

(1941) 05 CAL CK 0006
In the Calcutta High Court

Atul Chandra Bhandary

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 14-05-1941

Acts Referred:

Citation : AIR 1942 Cal 142a

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This is a rule calling upon the Municipal Magistrate and the Chief Executive Officer of the Calcutta Corporation to show cause why the conviction of the petitioner u/s 386(1)(b)/488, Calcutta Municipal Act, should not be set aside on grounds Nos. 2 and 4 attached to the petition. The petitioner keeps a motor repairing workshop and the noise, which is said to be almost continuous day and night, is undoubtedly a nuisance to the neighbours. The essence of the offence charged is that he is using the premises without a license for a purpose, which is, in the opinion of the Corporation, dangerous to health or likely to create a nuisance. For the purpose of this provision the Corporation means the Chief Executive Officer. The first thing, therefore, the prosecution had to prove was that the Chief Executive Officer had formed this opinion. Now there was a complete muddle at the trial. Both sides apparently thought that it was the duty of the prosecution to convince the Magistrate that this business was dangerous to health and a nuisance to the neighbours. They called evidence on the point and the learned Magistrate discussed it at enormous length. It appears, however, from the explanation of the Magistrate that in their attempt to convince him of the existence of a nuisance the prosecution did actually introduce evidence to show that the Chief Executive Officer had formed the necessary opinion. The evidence of course is extremely scanty but it is actually there on the record and its truth is demonstrated by the letters B and C, which were written by the petitioner himself. The first ground upon which this rule was issued must therefore fail.

2. The other ground raises a question of limitation. The learned Municipal Magistrate appears to have misunderstood the law on this point. The offence charged is using the premises without a license during the year 1939-1940. The learned Magistrate seems, to have thought that the only question was " whether the petitioner committed a solitary offence on 5th January 1940. The offence, however, is a continuing offence but under the specific provision of Section 534(2), Calcutta Municipal Act, the offence will come to an end on the expiry of the year for which the license is required to be taken out.

3. u/s 534(1) the complaint must be made within three months of the date on which the existence of the offence is first brought to the notice of the Chief Executive Officer. The learned Magistrate points out that no question of limitation was raised at the trial. It was, however, his duty to examine the question and he ought to have satisfied himself that the prosecution was within time. The question therefore is whether 11th January 1940 is within three months of the date when the existence of the offence was first brought to the notice of the Chief Executive Officer. As it turns out there is no difficulty in the present case. It appears that the Chief Executive Officer first formed the opinion referred to in Section 386(1)(b) on 30th October 1939. The offence therefore began subsequent to that date and the complaint was within three months thereof. The rule is accordingly discharged.