[L. & M. / 3,000—19-11-96.]

INDEXED.

Local & Munl. (1897) Department.

MISCELLANEOUS.

G.O., No. 12 M.Mis.

DATED 6-1-97.

[Despatch Abstract.]

Judgments.

Concurring in the remarks of the Collector of Godavari in regard to moving the High Court to revise the judgments of the Stationary sub magistrate of Ellore and the Progs. of the District Magistrate of Godavari relating to certain offences against municipal laws.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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[5]
700—6-4-96.

LOCAL AND MUNICIPAL DEPARTMENT.

Papers to be read in Proceedings :—

~~Again G.O., dated 189 , No.~~

Current No 3285^{m} of 1896, dated 25.11.96 from the Chairman, M.C. Ellore

~~Current No. of 189 , dated from the~~

Misc.

Order. No 12 Munis dt 6-1-97

The Government concurs in the Collector's remarks in para 2 of his endorsement.

V.R.
20/12/96

To the Chairman, M.C. Ellore
thro' the Collector

Despd. 8/1/97

@ $\frac{1831}{\text{Eng}}$ a.v.n

Cur $\frac{4001}{96}$

Local & Munl. (1896) Department.

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$\frac{\text{k}}{3\text{-}8\text{-}96}$

$\frac{28\text{-}11\text{-}96}{\text{C}}$

CURRENT No. ~~511~~ 3285-M

COLLE
4 DEC 96
GODA

Order.

& Dis $\frac{4001}{\text{Rev}}$ 8 96 desp 2/12

Submitted

C Swayne

As Dy Collector

Forwarded w Dis on Cur $\frac{1831}{\text{Eng}}$ of 96
Dc 4/12

The Chairman has so to speak sat on that Mr. Brodie's proceedings for over 3 months.

I see no reason to recommend that the High Court be moved in the matter. The Municipal Council can do that itself, at its own expense.

R H Shipley
4-12-96

$\frac{527\text{ M}}{96}$

a 16/12 12/12 5/12

From

The Chairman
Municipal Council
Ellore

No. 511

8. DEC. 1896

Dated 25-11-96

Received 8-12-96

Registered 9-12-96

Enclosures 6.

Spare copies

SUBJECT.

Forwarding certain judgments of High Court for ~~re~~consideration & to move the High Court thereon.

$\frac{\text{at}}{4/12}$

7/12

9. R 8/12

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BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

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TWO ANNAS

INDIA

THOS. DE LA RUE & CO. LONDON

In the Court of the Stationary Sub Magistrate of the Ellore Taluk Godavary District

Calendar Case No: 754 of 1895

Complainant	Defendant
Regina	Mulukatla Atchutaramiah of Ellore.

Offence. Erecting a pendal without license under section 170 of Municipal act

Finding. Not guilty

Sentence. The accused is acquitted under section 245 C.C.P.

Judgment

The Case is that accused erected on 27th May last a pendal in front of his house in the public street without license under section 170 of the Municipal act on the occasion of marriage in his house which came off 4 or 5 days afterwards and thereby committed an act provided for in section 263 of the act.

2 The case was originally instituted as Beach Case No $\frac{1062}{1895}$ but at the request of the accused transferred to Calendar file on which it was taken as No. $\frac{754}{1895}$.

3 The accused is a first grade pleader then

153

Errors none

No 3249
J. Ramayya
J. F. More 5-2-96
Ellore
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STAMP DEPARTMENT
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GODAVARI

Ellore Municipal Office

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TWO ANNAS
INDIA
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THOS. DE LA RUE & CO. LONDON.

practising in Ellore and had to celebrate certain marriages in his house. On the 12th of April last he put in his application (Exh A) for permission to erect a pendal and permission asked for was granted (vide Exh I) In accordance with this permission pendal ~~of~~ his was in the Course of Construction the roofing was completed, but while the decorations inside were in progress it accidentally took fire on 26th May last and was burnt down. The damage was repaired on 27th (the next) day and the following days and the marriage was celebrated four or five days after the 27th. The charge against the accused is on account of the second pendal erected on 27th as no previous sanction for the same was obtained.

4 Accused admitted his having erected a pendal on 27th, but his plea or Contension is that no second sanction was needed because the object for which the first pendal had been erected was not yet fulfilled and because the sanction already given (Exhibit I) was not withdrawn or revoked, that he however put in or presented a petition Exh A, to the Municipal

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Error one only hr

No 3248
Ramayya
of Ellore 5-2-96
Ellore

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Council intimating that there was ~~(free)~~ (fire) Ins accident that thinking no second sanction was needed he already undertook the work of reparation as there was no time to be lost and requesting that in case fresh sanction was thought necessary by the Council, his action in erecting a second pendal in anticipation of such sanction might be approved of and formal sanction accorded.

5 It is contended for prosecution that the grant of sanction (Exh I) being conditional that is subject to a payment of fees according to the scale given therein Ex I was no sanction since accused did not pay up the fees and could not legalize the erection of the first pendal that it (Ex I) is therefore no authority for the second pendal erected on 27th May last that the second application or petition (Exh A) presented by accused was never responded to and that therefore the second pendal was raised without any sanction whatever.

6 But from the Exhibit II put in for defence in which the wording to convey the sanction asked by accused himself for the erection of pendals

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No 3241
Mr Ramappa
Ellore 5-2-96
Ellore

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in streets in front of houses other than accused's is quite different from that in Exhibit II, it appears that sanction conveyed in Exhibit I was never meant to be conditional, & Exhibit I stating that "sanction has been given" and Exhibit II containing words to mean that "sanction will be given" - so that Exhibit I might be passed of as proper sanction. Further if it were not a proper sanction there should have been another prosecution for this first pendal which was burnt down.

