

(1952) 05 CAL CK 0018

In the Calcutta High Court

Case No : Criminal Admitted Appeal No. 16 of 1952

Anath Bandhu

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 29-05-1952

Acts Referred:

Bengal General Clauses Act, 1899 — Section 3(32)
Calcutta Municipal Act, 1923 — Section 407
Criminal Procedure Code, 1898 (CrPC) — Section 386, 388
Penal Code, 1860 (IPC) — Section 108

Citation : AIR 1952 Cal 759 : (1952) 22 CompCas 175 : 56 CWN 594 : (1954) 1 ILR (Cal) 403

Hon'ble Judges : Chunder, J

Bench : Single Bench

Advocate : Debabrata Mukherji, Nirmal Chandra Chakravarty, for the Appellant;
Bireswar Chatterji, for the Respondent

Judgement

Chunder, J.—This is an appeal against a conviction of the appellant Anath Bandhu Samanta u/s 407, Calcutta Municipal Act read with Section 488 and a sentence of fine of Rs. 500 only by the Third Municipal Magistrate of Calcutta. The complaint was also against Messrs. Samanta Industries Ltd. Sri Anath Bandhu Samanta was convicted as proprietor. It has been pointed out by Mr. Debabrata Mukherjee appearing on behalf of the appellant that as it is a limited company there can be no proprietor and the person in charge of the limited company should have been proceeded against. He very fairly points out that the person in charge is the son of Anath Bandhu Samanta called Shib Kanta Samanta who is the General Secretary. His first contention is that the proceeding should have been against Shib Kanta Samanta. As the matter has to go back to the Municipal Magistrate, when the matter goes back the learned Magistrate may draw up proceedings against Shib Kanta Samanta instead of Anath Bandhu Samanta, as Shib Kanta is admitted to be the person in charge of the business.

2. Mr. Chakravarty on behalf of the State has raised the point whether Samanta

limited can be charged with the substantive offence or/and whether with abetment of the same Shib Babu is to be charged by the Company. His contention is that a limited company under the Indian law cannot be proceeded against under the criminal law. According to him, Samanta Industries Ltd. being a limited company cannot be proceeded against even under the Municipal law and his further contention is that although Samanta Industries Ltd. cannot be proceeded against, the law allows the abettor to be proceeded against when the principal for some reason or other cannot be brought to trial. As far as the second part of Mr. Chakravarty's argument is concerned, it can be accepted without hesitation. It is clear that in law the fact that the principal cannot be brought to trial does not prevent a charge of abetment. This has been accepted also in the Indian Penal Code in the chapter dealing with abetment.

3. The contention of Mr. Chakravarty that under the Indian Criminal law a limited company cannot be proceeded against does not appear to me to state the correct position in law. It is said in Ratanlal's edition of the Indian Penal Code in connection with the comments on the word "person" used in Section 11, Penal Code that it will not include a limited company and the authority is given of an English case. I have not been able to find out any Indian decision on the point. It is quite clear that if there is anything in the definition or context of a particular section in the Statute which will prevent the application of the section to a limited company certainly a limited company cannot be proceeded against. For example, rape cannot be committed by a limited company. There are heaps of other sections in which it will be physically impossible by a limited company to commit the offences. Then again it is quite clear that a limited company cannot generally be tried when mensrea is essential. Again it cannot be tried where the only punishment for the offence is imprisonment because it is not possible to send a limited company to prison by way of a sentence. If we leave these classes of cases aside, it is not clear why under the Indian law a, limited liability company cannot be proceeded against.

Under the General Clauses Act as also the, Bengal General Clauses Act "person" includes a limited liability company. There is no doubt about the same. We are dealing with a case under the Calcutta Municipal Act and Section 3(32), Bengal General Clauses Act (Bengal Act I [I] of 1899) applies and it is definitely stated that a "person" shall "include any company or association or body of individuals whether incorporated or not". As far as the interpretation of the word "person" in any of the sections of the Bengal Act or of an Indian Act is concerned, unless there is any repugnancy in the context a person may be interpreted so as to include a limited company.

