

1885

QUEEN  
EMPERESS  
?.  
PURSHOTAM  
KÁLA.

and asked the Court to stop it, lest he should tamper with the witnesses. For this he has been convicted of defamation. I think there is nothing defamatory in this information; but, even if there is, in my opinion exception 9 of section 499 of the Penal Code would clearly apply to the case, and I consider that the applicant has committed no offence. It is not alleged that he acted maliciously, and the facts show that he was acting in good faith in the interest of his partner, who was defendant in the suit."

*Branson (Ghanashám Nilkanth Nádkarni with him) for the accused.*—The imputation which the accused made, was made in good faith, and without any malice, as the Sessions Judge has found. He was justified in making such imputation to guard the interest of his partner, who had expressly set him to watch the case. The case of the accused, therefore, falls within the purview of exception 9 to section 499 of the Penal Code.

NÁNÁBHÁI HARIDÁS, J.—We agree with the view taken by the Sessions Judge, and order that the conviction and sentence be set aside.

*Conviction quashed.*

## REVISIONAL CRIMINAL.

1885

February 5.

*Before Mr. Justice Nánábhái Haridás, and Sir W. Wedderburn, Justice.*

*In re THE PETITION OF RA'JA PABA KHOJI.*

*Municipal Act (Bombay) VI of 1873, Secs. 66 and 3—Sale of vegetables on the otá of a house—Power of the municipality to prevent such sale—Market—Place, definition of—Otá of a house.*

The word "place," as defined in section 3 of Bombay Act VI of 1873, does not include a house, or otá of a house.

Selling vegetables on the otá of a house is not using the otá "as a market" within the meaning of section 66.

Accordingly a person, who sold vegetables on the otá of his house, was held not thereby to have committed any offence under section 66 of the Municipal Act (Bombay) VI of 1873.

THE Municipality of Tháná promulgated an order that no other place, except the municipal market, should be used for the

\* Criminal Review, Petition No. 264 of 1884.

purposes of selling vegetables. The petitioner, in disobedience of the order, exposed vegetables for sale on the *otá* of his own house.

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On a complaint by the secretary of the municipality the petitioner was charged before the Third Class Magistrate at Thána under section 66 of the Municipal Act VI of 1873, and a fine of Rs. 2 was inflicted upon him.

The petitioner appealed to the First Class Magistrate, who confirmed the conviction and the sentence.

The petitioner thereupon made the present application to the High Court under its revisional jurisdiction, and prayed that the record and proceedings in his case might be sent for and the conviction annulled. Accordingly the record was sent for.

*Mádlavráv Chinnáji Apte (Gangáram B. Rele with him)* for the petitioner.—Section 66 of Act VI of 1873 does not enable the municipality to prevent a person from selling vegetables in his own house. The word "place" as defined in the Act means a place which belongs to the municipality, or to or over which the municipality has a right or control. The word "market" has not been defined in the Act, but the word "bázár", as defined in section 3 of the Act, would include it. In order that a place should fall within the category of "market" there must be a collection of shops frequented by more than one person. Here the petitioner used his own house for the sale of vegetables. If others used adjoining *otás* he was not responsible for it. In the case of *The Mayor of Macclesfield v. Chapman* <sup>(1)</sup> it was held that a grant of a market did not of itself imply a right in the grantee to prevent persons from selling marketable articles in their private shops: see also *The Mayor of Penryn v. Best* <sup>(2)</sup>; *Goldsmid v. Great Eastern Railway Company* <sup>(3)</sup>; *The Mayor of Manchester v. Lyons* <sup>(4)</sup>.

NA'NA'BHA'I HARIDA'S, J.—The words, which appear to be very important in section 66 of the Act in reference to the present

(1) 12 M. & W. Rep. 18.

(2) L. R. 25 Ch. Div. at p. 548.

(3) L. R. 3 Ex. Div. 292.

(4) L. R. 22 Ch. Div. 287.

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*In re*  
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OF RÁJA  
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case, are “no place shall be used as a market”<sup>(1)</sup>. The word “place”, as defined in section 3 of the Act, does not include a house or an *otá*. In another part of the defining section the word “land” is used to include a building, and the word “bázár” to include a collection of shops. The word “building” as well is defined. If that word had been used in section 66 it would have included the *otá* of a private house, but that word does not appear in the section.

The next point for consideration is, whether the *otá* was used “as a market” within the meaning of section 66. The fact found is that the petitioner sold vegetables on the *otá*. It seems, therefore, that the *otá* was used as a shop, and not as a market.

Though the Magistrate refers to other persons selling vegetables on *otás* near the shop of the petitioner, there is nothing to show that the petitioner had anything to do with them; he is responsible only for his own act. We fail to find that the petitioner used the *otá* of his house as a market for the sale of vegetables. Selling vegetables on the *otá* of his house, which is all the applicant seems to have done, does not appear to us to be an offence under section 66 of the Bombay Act VI of 1873. We, therefore, set aside the conviction and sentence. The fine levied should be refunded.

*Conviction and sentence set aside.*

(1) Section 66, Clause 1.—It shall be lawful for the Municipality to direct that no place shall be used as market for the sale of animals, meat, fish and vegetables intended for human food, or as a slaughter-house, excepting the public markets or slaughter-houses constructed or opened by the Municipality, or such other markets or slaughter-houses as may have been licensed in writing by the Municipality, who may at their discretion from time to time grant, withhold, or withdraw such license, either generally or in individual instances.

Clause 2.—Whoever, contrary to such direction or without such license as aforesaid, sells or exposes for sale any such animals, or commodities, or uses any place as a slaughter-house, shall be liable to the penalty hereinafter provided.