7 Now the question would come to this; whether or not Exhibit I was a sufficient authority for the raising of the second pendal and whether or not under the circumstances accused was justified in erecting it in anticipation of a second sanction if it were considered necessary at all.

8 The 1st sanction (Exhibit I) not being revoked or withdrawn, I think it was in force on 27th May last. Suppose that instead of fire, there was some other accident like want of skilled labour, which brings down to the level of the ground the foundations

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Error one only, [illegible]

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No 3241
to Ramayya
Ellore 5-12-96
Ellore

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TWO ANNAS

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No 3240
N Ramappa
of Ellore 5-2-96
Ellore
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INDIA
TWO ANNAS

and erections thereon of any building while it was in the course of construction with the formal sanction of the Council previously obtained, would it be necessary for the licensee (~~for repairing~~) [illegible] to obtain a second license for repairing by skilled labour the damage caused by unskilled laborer in the first instance?. I think not - Even taking it for granted, that a second sanction was needed, the circumstances in which the accused was then placed in relation to the marriage which was to come off four or five days afterwards and for which the pendal had been in construction for a number of days prior to 27th, the bonafides with which he acted on 27th in deputing a friend of his to present his second application (Exh A) to the chairman delegate (defence witness pensioned Subadar (headman)), would certainly go in favour of the accused and could not in my opinion criminate him under the District Municipal act.

9 As argued by prosecution vakil, malifides or bonafides may not go to decide any offence against Municipal law, which requires previous

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No 3240
Ramayya
Ellore 5-2-96
Ellore

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TWO ANNAS

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TWO ANNAS

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sanction for acts like the erection of peudal but in the present case, the circumstances were of a very peculiar nature and would in my opinion be sufficient to exonorate the accused, who with all his legal knowledge and position he occupies in society cannot be expected to defy law by wilfully acting as he is alleged to have acted in contravention to and against its commands.

10 I cannot therefore find the accused guilty of any offence punishable under section 263 of the act and accordingly direct that he be acquitted under section 245 CCP

(Sd) SV Ramiah
24.3.96. 2nd Class Magte
(True Copy)

By order of the Court
Gurulachulu
Hd Clerk

Compared
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Errors none hw

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Application No. 86 for copy received	20-3-96
Papers called for	20-3-96
Papers produced	23-3-96
Copy ready	28-3-96
Delivered or sent	31-3-96

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INDIA TWO ANNAS

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Proceedings of the Stationary Sub Magistrate of the Ellore Taluk Godavary District

Read resolution of the Council sanctioning the prosecution of the accused which was published with the District Gazettee as suppliment dated 1st August 1895 filed and marked Exhibit ~~(A)~~ C

(Signed) T V Ramiah
16-1-96 2nd Class Magte

Order.

This resolution is very improperly worded. Under the major Head VI miscellaneous petitions which were read, the first petition was that of accused requesting permission to raise marriage pendal sheds and to erect a portion of the house burnt down. The 2nd, 3rd & 4th particulars were from persons claiming compensation for the loss caused to their houses by the accident (Fire) occurring by grant of permission to accused for fireworks and pendals. Against the first petition the resolution was that prosecution ordered for having raised pendals without permission. As against the next three petitions the resolution was that no permission was granted to the accused (1st petitioner) for the pendal and for making fireworks

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TWO ANNAS

or to store them in the place mentioned &c – that prosecution of the occupier ordered under section 188 & 189 for having manufactured fireworks and for having stored explosive or combustible materials without permission:—

2 The Counsel for defence contends that the resolution against the petitions No. 2, 3 & 4 is no resolution sanctioning the accused's prosecution for manufacturing fireworks but that it was intended for the information of the petitions (petitioners) (Sic) and that no formal resolution authorizing accused's prosecution was ever passed by the council. It is also contended that the word "occupier" in the resolution has no reference to the accused M. Atchutaramiah because it is stated no-where ~~that~~ Atchutaramiah is the "occupier" referred to in the resolution.

3 Before I had a look at the original resolution book, I thought that the word "&c" in the resolution passed in reference to petition No 1 had something to do with and included the manufacture of fireworks for which prosecution was ordered in the resolution passed in reference to the other three petitions, but after perusing the original

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THOS. DE LA RUE & CO. LONDON

resolution book and after hearing the defence Counsels objections against such a Construction I think I must hold that the resolution passed in Connection with one petition has nothing to do with the resolution passed in Connection with the other petition, that each resolution should be considered to have been passed solely in Connection with that particular petition under which it appeared and with no other, and that the particular resolution must be understood and read together with the connected petitions. I would now read the petitions Nos 2, 3 & 4 with the resolution passed in Connection with them as printed in the supplement Resolution.

2 Vadlamudy Adinarayanaswamy - To answer for the loss 700 Rs caused by granting permission for fireworks & pendals to M. Atchuta-ramiah Garu (accused)	"The petitioners are informed that no permission was given for the pendal and for making fire works or to store them in the place mentioned, and the Council recognized no liability under any circumstances.
3 Satyavarapu Manikyam - To answer for the loss 100 Rs for Do	
4 Kundula Sarayya Do - 150 - Do.	

Prosecution of the occupier ordered under sections 188 & 189 for having/manufactured fireworks and

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TWO ANNAS

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2 Vadlamudy Adinarayanaswamy - To answer for the loss 700 Rs caused by granting permission for fireworks & pendals to M. Atchutaramiah Garu (accused) 3 Satyavarapu Manikyam - To answer for the loss 100 Rs for do 4 Kundulas Sarayya do - 150 - do.	"The petitioners are informed that no permission was given for the pendal and for making fireworks or to store them in the place mentioned, and the Council recognized no liability under any circumstances.

