or danger is likely to arise to the inhabitants of the neighbourhood."

In *In re Smith*(1) Mr. Justice KRISHNAN had to consider the true scope of these two sections under slightly different circumstances. In that case the accused was convicted for not taking a licence under section 288. He had removed his machinery from its old place to a new one, and obtained permission to use it in his new premises, but he had not obtained permission to erect the machinery in the new place. It was argued as the first point that

"the accused having been allowed to use the machinery in Jones' street and it having been merely transferred to the new

(1) (1920) 45 M.L.J., 731.

MUTHU BALU CHETTI, *In re*.

MADHAVAN NAYAR, J.

place, he could not be asked to pay any new licence fee for erecting the machinery there."

The learned Judge in overruling this argument made the following observation :—

"I do not agree with this connexion because the two things are different, the one is an annual payment of the licence fee for the use of the machinery and the other is a payment once for all for erecting the machinery and the fact that the payment was made in the one case is no excuse for not paying in the second time."

I think these observations may well be applied in considering the arguments advanced in the case before us.

For these reasons, I would respectfully differ from the decision in Criminal Revision Case No. 503 of 1925. The other question raised in that case, viz., whether the machinery falls within clause (*q*) of schedule V does not arise in the present case as already indicated. I would therefore return this reference and the connected cases to the District Judge and ask him to deal with the case in the light of the above observations.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nayar.

1926, September 3.

In re MAYANDI THEVAN, APPELLANT.*

Criminal Tribes Act (VI of 1924), *sec.* 23—*Conviction under sec.* 23 (1) (*b*)—*Second and third convictions—If should be after accused's tribe is declared or accused registered as member of criminal tribe—Reduction of sentence—"Special reasons to the contrary"—Character of.*

For the conviction of an accused person under section 23 (1) (*b*) of the Criminal Tribes Act (VI of 1924) it is not necessary that both the second and the third convictions should be

* Criminal Appeal No. 203 of 1926.