It appears that the authority cited for the proposition that a limited liability company cannot be the subject of an indictment, that is, cannot be tried in a criminal Court, is based upon a decision of the Court of Criminal Appeal in the case of *The King v. Daily Mirror Newspapers Ltd.* (1922) 2 K. B. 530. It was held there that a limited com- If the learned Magistrate so likes he may also many

cannot be committed for trial on an indictment- proceed against the principal officer of abetment. I meant and, therefore, it cannot also be tried. The position is made clear in the argument of Sir John Simon which was accepted by the Court of Appeal. He points out that in order that a person may be brought to trial he must be committed for trial. In that case, the company could not be committed for trial because the Interpretation Act of 1889 in England explained what was meant by the expression "committed for trial" and the provision was that the expression "committed for trial" used in relation to any person shall, unless the contrary intention appears, mean, committed to prison with a view to being tried before a judge or jury. This interpretation of "committed for trial" has not found a place in the Indian Law. There is no such definition of commitment for trial as in the English Interpretation Act. Therefore, because of the difficulty of committing for trial under the English law it could not be possible for a Judge or a Jury to try a limited liability company but in the Indian law "committed for trial" or being prosecuted does not mean being actually detained in a prison. Therefore, the reason given why a limited liability company could not be tried in England cannot be applied to the case of a limited liability company in India. Therefore, it must be said that the authority of *The King v. Daily Mirror Newspapers Ltd. etc* (1922) 2 K. B. 530, has no effect in India, so long as the difficulties I have pointed out in connection with the trial of a limited company or commitment of an offence by a limited company do not prevent a limited company being put on trial by the Court.

There is nothing in the Indian law which precludes a trial where possible. The question of sentence also need not generally stand in the way of a trial of this kind because, as I have pointed out, except in the case where no other sentence than imprisonment or transportation or death is provided, there is nothing to prevent a Court from inflicting a suitable fine and a sentence of fine need not carry with it any direction of imprisonment in default. There may be fine alone and Sections 386 and 388, Criminal P. C., will show how such fines can be realised and there is nothing to prevent the application of those sections to the case of a limited liability company in realising fines. In certain Acts definite provision is made that a fine will be the only sentence and it has been already decided in these Courts that in such case there can be no imprisonment in default of fine.

4. Under the circumstances, I am unable to accept the contention of Mr. Chakravarty that the limited liability company cannot be proceeded against by the learned Magistrate. It will be quite optional for the learned Magistrate, if he so likes, to proceed against the limited liability company itself instead of its officer and more so as a fine is the only sentence provided for in the present case. If the learned Magistrate so likes he may also proceed against the principal officer of abetment. This is a matter for use of his judicial discretion.

5. u/s 407 (1) (v), Calcutta Municipal Act, it is provided that in the case of mustard oil it shall be derived exclusively from mustard seed. If, therefore,

mustard oil is adulterated with any other kind of oil which is not mustard oil then certainly whatever be the specification test or other consideration there will be an offence committed of violation of Section 407. In the present case the Analyst who was examined spoke about the specification test and other things and said that the sample of mustard oil was mixed with other oil but he in his cross-examination did not say that the other oil was not some other kind of mustard oil but was some oil other than mustard oil which he might or might not have been able to identify. So long as this is not clear, namely, that the adulteration is with some thing other than mustard oil, whatever that other oil may be, Section 407 as far as mustard oil is concerned is not violated. Therefore, in the present case it has become necessary to send the case back to the learned Magistrate for taking fresh action. u/s 425 of the Act, the help of the Public Analyst may be taken advantage of in the present case and the sample of oil may be sent to him for determination as to whether the adulteration is with any kind of oil other than mustard oil derived from mustard seed. This point should be made-clear before a conviction can take place.

6. Under the circumstances, the conviction and sentence are set aside and the appeal is remanded to the Municipal Magistrate for further trial in the light of this judgment.

7. It is desirable that the trial should be by some other Municipal Magistrate.