Prosecution of the occupier ordered under sections 188 & 189 for having manufactured fireworks and

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for having stored explosive or combustible materials without permission

The words underlined in the first para of the resolution viz "in the place mentioned" must certainly refer to the place named in the three petitions read and noted in the margin. So are the words underlined in para two viz "Occupier (of the) (of that place) which must necessarily refer to Mr Atchuta Ramiah, accused in this case.

It would thus become clear that the second para of the resolution meant the prosecution of the accused for the manufacture and storing of fireworks without permission and was never intended simply for its being communicated to the petitioners. If it were otherwise, it should not have been recorded in a separate para, separate from the first one which commences with the words "The petitioners are informed that" — I therefore come to the conclusion that the para two of the resolution is the resolution passed and duly published by the Municipal Council in reference to the prosecution of the accused for the manufacture and storing of fire-works without permission under sections 188, 189 182 —

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of the Municipal Act..

(Signed) T V Ramiah
16 1 96. 2nd Class Magte

II Now that the objection in reference to the resolution (and its publication in the Gazettee) regarding the prosecution of the accused for the manufacture and storing of fireworks has been met by me, the Counsel for defence urges that according to the notification and the resolution (Exhibits A+B) under section 188, licence was necessary only in the case of those who regularly carry on the trade of fireworks and the case of persons who manufacture fireworks themselves for their private use at the festivals does not fall in the category of trades mentioned in Clause (1) i of the section (188 of the act), that the word "used" occurring in this clause must be held to mean a general or habitual use as in the case of traders, that the notification (Exhibit B) too which directs the taking of license speaks of persons carrying on the trades specially mentioned as being required to apply for license within the first of every official year or in the case of a place to be opened for any such purposes

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TWO ANNAS

(trades) thirty days prior to such opening, and therefore supports his view of the clause (1) i of section 188 - And that therefore the manufacture of fireworks for temporary and private use without license does not come under section 189 and is no offence.

2 Vakeel for the other party contends that the word "trades" occurring in the marginal note of clause (1) i section 188, in the heading No 7 — "offensive and dangerous trades" and in the notification (Exhibit B) should be taken not in its restricted sense of habitual dealing but in the general sense of business which must necessarily include temporary and not general manufacture of fireworks and for a private purpose and not for the benifit of others for any consideration that from the following sub sections of clause (1), (ii, iii and iv) which deal with coal firewood straw &c it would appear quite impossible to hold the word trade occurring in the heading not to mean other than habitual dealing, that if the legislature ~~meat~~ meant that no sanction was necessary in the case of manufacture by any person of fireworks intended for his private

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TWO ANNAS

THOS. DE LA RUE & CO. LONDON.

use, they would have exempted the same as in the case of wood &c for private use, that the word "used" occurring in the first clause of section 188 should not be held to mean a general or habitual use and that the case of manufacture of fireworks and storing them by the accused undoubtedly comes under the section 188 and the notification published thereunder. The prosecution vakil further stated that he would prove by the evidence of Dasu Sreeramulu & J. Gavrinadha-Sastry that accused had not manufactured fireworks solely for his own private use but that he had "traded" in them and given them away. So that even admitting that section 188 clause (1) i treats of trades and trades alone the case of accused is covered by the act and accused had committed an offence under sec 189.

3 I have carefully read section 188 of the Municipal act as well as the notification (Exhibit B) published thereunder in the District Gazette and am of opinion that the word trade "trade" occurring in the heading "of offensive and dangerous trades", in the marginal note of sub-head i of clause 1 of section 188 viz "License for offensive

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Ellore Municipal Offic

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use, they would have exempted the same as in the case of wood &c for private use, that the word "used" occurring in the first clause of section 188 should not be held to mean a general or habitual use and that the case of manufacture of fireworks and storing them by the accused undoubtedly comes under the section 188 and the notification published thereunder. The prosecution vakil further stated that he would prove by the evidence of Dasu Sreeramulu & J. Gavrinadha-Sastry that accused had not manufactured fireworks solely for his own private use but that he had "traded" in them and given them away. So that even admitting that section 188 clause (1) i treats of trades and trades alone the case of accused is covered by the act and accused had committed an offence under sec 189.

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TWO ANNAS

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use; they would have exempted the same as in the case of wood &c for private use, that the word "used" occurring in the first clause of section 188 should not be held to mean a general or habitual use and that the case of manufacture of fireworks and storing them by the accused undoubtedly comes under the section 188 and the notification published thereunder. The prosecution vakil further stated that he would prove by the evidence of Dasu Sreeramulu & J. Gavrinatha-Sastry that accused had not manufactured fireworks solely for his own private use but that he had "traded" in them and given them away. So that even admitting that section 188 clause (1) i treats of trades and trades alone the case of accused is covered by the act and accused had committed an offence under sec 189.

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or dangerous trades" and occurring in the Exhibit B has one and the same significance viz, occupation, a way of life, buying and selling or in other words commerce or habitual dealing & nothing else. Clause 1 subhead i of section 188 deals with "offensive or dangerous trades" properly so called, and subheads ii, iii & iv deal with those offensive or dangerous trades improperly so called, that is, with those trades or professions which are of a far less offensive or dangerous character but such as may be classed under the heading "offensive and dangerous trades". and these are (ii) stables cartstand, yard for cattle &c, iii timber firewood and hay depots and iv bake house. In framing this section, the legislation evidently had in view the fact that private individuals keep their own domestic cattle in their private yards and store within their house premises just for their private purposes "wood firewood, thatching material, hay grass, straw or coal and enacted that owner or occupier of yard for cattle for private purposes though not for trade should obtain a license if the cattle come to a certain number viz, twenty if sheep or goats, and ten

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of other cattle or pigs (vide sub section ii Clause 1) but as to storage of wood &c gave the Chairman discretion regarding the quantities & restrictions for safety so that the Chairman has power to direct that persons keeping or storing these things wood &c above a certain quantity to be named by him should apply for a license the reason for leaving this matter to the discretion of the Chairman being the conditions of ~~the~~ people and situation of houses in the several Municipal towns not being the same and uniform throughout but so quite different and varied that it is impossible to make any restrictions themselves.

