

(8) The application dated the 28th of August, 1970, made by the appellant to the Court of the learned Senior Subordinate Judge does no doubt not mention that it was being made under section 20 of the Act but then its contents clearly make out that this was so. It was, in these circumstances, the duty of the learned Senior Subordinate Judge to decide it on merits and not to throw it out on the ground that there were no proceedings pending before him and that this Court had set aside the award without any further directions.

(9) In the result the appeal succeeds and is accepted. The order of the learned Senior Subordinate Judge in so far as it relates to the application dated the 28th of August, 1970, above mentioned, is set aside and the case is remanded to him with a direction that he shall deal with that application on merits. No order as to costs.

B. S. G.

APPELLATE CRIMINAL

*Before Ranjit Singh Sarkaria and M. R. Sharma, JJ.*

MUNICIPAL COMMITTEE, AMBALA CITY,—Appellants

*versus*

MOHAN LAL—Respondent.

Criminal Appeal No. 410 of 1969

May 15, 1972.

*Punjab Municipal Act (III of 1911)—Section 121—Bamboos and bamboo sticks kept in a shop of a retail seller—Whether “wood” as used in section 121 and whether they fall within the description of “dangerously inflammable material”.*

*Held*, that the word ‘wood’ used in item No. 5 of section 121 of the Punjab Municipal Act, 1911. precedes the word “charcoal” and has been used in the sense to denote rough logs etc. which are normally used as fuel wood. The finished bamboo sticks cannot be described as wood. The test to be applied in such cases is whether a layman would describe bamboos as wood or not. The words used in a penal statute are to be read in the setting in which they occur and cannot be given a wider meaning so as to enlarge the scope of the offence. Hence bamboos and bamboo sticks kept in a shop of retail seller do not fall within the description of the word ‘wood’ as used in section 121 of the Act. It is no doubt true that dry bamboos do catch fire easily but the statute does not prohibit the storage of merely inflammable material”. The prohibition applies only to the “dangerously

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inflammable material". The description applies only to petrol, ether, alcohol and such other chemicals as are prone to go up in flames immediately when they catch fire. Bamboos or bamboo sticks do not fall within the description "dangerously inflammable material". (para 4)

*Appeal from the order of Shri C. D. Vasishta, Judicial Magistrate 1st Class, Ambala, dated 30th May, 1968, acquitting the accused.*

*Charge Under Section 121 of the Punjab Municipal Act, 1911.*

*K. P. S. Sandhu, Advocate, for the appellant.*

*Gurmukh Singh Chawla, Advocate, for the respondent.*

#### JUDGMENT

**SHARMA, J.**—This is an appeal against the order dated May 30, 1968, passed by the learned Judicial Magistrate 1st Class, Ambala, acquitting Mohan Lal respondent of an offence under section 121 of the Punjab Municipal Act, 1911 (hereinafter called the Act).

(2) The respondent is said to be a dealer in bamboos having his shop in Bazar Nohrian, Ambala City. Shri Joginder Singh and Shri Kundan Lal, Pairokars of the Municipal Committee, Ambala City, filed the following complaint before the learned Judicial Magistrate :—

"It is submitted on behalf of the Municipal Committee, Ambala City, that the accused was selling bamboos on the 27th January, 1965, within the Municipal limits of the Municipal Committee, Ambala City, without licence. The said accused has committed an offence punishable under section 121 of the Punjab Municipal Act, 1911. Hence, suitable punishment may please be awarded to him."

The learned trial Court tried this matter as a summons case. The notice served on the respondent was explained to him and when questioned he pleaded not guilty to the charge. Thereafter, the prosecution examined four witnesses. Shri Kundan Lal P.W. 1, Pairokar, merely stated that he was authorised to file the complaint on behalf of the Municipal Committee and the same was under his signatures. Asa Nand P.W. 2, Licence Clerk, stated that the Municipal Committee had fixed Rs. 10 as licence fee for selling bamboos. The respondent did not pay this fee. Daljit Singh P.W. 3, Medical Officer Health, stated that he inspected the shop of the respondent wherein he had kept bamboos for selling. According to him, bamboos are

inflammable commodity and catch fire by striking against one another. In cross-examination, he admitted that the respondent had not constructed any *bhatti*, which is normally used by the bamboo dealers for straightening the bamboos. Nanti P.W. 4 had brought the past record of the fire incidents in Ambala City. According to him, the shop of one Hans Raj Dhiman, who deals in furniture, got fire on March 12, 1967. Similarly, the shop of one Mehtab, another furniture dealer, caught fire on May 6, 1967. When cross-examined he admitted that the dealers having business of selling bamboos in the bazar did not make use of *bhattis*. After a careful consideration of the entire evidence in the case, the learned trial Court came to the conclusion that the respondent did not maintain any yard or depot for wood, nor was he dealing in a dangerously inflammable material. As a result of this finding, the respondent was acquitted of the charges preferred against him.

