

## REVISIONAL CRIMINAL

Before Bhandari, C.J.

KIRORI MAL.—*Convict-Petitioner.*

versus

THE STATE,—*Respondent.*

—Civil Revision No. 715 of 1955:

*Indian Penal Code (XLV of 1860) Section 290—Business carried on lawfully for 20/25 years—Business becoming a nuisance by reason of changed circumstances—Whether conviction under section 290 justified.*

*Held*, that a trade or business may be lawful to start with but may become a nuisance by reason of changed circumstances. The mere fact that it was allowed to continue for several years without any objection by the neighbours would not render its owner immune from punishment. No prescriptive right can be acquired to maintain, and no length of time can legalize, a public nuisance

*Petition under Section 435/439 of Criminal Procedure Code, for revision of the order of Shri Sher Jang Singh, Sub-Divisional Magistrate, Rewari, dated the 18th December, 1954, affirming that of Magistrate III Class, Rewari, convicting the petitioner.*

P. C. PANDIT, for Petitioner.

HAR PARSHAD, Assistant Advocate-General, for Respondent.

## JUDGMENT

Bhandari, C.J. BHANDARI, C.J. This petition raises the question whether the Courts below were justified in convicting the petitioner under section 290 of the Penal Code.

Twenty or twenty-five years ago an enterprising businessman of Rewari set up a factory in the outskirts of the town at a considerable distance from the houses of people. The factory continued working

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as a flour-mill for many years, but a short time ago it was converted into a metal factory and was used almost exclusively for the manufacture of brass utensils. In the year 1953, some of the owners and occupiers of residential buildings which have sprung up in the vicinity of the factory complained that the noise caused by the factory interfered unreasonably with the comfort and enjoyment of private property, that the vibrations caused by the heavy machinery were shattering the foundations of their buildings and that the smoke emitted by the chimneys was contaminating the general atmosphere. The trial Court convicted the petitioner under section 290 of the Penal Code and sentenced him to pay a fine of Rs. 50. The order of the trial Court was upheld by the learned District Magistrate in appeal and the petitioner has now come to this Court in revision.

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The first point for decision in the present case is whether the existence and working of the flour-mill is or is not a nuisance. My attention has been invited to *Punjaji Bapuji Bagul v. Emperor* (1), in which it was held that a person is at liberty to instal an oil engine on his own property and to work it in any way he chooses and that as damage, if any, cannot be said to be caused by unlawful means he cannot be convicted of mischief. This authority does not lay down the proposition that the owner of an oil engine cannot be convicted under section 290 if the working of the engine is a source of injury or annoyance to the members of public.

It has been established by the evidence on record that the factory in the present case creates distressing noises and vibrations which render the occupation of the property in the neighbourhood unsafe and uncomfortable. It seems to me therefore that the existence of the factory is a nuisance, for the expression 'nuisance' includes every act or illegal omission

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which causes danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. Although a person is at liberty to carry on any trade or business on the property belonging to him he has no right to do so if such trade or business deprives another of the reasonable and comfortable use of his property. Even a lawful trade would become a nuisance if it interferes with the comfort and enjoyment of the neighbours, gives offence to their senses or obstructs the reasonable use of property.

Mr. P. C. Pandit, who appears for the petitioner, contends that this factory has been working for a period of about 20 or 25 years without any objection having been raised by the neighbours and consequently that it is too late in the day for the neighbours to come to Court and to complain that the factory is a nuisance. This criticism has been satisfactorily answered by the prosecution. It is stated in the first place that there was no occasion for any one to complain against the petitioner as the factory was set up in an open place at a considerable distance from human habitation. With the passage of time a number of houses and other buildings sprang up in the vicinity of the factory and it is the owners and occupiers of those houses and buildings who are now being put to trouble and inconvenience. A manufacturing plant situate at a considerable distance from human habitation may not be a nuisance while a similar plant situate in the heart of a town where a large number of people reside or carry on business may be a nuisance. A particular trade or business may be lawful to start with but may become a nuisance, as in the present case, by reason of changed circumstances such as the growth of population. Secondly it is alleged by one of the witnesses that although this factory has always been a nuisance the

neighbours did not bring a regular complaint in a Court of law because of disunity among the complainants themselves. Thirdly, it is stated that the neighbours did not experience any real difficulty when the factory was being worked only as a flour-mill but that the discomfort and inconvenience were considerably accentuated when the flour-mill was converted into a utensil factory. The question whether a particular trade or business is or is not a nuisance can be determined only after taking into consideration a number of circumstances such as the place where it is located or carried on, the number of people whose rights are prejudicially affected thereby and the extent of the injury, discomfort and annoyance caused to normal human beings. The mere fact that the factory was allowed to operate for several years without any objection having been raised by the neighbours would not render the petitioner immune from punishment if it is found, as has been found in the present case, that its existence constitutes a nuisance to the people of the neighbourhood. It has been held repeatedly that no prescriptive right can be acquired to maintain, and no length of time can legalise, a public nuisance (Law of Crimes, page 627).

For these reasons I would uphold the orders of the Courts below and dismiss the petition.

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