4 But I do not and cannot think for a moment that the legislature had ever thought while enacting this particular section 188 of the fact that persons other than professional dealers, would manufacture fireworks or store them within their own premises solely for private purposes because the general experience is and has always been that whenever display of fireworks is intended by any private person for his own enjoyment and amusement — on

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any festive occasions in his house, he would as a matter of fact give orders to habitual dealers for these fireworks but would never undertake the trouble of manufacturing them himself, which is seldom the case - But if there are cases such as is alleged in the case of accused here, in which private individuals do undertake the business of making fireworks themselves for their own private use on festive occasions, I believe they must have escaped the notice of legislature and this accounts for the omission of the mention of this matter at all in this section which treats of cattle yards, wood and other depôtes intended for private purposes. So that if there is any unique case like that of accused where fireworks are alleged to have been manufactured or stored for private and temporary purposes, I must say that section 188 of the act is defective on this account and would not at all cover such a case and that the man who makes fireworks and stores them for his private purposes without licence cannot be punished under sec 189 of the act. But if it is contended as it has been contended by prosecution vakeel, that it might be

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that the legislature did not lose sight of the fact of manufacture of fireworks for private purpose but had it in their view and made no exception regarding the same as in the case of cattle yards and wood depôts because taking the combustible and explosive nature of fireworks into consideration they thought and rightly too of the inadvisability to allow the private manufacture of fireworks (in whatever small quantity it may be) without special license for the same and so we intentionally silent on this point in enacting this section: I would meet this contention in this way; the general tenour of the Section, the different trades of which it treats who cannot but be one's profession or callings or habitual dealings as a means of livelihood, the direction in the section that (application) ~~applic~~ation for license should be made "within the first month of every official year or in the case of a place about to be opened thirty days prior to such opening", the provision in clause (2) of ~~this~~ section ~~that the~~ period of license should not ~~exd~~ exceed one year and in clause 3 ~~that~~ against the Chairmans order of refusal to grant license, ~~application~~ appeal can be made within one month

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of the order, and lastly but not the least, the occurring of the word "used" in Clause (1) Sub Section i who denotes habitual use all these would point to the fact that the section is intended for professional tradesmen carrying on the trades specified but would never cover the case of persons manufacturing fireworks or storing them for private purposes.

5 Again if it can be conceded for arguments sake that Section 188 covered manufacture of fireworks for private purposes other than purposes of trade or Commerce, I do not understand why the general notification (Exhibit B) published by the Municipality should be speak of only trades of which a list is given and in which manufacture of fireworks by private individuals for private purposes finds no place and not direct the applying for a license for such a purpose. Neither did at a meeting held for the purpose, the Municipal Council say in their resolution (Exhibit A) that persons intending to manufacture or store fireworks for private purposes should take out license. In connection with storing fireworks for private use let it be supposed that a person wants a brilliant display of fireworks on a certain occasion

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of festivity in his house. He would give necessary orders for them to the habitual dealer, a licensee and when they have been manufactured and declared ready, would fetch them from the maker or licensee and deposit or store them in his house pending the arrival of the time when they should be exhibited. I would now ask "would the Municipality require of such a person to apply for and obtain a license from the Chairman permitting him to deposit, store or keep the fireworks (so purchased from the professional dealer) in his own house however temporary the place is "used" for their storage on pain of his being prosecuted under sections 188 & 189 of the Municipal act? I do not believe the question (Affirmative) will be answered in the affirmation. Then if no license is necessary in such a case for storing fireworks under such circumstances I do not see any reason why the private manufacture as well of fireworks to the same extent as can legally ~~be~~ be ordered of a professional man should not be exempted. Since as it stands Section 188 makes no distinction whatever between the two cases. If on the other hand the above question were answered in the affirmative, I think we must

Errors two only

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MAR 6 1895 GODAVERY

S. Ramarao
S.V.

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INDIA TWO ANNAS

go on prosecuting in a Criminal Court every man who on the occasion of marriage ceremonies or other festivities in his house purchases, possesses and temporarily stores in his house fireworks in any quantity on the ground they are either explosive or combustible in their nature and this would certainly tell very hard on the liberties of a citizen and the act passed by the legislature would be a source of annoyance and trouble to the public instead of being boon for them, and I do not think that the legislature meant to give such annoyances. Now to the subject of notification (Exhibit B) and the resolution (Exhibit A) the Municipal Council at their meeting did not only not resolve anything in connection with the matter of applications for license for the private manufacture and storing of fireworks if they considered license was necessary but refrained from declaring in what quantities, and under what restrictions wood coal &c could be stored for private use without license under the proviso in section 188, so that any man who has ~~chosenl~~ chosen to store for his own private purposes any article such as straw, hay, coal &c in enormous quantities, that is in quantities beyond

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INDIA
TWO ANNAS
THOS. DE LA RUE & CO. LONDON.

the limit which the Council might have fixed at their meeting cannot be found fault with for not possessing a license and punished under section 187 of the act.

6 If it is admitted that the notification is defective and is intended also for cases of private manufacture and storing of fireworks, I think it is only just and equitable that benefit of this defect should be given to the accused who is alleged to have manufactured and stored fireworks for his own private purposes.

7 But if the prosecution alleges as has been alleged and is ready to prove by evidence to be recorded that accused manufactured fireworks and stored them not simply for private use but for the purposes of trade, the case would be different and the accused ~~was~~ him would certainly render himself liable under section 187 of the act for not applying for and obtaining license under section 188.