(3) The Municipal Committee, Ambala City, has come in appeal before us. It has been argued by Shri K. P. S. Sandhu, the learned Advocate for the appellant, that a shop in which bamboos or bamboo sticks are kept would come within the meaning of a yard or a depot and bamboos are certainly more inflammable than wood. According to the learned counsel, the learned trial Court had placed a wrong interpretation on the language of the statute in recording the order of acquittal of the accused. Before we deal with this contention, it is necessary to examine the provisions of section 121 of the Act, the material portions of which are given as under :—

“121. Regulation of offensive and dangerous trade.

(1) No place within a municipality shall be used for any of the following purposes :—

- melting tallow, dressing raw hides, boiling bones, offal or blood ;
- as a soap house, oil-boiling house, dyeing house or tannery;
- as a brickfield, brick-kiln, charcoal-kiln, pottery or lime-kiln;
- as any other manufactory, engine-house, store-house or place of business from which offensive or unwholesome smells, gases, noises or smoke arise;
- as a yard or depot for trade in unslaked lime, hay, straw, thatching grass, wood, charcoal or coal, or other dangerously inflammable material;

as a store-house for any explosive, or for petroleum or any inflammable oil or spirit; except under a licence from the committee which shall be renewable annually :

Provided that no such license shall be necessary in the case of any such premises which were used for any such purposes at the time that the Punjab Municipal Act, 1891, came into force, and were registered under that Act and in the case of brickfields, which were used at the time that this Act came into force; but the owner or occupier of the brickfields so expected shall register the same in a book to be kept by the committee for the purpose."

This section appears in Chapter IX of the Act and is the first section relating to the group of sections dealing with dangerous or offensive trades. A cursory reading of this section would show that practically all the six items of trade for which a licence is required to be obtained are of a dangerous nature. In this case, however, we are concerned with item No. 5, i.e., a yard or a depot for trade in wood or other dangerously inflammable material. In order to interpret this item, we cannot ignore the general nature of prohibition envisaged by this section because this item does acquire some colour from the other items enumerated in section 121 of the Act. The trade in this unslaked lime is prohibited because it emits heat when it comes into contact with water. Hay, straw, thatching grass, wood, charcoal or coal etc., are also incendiary materials and if stored in sufficiently large quantities increase the danger due to accidental fire. It is precisely for this reason that the statute has used the words "a yard" or "a depot" in item No. 5 of section 121 of the Act. A yard or a depot denotes a big area in which goods are stocked. In commercial parlance a depot means a place in which goods are stored in large quantities for being supplied to retailers. A shop in the very nature of things cannot be regarded either as a depot or as a yard.

(4) The word "wood" used in item No. 5 precedes the word "charcoal" and has been used in the sense to denote rough logs etc., which are normally used as fuel wood. The finished bamboo sticks certainly cannot be described as wood. The test to be applied in such cases is whether a layman would describe bamboos as wood or not. The words used in a penal statute are to be read in the setting in which they occur and cannot be given a wider meaning so as to

enlarge the scope of the offence. We are of the considered opinion that the bamboos and bamboo sticks kept in a shop of retail seller do not fall within the description of the word "wood" as used in section 121 of the Act.

(5) It was then suggested by the learned counsel for the appellant that the bamboo sticks and coal kept at the shop of the respondent answered the description of dangerously inflammable material. We find no substance in this argument either. According to the Shorter Oxford English Dictionary, the word "inflammable" is defined as 'capable of being inflamed; susceptible of combustion; easily set on fire.' It is no doubt true that dry bamboos do catch fire easily but the statute does not prohibit the storage of merely inflammable material. The prohibition applies only to the "dangerously inflammable material". In our opinion, petrol, ether, alcohol and such other chemicals as are prone to go up in flames immediately when they catch fire, can only answer this description.

(6) On a careful consideration of the entire matter, we are of the view that the learned trial Court rightly came to the conclusion that the storing of bamboo sticks and small poles in a shop does not come within the mischief of section 121 of the Act. Consequently, this appeal fails and is dismissed.

SARKARIA, J.—I agree.

N.K.S.

LETTERS PATENT APPEAL

*Before D. K. Mahajan and Prem Chand Pandit, JJ.*

MADAN SINGH, ETC.,—Appellants

*versus*

THE STATE OF HARYANA AND ANOTHER,—Respondents

**Latter Patent Appeal No. 99 of 1972**

May, 16, 1972.

*Land Acquisition Act (1 of 1894)—Sections 4, 5A, 6 and 48—Requirements of section 4(1)—Whether mandatory—Public notice of the substance of notification under section 4—Whether must precede the notification under section 6—Section 48—Government's withdrawal from the acquisition of land—Whether a bar to restart acquisition proceedings qua the same land.*