

(1928) 05 CAL CK 0014
In the Calcutta High Court

Ambica Prosad Das

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 16-05-1928

Acts Referred:

Calcutta Municipal Act, 1923 — Section 271(2)

Citation : AIR 1928 Cal 483 : 114 Ind. Cas. 82

Hon'ble Judges : C.C. Ghose, J

Bench : Division Bench

Judgement

C.C. Ghose, J.—The facts involved in this case are as follows : In this case a Water-works Sub-Inspector of the Corporation of Calcutta complained on 5th December 1927 before the Municipal Magistrate of Calcutta against the petitioner for having executed certain works in connexion with filtered water supply in his premises with extension and addition of fittings and pipes by a person other than a licensed plumber from premises No. 1/1A, Puddopukur Square in Kinderpore. The complainant stated in his petition of complaint that notice had been served on 22nd September 1927, but that the said notice had not been complied with by the accused. On that petition of complaint being filed, summons was issued under the provisions of Section 271(2) read with Section 488, Calcutta Municipal Act of 1923. The summons was served on 2nd February 1928, on one Puma Chandra Das, who, we are informed, is a son of the accused. It appears that the case itself was fixed for hearing on 2nd February. One Jatindra Nath Das, agent of the accused, appeared in Court on that date, but the opposite party, namely, the prosecuting officer, was absent. The case was then adjourned to 9th February 1928. What happened on 9th February appears from the endorsement on the form used for making complaints which is as follows : "Jatindra Nath Das, agent, admits. Accused fined Rs. 20 u/s 291(2)."

2. On behalf of the petitioner it has been argued before us that there could not have been any conviction upon the admission of the agent of the accused. Now, prosecutions under the Municipal Act are of a quasi criminal nature and it is

unnecessary for the purposes of this case, as will appear later on, to decide whether the conviction of an accused Under the Municipal Act can or cannot be legally based upon the admission of the agent of the accused. We are satisfied however, that beyond, the written complaint of the Water-works Sub-Inspector (leaving aside for the moment the question of the admission of the agent of the accused) there was nothing else before the learned Municipal Magistrate which would have justified him in convicting the accused u/s 291(2). The Municipal Magistrate of Calcutta is a Presidency Magistrate and in cases of complaints to him, he is as Presidency Magistrate required to examine the complainant subject to the provisions of Section 200(b), Criminal P.C. It does not appear from the record whether the complainant was ever examined by the Magistrate. It is true that under the Calcutta Municipal Act (See Section 533) if the accused had not appeared in person and had not sent an authorized agent, it would have been open to the Magistrate to decide the case ex-parte, but that provision must be taken to be subject to the provisions of Section 200(b), Criminal P.C. As indicated above, the last mentioned section has not been complied with and in the circumstances of this case we think it would be safer, having regard to what has happened, to set aside the conviction and sentence and direct that the complaint of the Water-works Sub-Inspector against the accused be enquired into afresh in accordance with law.

3. The record will be sent down immediately and the Magistrate is requested to see that the case against the accused is disposed of as quickly as possible. It must be clearly understood that it is not necessary for the Water-works Sub-Inspector to institute a fresh complaint. But what is necessary to be done is that the complaint of the Water-works Sub-Inspector, which is already on the record, should be enquired into afresh in accordance with law. The fine, if paid, will be refunded.