8 In these circumstances I order that no further evidence need be recorded if the case for prosecution is simply that the accused manufactured fireworks and stored them for his private use without license

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INDIA
TWO ANNAS
TWO ANNAS

THOS. DE LA RUE & CO. LONDON.

and that judgment be recorded acquitting the accused under section 245 CPC but that the evidence be recorded in behalf of prosecution if the case against the accused is that ~~the~~ he manufactured fireworks and stored them not for private purposes but for purposes of trade.

(Signed) I V Ramiah
18-1-96 2nd Class Magte

(True Copy)

By order of the Court

[illegible]
Hd Clerk

GODAVERY
8
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to M/s
R venkayya
of Ellore
D 10-4-94
Ellore
K. R. Brahmam
Sc

Application No. 215 for copy received	25-6-96
Stamp Papers called for	26-6-96
Stamp Papers produced	1-7-96
Copy ready	6-7-96
Copy delivered or sent	6-7-96

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INDIA
TWO ANNAS
THOS. DE LA RUE & CO. LONDON

In the Court of the Stationary Sub Magistrate of the Ellore Taluk Godavery District

Calendar Case No. 755 of 1895

Complainant — Defendant
Regina — Mulukutla Atchutaramiah Garu of Ellore

Offence. Manufacturing fireworks and storing explosive or Combustible materials without permission of the Municipal Council under sections 188 & 189 of act IV of 1884.

Finding — Not guilty

Sentence The accused is acquitted under section 245 CCP

Judgment

The prosecution vakil Contending that the Case against the accused was that he had manufactured fireworks for purposes of trade the evidence was recorded of one witness D. Sreeramulu but has not proved that the accused manufactured fireworks for purposes of trade. For the reasons already recorded I cannot find the accused guilty & accordingly direct ~~that~~ he be acquitted under section 245 CCP & set at liberty

(Signed) T. V. Ramiah
9-3-96 2nd Class Magte

(True Copy)
By order of the Court
Ho Clerk

STAMP DEPARTMENT
MAR 8 94
GODAVERY

No 1108
R Venkayya
Of Ellore
D 10-4-94
Ellore
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Application No. 215 for copy received	25-6-96
Stamp Papers called for	26-6-96
Stamp Papers produced	1-7-96
Copy ready	6-7-96
Delivered or sent by post	6-7-96

2 / 3285 M of 96

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INDIA
TWO ANNAS

In the Court of the Stationary Sub Magistrate of the Ellore Taluk Godavery District

Calendar Case No. 755 of 1895

Complainant — Regina

Defendant — Mulakutla Atchutaramiah garu of Ellore

Offence. Manufacturing fireworks and storing explosive or combustible materials without permission of the Municipal Council under sections 188 & 189 of act IV of 1884.

Finding — not guilty

Sentence The accused is acquitted under section 245 CCP

Judgment

The prosecution vakil contending that the case against the accused was that he had manufactured fireworks for purposes of trade the evidence was recorded of one witness D. Sreeramulu but has not proved that the accused manufactured fireworks for purposes of trade. For the reasons already recorded I cannot find the accused guilty & accordingly direct ~~that~~ he be acquitted under section 245 CCP & set at liberty

(Signed) T. V. Ramiah
9-3-96 2d Class Magte

(True Copy)

By order of the Court
Hd Clerk

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DEPARTMENT
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No 144
Rvenkayya
of Ellore
D 10-4-94
Ellore

Application No. 215 for copy received } on 25-6-96

Stamp Papers called for „ 26-6-96

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3/3285 No 896

Ellore Municipal Office.

Dated the 7th June 1896
Despatched

No. 196

FROM,

M-R-Ry,
C. SITARAMAYYA PANTULU GARU;
CHAIRMAN,
MUNICIPAL COUNCIL ELLORE.

To,
V. A. Brodie Esqr.
District Magistrate
Godavari

Sir.

I beg to bring to your notice the judgment in Calendar Case No. 764 of 1895 and request that after perusal of the Judgment you may be pleased to order further enquiry under Section 437 of the Criminal Procedure Code. I may mention here that the facts of this case are not quite new and the law on the subject once occupied your attention at Rajahmundry. The facts of the case are simply these:–

One Mr. M. Atchuta Ramayya a pleader then in the Sub Court here applied for a license to erect a pandal in the street in front of his house on 14-4-95 and the following endorsement on 30-4-95 was given to him. "Permission granted for erecting sheds. The petitioner is informed that permission is granted to erect pandals on condition of paying the prescribed fee, i.e., at the rate of As 8 per day for above 24 Sq. yds and Annas 6 a day for below 24 Sq. yds. Without paying the fee as per endorsement, he erected a pandal, when a report was submitted by the Sub Inspector of the Division on 17.5.95, stating that the petitioner had not paid the pandal fees and that without permission he erected a pandal. The Chairman passed an order on 20.5.95 that the pandal fees, if paid in future should not be taken without his permission as the pandal was already completed. This of course he came to know privately and the result was he put in a memo and pandal fees on 22.5.95 after the Chairman's order on 20.5.95 not to take the same.

