

**REVISIONAL CRIMINAL.**

*Before Zafar Ali and Bhide JJ.*  
**MULA AND OTHERS—Petitioners**

*versus*

**THE CROWN—Respondent.**

**Criminal Revision No. 1815 of 1928.**

*Punjab Municipal Act, III of 1911 (as amended by Punjab Act II of 1923), section 197 (a)—License for sale of vegetables—powers of Committee—restriction of—Bye-law under clause (d) of section 197 (since repealed)—restricting sale to specified area—whether still in force—Punjab General Clauses Act, I of 1898, section 22.*

*Held*, that under clause (a) of section 197 of the Punjab Municipal Act, 1911 (as amended by Punjab Act II of 1923), all that the Committee can do is to require licenses to be taken for manufacture, sale, etc. of articles of food and drink and to prohibit manufacture or sale in premises for which no license is taken. And, although the Committee has the power to refuse a license for any premises, this power can only be exercised, not arbitrarily, but on reasonable grounds, such as those based on considerations of public health, sanitation, etc.

*Held further*, therefore, that a bye-law (framed under clause (d) of section 197 before its repeal in 1923) restricting the sale of vegetables to one locality only, namely the vegetable market appointed by the Municipal Committee, and which thus impliedly takes away the right to sell vegetables in other places on obtaining a license from the Committee, goes beyond the scope of clause (a) of section 197 as it stands now, and cannot therefore be considered to remain in force under the provisions of section 22 of the Punjab General Clauses Act.

*Case reported by K. C. Janmeja, Esquire, Additional Sessions Judge, Ferozepore, with his No. 296-J., of 21st September 1928.*

**HUKAM CHAND**, for Petitioners.

**R. C. SONI and MOHAMMAD DIN JAN**, for Respondent.

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*March 20.*

*The Report of the Additional Sessions Judge,  
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The facts of this case are as follows :—

The accused are ordinary vegetable-sellers at Muktsar and because they sold their vegetables wholesale at their premises which are not situate in the vegetable market appointed by the Committee, the Naib Tahsildar, Muktsar, punished them with a fine of Rs. 30 each and besides the accused were instructed to mend their demeanour towards the Committee otherwise they will have to pay Rs. 5 per day as penalty. The accused preferred an appeal before the District Magistrate who confirmed the order of the Naib Tahsildar saying that the accused, by selling vegetables on unauthorised premises, had committed a breach of the bye-laws and the order passed by the Naib Tahsildar was both legal and suitable.

The proceedings are forwarded for revision on the following grounds :—

The principal ground which is pressed before me in this case is that the conviction is bad inasmuch as Clause D of Section 197 of Act 3 of 1911 has been repealed by the Punjab Municipal Amendment Act 2 of 1923 and Clause A of that section does not authorise the Municipal Committee to frame a bye-law prohibiting the sale (by auction) of fresh fruits and vegetables at any place other than the Sabzi Mandi, Muktsar. I think this ground has a great force and accordingly I am fortified in this view by the Judgment of the Hon'ble Chief Justice dated 13th April 1928, passed in case *Ganya Lal versus Municipal Committee, Montgomery*, of which a copy has been produced before me (case No. 232 of 1928). This case appears to be on all fours with the facts of the present case. Clause A of Section 197 of the Municipal Act does not authorise

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the Municipal Committee to frame any bye-law prohibiting the sale (by auction) of the fresh fruits and vegetables. I recommend therefore that the petitioner's conviction be set aside. It might be however noted that the fine has been realised.

BHIDE J.

BHIDE J.—The petitioners Mula Mal, Bansi Ram and Buta Ram were convicted under section 199 of the Punjab Municipal Act, 1911, for the breach of a bye-law and sentenced to pay a fine of Rs. 30 each.

The bye-law of which a breach was alleged to have been committed was framed by the Municipal Committee, Muktsar, under clause (d) of section 197 of the Punjab Municipal Act, 1911, as it stood before its amendment in 1923. The bye-law is as follows :—

“ No person shall sell wholesale or by auction any fruit or vegetables except at the vegetable market appointed by the Municipal Committee in this behalf.”

Clause (d) of section 197 was repealed in the year 1923. It is not disputed that the bye-law would have become null and void in the ordinary course owing to the repeal of clause (d) under which it purported to have been framed, but it is urged on behalf of the Committee that the bye-law remains in force inasmuch as it is consistent with clause (a) of section 197 of the Punjab Municipal Act as it stands now. Reliance is placed in this respect on section 22 of the Punjab General Clauses Act.

The sole point for decision in this revision therefore is, whether the bye-law referred to above can be held to fall within the scope of clause (a) of section 197. That clause is as follows :—

“ The committee may, by bye-law, prohibit the manufacture, sale or preparation or exposure for sale

of any specified articles of food or drink in any premises not licensed by the Committee.”

The old clause (d) of section 197 under which the bye-law was framed was on the other hand worded as follows:—

“ The committee may by bye-law, fix the places in which any specified article of food or drink may be sold or exposed for sale or the places in which it may not be sold or exposed for sale.”

It is contended on behalf of the Committee that there is no distinction between ‘fixing’ and ‘licensing’ places. After carefully considering the matter, I am of opinion that there is a distinction between the two words. It is an established principle of construction of statutes that words used in an enactment should be taken in their ordinary sense especially when the sense is appropriate to the context. The power of regulating trade and manufacture by means of licenses, which local bodies exercise in the interest of public health, sanitation, etc. is well known. The word license means ‘leave or permission’ and it implies that permission is asked by one or more individuals and is granted by the Municipal Committee. Under clause (d) of section 197, as it stood before its amendment in 1923, the committee had the power to fix places for the sale or exposure for sale of articles of food or drink, etc., irrespective of any permission or leave being asked for the purpose.

Clause (a) of section 197 seems to be much more restricted in its operation. All that it empowers the committee to do is to require licenses to be taken for manufacture, sale, etc. of articles of food and drink and to prohibit manufacture or sale, in premises for which no license is taken. The bye-law referred to

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above on the other hand allows sale of vegetables in one locality only, namely, the vegetable market appointed by the Municipal Committee. This impliedly takes away the right to sell vegetables in other places on obtaining a license from the Committee.

It is true that the Committee has the power to refuse a license for any premises, but I take it that this power can be exercised, not arbitrarily, but on reasonable grounds, such as those based on considerations of public health, sanitation, etc. The bye-law in question seems to my mind to go beyond the scope of clause (a) of section 197 and cannot, therefore, be considered to remain in force by virtue of section 22 of the Punjab General Clauses Act.

I would, therefore, hold that the bye-law has ceased to have any force and set aside the conviction and the sentence passed on the applicants and order the fine, if paid, to be refunded to them.

ZAFAR ALI J.

ZAFAR ALI J.—I agree.

N. F. E.

*Revision accepted.*