

A

AUDH NARAYAN

v.

SUVA CITY COUNCIL

B [COURT OF APPEAL, 1967 (Mills-Owens P., Gould J.A., Marsack J.A.),  
13th, 18th July]

Criminal Jurisdiction

C *Criminal law—defence—defective particulars in charge—whether prejudice occasioned thereby—Suva (Garbage Disposal) By-laws (Cap. 124) By-laws 3, 9.*  
*Local government—garbage disposal—owner and occupier—liability—provision of garbage pans—Suva (Garbage Disposal) By-laws (Cap. 124) By-laws 3,9.*  
*Interpretation—by-laws—construction—“Every owner or occupier... shall provide”—liability—Suva (Garbage Disposal) By-laws (Cap. 124) By-law 3.*

D By-law 3 of the Suva (Garbage Disposal) By-laws requires “every owner or occupier” of premises to provide a sufficient number of garbage pans of a capacity within certain limits. The appellant, who was a tenant occupier, was charged in the Magistrate’s Court with failing to provide a proper garbage pan and was convicted. There was evidence that the owner of the premises had provided a garbage pan but it was substantially in excess of the permitted cubic capacity. On appeal to the Supreme Court the judge held that the liability of the occupier arose only if the owner had not provided a proper garbage pan and that the Particulars of Offence in the charge should have included an allegation to this effect; he nevertheless upheld the conviction. On appeal to the Court of Appeal on the ground that the appellant had suffered prejudice in his defence —

E *Held:* 1. There was in law no difference in the appellant’s obligations under the by-law, whether the owner’s failure to provide a proper garbage pan was due to his having made no provision at all or to his having provided a receptacle which did not comply with the by-law.

F 2. It was conceded that in both courts below the question whether the appellant’s liability arose only in the event of the owner’s failure to provide a proper garbage pan had been fully argued, and there was therefore nothing to justify a finding that the appellant had been prejudiced in the presentation of his case.

H Appeal from a judgment of the Supreme Court in its criminal appellate jurisdiction.

B. C. Ramrakha for the appellant.

C. L. Jamnadas for the respondent Council.

G The facts appear from the judgment of the court. The Supreme Court judgment contains the following passage — “It is not therefore of itself a breach of the by-law by the occupier if he fails to provide a garbage pan for his premises for which no garbage pan has been provided by the owner.”

Judgment of the Court (read by MARSACK J.A.): [18th July 1967] —

This is an appeal on points of law from the decision of a Judge of the Supreme Court dismissing an appeal against conviction in the Magistrate's Court for breach of a by-law of the Suva City Council. The offence in respect of which the conviction was entered was thus stated in the original information:

"Being the occupier of premises at 60 Waimanu Road, Suva, did fail to provide garbage pan with a tight fitting lid contrary to By-Laws 3 and 9 of the Suva (Garbage Disposal) By-Laws, Cap. 124."

The particulars of offence given in the first instance were set out in these words:

"Being the occupier of premises at 60 Waimanu Road, Suva, did on the 11th day of November, 1966, fail to provide a proper garbage pan with a tight fitting lid for the reception of refuse arising from the premises."

The appellate Judge affirmed the conviction for the offence charged, but held the particulars defective in that they should have read:

"Audh Narayan s/o Dun Mun being the occupier of premises at 60 Waimanu Road, Suva, in respect of which the owner had not provided a garbage pan as required by section 3 of the Suva (Garbage Disposal) By-Laws did on 11th November, 1966, fail to provide a garbage pan with a tight-fitting lid as required by the said By-Law."

The material portion of By-Law No. 3 reads:

"Every owner or occupier of any house, residence, shop, building, premises or other place in the Urban Sanitary District of Suva shall provide a sufficient number of garbage pans, each of a capacity of not less than 1½ cubic feet and not more than 3 cubic feet, constructed of metal, cylindrical in shape, and provided with tight-fitting lids . . ."

The first ground of appeal is that the appellate Judge should have held as a matter of law, that the appellant was prejudiced in the Magistrate's Court in that the conviction there was based on the finding that the defendant had no garbage pan, while in the Supreme Court the conviction was affirmed on the basis that the garbage pan to which the defendant had access, and which was supplied by the landlord, was larger than the by-law provided.

It is difficult to see in what way this argument furnishes a sufficient ground for setting aside the original conviction. If the landlord furnishes a receptacle which does not comply with the provisions of the by-law then, in law, he is not carrying out the obligation of an owner or occupier under the by-law to provide a garbage pan; which must, by the terms of the by-law, be a pan of certain specified dimensions. There is therefore, in law, no difference in the appellant's obligations under the by-law, whether the landlord's failure to provide a proper garbage pan is due to his making no provision at all or to his providing a receptacle which does not comply with the terms of the by-law itself.

Counsel conceded that in the Magistrates' Court, as in the Supreme Court, the question whether the appellant's liability arose only in the event of the landlord's failure to provide a proper garbage pan, was raised and thoroughly argued. In our view there was nothing in the

**A** conduct of the proceedings either in first instance or on appeal which, as a matter of law, would justify this Court in quashing the conviction on the ground that the defendant had been prejudiced in the presentation of his case. The first ground of appeal accordingly fails.

The second ground of appeal was that the learned Judge erred in law in finding that the garbage pan facilities were larger than required, because only approximate measurements of the garbage pan were put before the Court.

**B** In the Magistrate's Court the appellant himself gave evidence that the rubbish bin provided for all tenants was nearly 3 feet high and  $2\frac{1}{2}$  feet wide. If these measurements were exact, the cubic content of the garbage pan would be little short of 15 cubic feet. The by-law specifies dimensions of between  $1\frac{1}{2}$  and 3 cubic feet. Even if due allowance is made for the approximate nature of the measurements furnished by the appellant himself, it is abundantly clear that the garbage pan in question must necessarily have exceeded, to a substantial degree, the maximum permitted under the by-laws. In these circumstances we find that there was ample justification for the finding in the Court below that the garbage pan provided by the landlord was not within the dimensions permitted under the by-law. Accordingly we can find no merit in the second ground of appeal.

**D** The third ground is to the effect that the appellate Judge erred in law in not exercising the general revisional jurisdiction of the Supreme Court in the direction of quashing what is referred to in the Notice of Appeal as "the sentence of the defendant". As counsel readily conceded at the hearing before us that the exercise of the appellate Judge's discretion in that matter was not subject to review by this Court as a matter of law, it is not necessary to consider this ground further.

**E** For these reasons we are of the opinion that none of the grounds of appeal has been established, and the appeal must be dismissed accordingly.

**F** It might perhaps be contended that the validity of the by-law could be attacked on the ground of uncertainty, in that the person made liable under section 3, already quoted, is not stated with precision. The by-law imposes an obligation on "every owner or occupier" of any premises. Where, as in the present case, the owner and the occupier are two separate persons, it may be objected that the by-law does not make it clear whether the duty is imposed on each of them or on one only, and, if the latter, which of the two. This point, however, was not argued either in the Magistrate's Court or in the Supreme Court, and it formed no part of the appellant's case in the hearing before us. Consequently it does not fall to us to decide the matter, and we express no opinion on it.

**G** The appellant will pay the respondent's costs, which we fix at £15.15.0.

*Appeal dismissed.*