On 23.5.95 the Sub Inspector's report was placed before the Council and the following resolution – "Resolved that notice be issued to Mr Achuta Ramayya Garu to remove within 3 days the thatched shed built by him on the main road in front of his house with a row of four lines of posts without permission and that if the same be not removed within that time, that the same be removed by the Municipality at his cost and prosecution be ordered for not

removing

removing the same, if not removed within the time. Mr. Venkataswamy Garu and Chandrayya Subadar Garu not voting for prosecution." was passed by the Council on 23.5.95 which was duly communicated to Mr. Atchuta Ramayya on 24.5.95 (vide copy of the notice and his endorsement thereon "Seen and taken the duplicate"). On 25.5.95 he put in a petition stating that he sees no reason to remove the pandal as required by the Council as the endorsement dated 30.4.95 was a sufficient authority for erecting a pandal. This pandal raised under such circumstances took fire and was burnt on 26.5.95 and the petitioner subsequently raised the pandal in question without permission and even without an application for a license to the Council (vide report of the Sub Inspector dated 27.5.95). But after the report of the Sub Inspector, that the petitioner was again erecting a pandal on 26.5.95 without permission and without payment of pandal fees, the petitioner put in a petition dated 27.5.95 (Copy enclosed and filed in Court) in which he stated that the pandals &c already erected as per sanction were burnt and that he was erecting new pandals

on the

on the strength of the former sanction and that petition was placed before the Council on 5.6.95 and the following resolution — "Prosecution ordered for having raised pandals &c without permission Head Assistant Magistrate not voting. Sundara Siva Row Garu proposing notice to be given to the party why he should not be prosecuted," was passed. It is on the strength of this last resolution that a prosecution was lodged against Mr. Atchuta Ramayya and the Judgment under reference was passed in that case, which I submit is both against law and admitted facts.

The Magistrate bases his Judgment in para 8 on the fact that the so called sanction given (namely "Sanctioned on condition of paying half rupee per day &c vide Ext. I) as Exhibit I was never revoked nor withdrawn and that the first pandal was not completed, and so it was in force when the second pandal was erected on 27th May. Taking for granted that the endorsement was, as was wrongly presumed by the Magistrate as sufficient authority to erect a pandal, still his finding that it would hold good for a second pandal and his reasons for the same are unsound in law and opposed to it and to admitted facts in the case. The accused put in a petition on the 27.5.95 (Ex. A) to the Council for fresh sanction

to

to raise a second pandal and in that petition, the accused distinctly admitted that the pandal already raised as per sanction accorded was burnt and that he was raising another pandal in its stead". The Chairman delegate C. Chendrayya Subadar Major Bhadur, who was examined as defence 1st witness, distinctly stated that he received a petition from the accused stating that the pandal raised for the marriage was burnt and that the sanction to erect again another pandal should be granted. He further stated that in the place of the pandal burnt, he saw a new pandal erected". Prosecution 1st witness stated that pandals and sheds already raised were burnt on the 26th May and that on the 27th May the accused again erected pandals. From the evidence on record, from the admissions of the accused, it is conclusively proved that the first pandal was completed and afterwards burnt, and that the second pandal was a different pandal, for which no sanction was given. The Magistrate in para 3 of his Judgment states that the pandal was in course of construction, the roofing was completed but while the decorations inside were in progress it accidently took fire on 26th May last

last and was burnt down. Whatever that may mean, it is clear from that sentence, that so far as the construction of a Pandal with inflammable substance was concerned, it was completed and then burnt while decorations and ornamentations were not finished. The Council has nothing to do with the decorations in a Marriage house or Pandal, and under these circumstances the second Pandal is a new Pandal and different from the one already raised and burnt. The next question to be considered is, whether a license to erect a Pandal which was accordingly constructed and completed and then burnt, would hold good for erecting a second Pandal without a fresh sanction. In the first, there was no license or Permission granted for erecting any Pandal in this case, and in the second Place, even if the endorsement given by the Chairman delegate that Permission was granted on Condition of Paying half a rupee a day &c. could be construed as a license, it was cancelled by the Council on 23-5-95 by a resolution (copy enclosed) and the same was duly Communicated to the accused on 24-5-95 which was admitted by him on 24-5-95 (vide acknowledgment copy) and by Petition put in by the accused on 25-5-95 declining to obey the Council's resolution as he sees no need to remove the pandal he first raised (vide copy of the Petition). In the

face

face of these facts the Magistrate is clearly wrong in finding that the Exhibit I endorsement of the Chairman delegate was never revoked nor withdrawn and that it was in force on the 27 May 1896. Apart from this, the Magistrate is clearly wrong in finding that the so called first sanction would hold good for a second Pandal as section 179 of the Municipal act distinctly lays down that external roofs, Pandals &c. erected or renewed after the coming into operation of this Act, shall not be made of grass, leaves or such inflammable materials except with the written Permission of the Municipal Council. Whatever may be the effect of the endorsement Exhibit I given by the Chairman delegate and the subsequent cancelment of the same by the Council, the Magistrates' finding is opposed to section 179 of the Municipal Act and to G.O. No. 792 M. Mis dated 9-5-96 recently sent to this Municipality by you in connection with a telegram from Purapus at Ellore, and would further have, if allowed to remain as it is, an alarming effect of granting a Perpetual license to build thatched buildings contrary to the Act. The Magistrate is further wrong in not ordering the accused to pay the Marriage Pandal fees as the Pandals continued for more than a month on the main road. Further the fact that the accused is a Pleader and ought as such to have respected law is

another

another circumstance which the Magistrate has very sadly overlooked when trying to exonerate him from all blame on some petty grounds. From a careful perusal of the Judgment, I am sure you will be pleased to find that the procedure in the case was far from satisfactory and that there was an attempt throughout to twist and turn facts and law in favour of the accused.

In these circumstances and in order to show the public that law is no respecter of riches or rank as you were once pleased to remark in this connection for the delay in lodging this prosecution, I request that you will be pleased to order further enquiry into the case under section 437 of the Criminal Procedure Code and thus afford an opportunity to show conclusively that the finding of the Magistrate on facts are incorrect and contrary to documentary evidence.

I beg to submit that owing to my illness, I was not able to submit these papers earlier though the Copy of the Judgment was obtained on 31.3.96.

