

Where he and his
family were using an



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Where the offence against the accused was that he and his family were using an open compound as latrine and thereby polluted the atmosphere to such an extent as to amount to public nuisance he is guilty under Section 278, IPC.

In *K. Ramakrishnan v. State of Kerala* [AIR 1999 Ker. 385], it was held that smoking of tobacco in any form in a public place vitiates the atmosphere and makes it noxious to health of persons who happen to be there. Smoking in a public place, therefore, attracts Section 278 of the IPC. Section 278 applies to trades producing noxious and offensive smells, such as making candles in a town by boiling stinking stuff, a manufactory for making spirit of sulphur, vitriol and aqua Fortis or a tannery where skins are steeped in water by which the neighbouring air is vitiated. It is apprehended that the burning of bricks lime in a kiln produces smoke which is peculiarly noxious.

The setting of a noxious trade in the proximity of a populated locality is always a nuisance. Section 278 is directed against a public nuisance and not a private nuisance. Section 278 clearly provides that the atmosphere must be so vitiated as to make it 'noxious to the health of the persons in general dwelling or carrying on business in the neighbourhood or passing along a public way'. The setting up of a slaughter-house may be strenuously objected to by Hindus, but it is not per se an offence under Section 278, or if it emits noxious smells, in which case, it would be a nuisance punishable under Section 278. The offence under Section 278 is non-cognizable and summons should ordinarily issue in the first instance. It is bailable but not compoundable, and is triable by any Magistrate summarily.