I may also state here that the Magistrate never had any necessity or occasion to enquire into the validity of the first resolution of the Council which if he did he would not have committed such a glaring mistake in his Judgment as to say that the first endorse=

ment

face

=ment Exhibit = was never revoked or withdrawn. The resolution of the 23d May 1895 is a public document which even an appeal court can take cognizance of under Section 78 of the evidence act Clause 5. That the accused was aware of this resolution could be seen by the summons served on the Chairman by the accused for the production of certain documents from the Municipal Office. As there was in fact no question before the Magistrate about the first fraudulent … erected as per resolution of the 23d May 1895 and as the present prosecution was lodged under resolution of the Council dated 5th June 1895 there was no necessity to produce or file all papers connected with the first resolution and hence was the cause why the first resolution was not filed before the Magistrate.

I may also mention here that owing to a threatening summons issued to me by the Magistrate at the request of the accused to produce certain office papers within a particular time, I placed that summons and my reply before Mr. Moore the then Head Assistant Magistrate who told me that he directed the Magistrate not to proceed with the case until further orders. That gentleman has been transferred subsequently and I don't know whether the order was withdrawn by his successor.

I have the honor to be

Sir,

Your most obedient servant

C. S. Arlanayga.

Chairman.

From

The Chairman

Municipal Council

Ellore.

To

Dated

Despatched

Received

Encls.

No.

Subject.

Referrence.

face

Ellore Municipal Office.

Dated the
Despatched

No.

FROM,

M-R-Ry,

C. SITARAMAYYA PANTULU GARU;

CHAIRMAN,

MUNICIPAL COUNCIL ELLORE.

To,

The District Magistrate
Godavari.

Sir,

In Submitting the Record and Judgment in C.C. no 755/1895 on the file of the Ellore Stationary Sub Magistrate, I have the honor to request that you will be pleased after perusal of the record, to order further enquiry into the Case to let in evidence, as the Stationary Magistrate has on a technical ground dismissed the Complaint without taking evidence.

The Sub Magistrate's Construction of the Section 188 of the Municipal Act, and of the Resolution and the notification, and his arguments largely based upon his imagination are against law and unsound. The Sub Magistrate, regretting as he does that the Section is defective Seems to cure the defect by his elaborate construction.

The Magistrate has not taken Evidence nor is there any admission of the accused to show that the accused had manufactured fire-works as alleged and his procedure in that respect is illegal as it shut out evidence in the matter vide I.L.R. Alla. Vol XVIII P.222

Under these circumstances, I request that you may be pleased to order further enquiry under Sec 437 of the Criminal Procedure Code

I have &c
(Sd) C. Sitaramayya
Chairman
True Copy

Sitaramayya
Chairman

No 677
9-8-96

Rev. 12/8/96
C.S

Ref 439

Cr Rev: Pet. No 34/Ag 96
Dated 1-8-96

Godavari District

District Magistrate's Court

Criminal Revision Case No /1896

Proceedings of the District Magistrate Godavari

Read. Ellore Municipal Chairmans revision application No 196/7.7.96

Read: also copies of judgement and depositions in C.C. No 754/1895 on the file of the Stationary Sub-Magistrate Ellore.

1188/96

No 677
forwarded to
the Chairman
M.C. Ellore
through the
Dy Sub Magte
Ellore
[illegible]
Dy Magte
3/8/96

In this case a district Court Pleader M. Atchutaramayya was prosecuted for having erected a marriage pendal without the Chairman's permission under Section 263 of the Madras Municipalities Act

2. The accused on 14.4.95 asked for sanction to ~~erect~~ erect a pendal in front of his house on account of a marriage that was to take place therein and on 30.4.95 the Chairman delegate passed the following order

"The petitioner is informed that permission to erect pendal on condition of paying the prescribed fee is granted" The accused sent a memo dated 12.5.95 with the prescribed fee to the — Chairman (who says that he received it on 22.5.95) and erected the pendal. On 17.5.95 the Municipal Inspector reported that the accused erected the pendal without ~~the~~ permission which was not true and without paying the prescribed fee which was true.

3. On the 20th May the Chairman passed an order that the pendal fees if tendered should not be accepted until further orders which appears to the undersigned to have been hardly the correct course. It would have been better had he issued a demand notice for payment of the fee as there appears to have been no objection to the act of constructing a pendal considered by itself. The Chairman in his revision application presumes that the accused coming to know privately of his order of the 20th May sent the money with an antidated memo. It may [illegible]nt this Court cannot act upon the presumption as it is not conclusive.

Possibly the delay was due to the Counterpetitioner having by oversight neglected to despatch his letter with the fees at the time he wrote it or carelessness on the part of the Servant entrusted by him with this duty. On 23.5.95 the Council sent a notice to the accused that the pendal should be removed with in 3 days and that he would be presecuted if it was not so removed (M. Venkataswamigar and Subadar Chandrayyagar not voting for prosecution) The accused replied on 25.5.95 that he saw no reason to remove the pandal as the Endorsement dated 30.4.95. was a sufficient authority for erecting it. On 26.5.95 the pendal accidantally took fire and the accused began to replace it and sent a petition on 27.5.95 stating that the pendal already arrected was burnt, that he was errecting erecting another on the strength of the former Sanction, but if fresh Sanction was necessary it might be given, that the work had been commenced in the belief that Sanction would be given and requesting Early orders as the marriage was fast approaching.

Instead of either granting or refusing sanction the Council (The Head Asst Collector dissenting) ordered the prosecution of the accused on 5.6.95.

4. The Sub Magistrate acquitted the accused on the following grounds:— A license was given on the 30.4.95 and it was never revoked. If the fees were not paid the Municipalities might have taken steps to recover them. The new pendal was erected on the strength of the original sanction and an application for fresh sanction if fresh sanction was necessary was also submitted by the accused but never replied to. The new pendal was only erected errected in place of the former pendal before the occasion for which the license had been obtained was over.

5. The Contention of the Prosecution was that the original sanction was no authority as it was conditional and the condition was not ?? fulfilled fulfieled and that though it was an authority for erecting the first pendal it was not for the 2nd as the sanction given was not a perpetual one and it was cancelled by the resolution of 23rd May. It must however be observed that the resolution quoted did not revoke the sanction already given but simply called upon the Counterpetitioner to explain why he should not be prosecuted for having erected the pendal without sanction to which his reference to the sanction of the 30th April was apparently an adequate reply. He had sanction. There it is said that this sanction was conditional on payment of the prescribed fee and that it had failed as this condition was not complied with. I notice however that the order of the 30th April says nothing about the fees being prepaid and there is nothing on record to show that payment was ever demanded and refused but on the contrary it would appear the fees were tendered by the Counterpetitioner and refused. Apparently he never questioned his liability to pay. The Prosecution also contend that the Magistrate's finding is opposed to Section 179 and G.O. 792/9.5.96. This Section and G.O. relate to houses and such other permanent structures. Temporary Festival

pendals come under Section 170. The occasion for which the license was granted was not over by the time the 2nd pendal was erected and the undersigned does not think that the Sub Magistrate erred in holding that the license only expired when the occasion for which it was issued had passed (vide Section 62(f) of Easements Act) This is a case quite different from that of a house. When a house for thatching which a license has been obtained subsequently takes fire a fresh license must be obtained for rethatching it as the sanction obtained is only for one particular act not for a particular festival occasion. The Chairman need not therefore be afraid of licenses to thatch buildings being held to be perpetual. It was also in the counter-petitioner's favour that although he did not consider it necessary he formally applied for the renewal of the sanction of the 30th April when the first pendal was burnt and receiving no reply though he asked for early orders the fair presumption is that he assumed no answer was given because none was necessary the surmise contained in his application being correct.

6. The Chairman finds fault with the Sub Magistrate for not ordering the accused to pay the pendal fees. It is not however very clear under what provision of law he could do so. So far as the records go it would appear that the Municipality could and should have done this itself for there is as already stated no evidence that the accused was ever asked to pay and refused. It is only in such cases that the Act authorizes resort to the Magistrate for the levy of certain Municipal taxes.

7. On the day on which the pendal took fire, the records shows that, the Chairman delegate went to see the accused and there saw the accused erecting the new pendal. He did not object to it. This conduct, it may be held too, implies consent or license, because a license may be implied or express (vide section 52 of the Easements Act)

pendals come under Section 170. The occasion for which the license was granted was not over by the time the 2nd pendal was erected and the undersigned does not think that the Sub Magistrate erred in holding that the license only expired when the occasion for which it was issued had passed (vide Section 62(f) of Easements Act) This is a case quite different from that of a house. When a house for thatching which a licanse has been obtained subsequently takes fire a fresh license must be obtained for rethatching it as the sanction obtained is only for one particular act not for a particular festival occasion. The Chairman need not therefore be afraid of licenses to thatch buildings being held to be perpetual. It was also in the Counter-petitioner's favour that although he did not consider it necessary he formally applied for the renewal of the sanction of the 30th April when the first pendal was burnt and receiving no reply though he asked for early orders the fair presumption is that he assumed no answer was given because none was necessary the surmise contained in his application being correct.

6. The Chairman finds fault with the Sub Magistrate for not ordering the accused to pay the pendal fees. It is not however very clear under what provision of law he could do so. So far as the records go it would appear that the Municipality could and should have done this itself for there is as already stated no evidence that the accused was ever asked to pay and refused. It is only in such cases that the Act authorizes resort to the Magistrate for the levy of certain Municipal taxes.

7. On the day on which the pendal took fire, the records shows that, the chairman delegate went to see the accused and there saw the accused erecting the new pendal. He did not object to it. This conduct, it may be held too, implied consent or license, because a license may be implied or express (vide Section 52 of the Easements Act).

8. Under all these circumstances therefore the undersigned sees no reason to doubt the correctness of the decision of the Sub Magistrate and must dismiss this application. He must also observe that there is no evidence on record in the case to show that prepayment of the license fees in such cases is either prescribed or insisted on in practice. It should be both but the undersigned's Experience as a chairman of a Municipal Council is that licenses are applied for and work begun as a rule at the same time and he has never before known of a prosecution after a license has been issued, for nonpayment of the fees without their having been first demanded and refused.

No 837
12.8.96

(sd) V. A. Brodie
Dt Magistrate

Forwarded to
the Chairman
Ellore Municipality
Ellore.

For Dt Magistrate

Ellore
7.11.8.96

29.7

To the Chairman Ml. Council through the Dt. Offices and to Sub magte. Ellore

Rd 28.11.96

285 M of 96

Ellore Municipal Office.

Dated the
Despatched } 25-11-96

Lo Dept.
3285 M

No. 511

FROM,

M-R-Ry,

C. SITARAMAYYA PANTULU GARU;

CHAIRMAN,

MUNICIPAL COUNCIL ELLORE.

To,

The Secretary to Government
Local and Municipal
Department
Madras.

Sir,

In forwarding copies of Judgments in CC Nos 774 & 775 of 1895, and my letters to the District Magistrate requesting him to order their retrial. I have the honor to state that the following proceedings were passed by the District Magistrate which I submit require to be reconsidered. For the reasons stated in my letter to the District Magistrate I venture to think that the judgments of the Lower Courts and the proceedings of the District Magistrate are not in conformity with the Municipal act

act, nor with its spirits, and should the Government be pleased to accept my view as correct I respectfully request that the High Court may be moved to revise the said judgments and to order a retrial in those cases.

I have the honor to be
Sir,
Your most obedient Servant

C. Sitaramayya
Chairman
23/11

I have the honor to be
Sir,
Your most obedient servant

Chairman.

From

The Chairman

Municipal Council

Ellore.

To

Dated

Despatched

Received

Encls.

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Subject.

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GAIN G.O., No.

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