

(1986) 05 CAL CK 0004
In the Calcutta High Court
Case No : C.R. No. 2417 of 1984

A.V. Engineering and Co.

APPELLANT

Vs

Municipal Corporation of Calcutta

RESPONDENT

Date of Decision : 07-05-1986

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 618, 635, 635(1)

Citation : 90 CWN 1196

Hon'ble Judges : Shamsuddin Ahmed, J

Bench : Single Bench

Advocate : Tapandeb Nandi, for the Appellant; Mihir Kumar Roy for the Municipal Corporation and Samir Chatterjee for State, for the Respondent

Final Decision : Allowed

Judgement

Shamsuddin Ahmed, J.—This Revisional Application is directed against the order dated 5.12.1984 passed by the learned Municipal and Metropolitan Magistrate, 2nd Court, Calcutta convicting the accused petitioner u/s. 537/437(i)(b) of the Calcutta Municipal Act, 1951 and sentencing him to pay a fine of Rs. 100/ in default S.I. for 10 days and further directing him u/s. 440 of the said Act to stop work place within 15 days from the date of the order failing which the accused will be liable to pay a daily fine of Rs.100/- per day and that the Commissioner shall be at liberty to take steps discontinuation of the work place accordingly to law after expiry of 15 days from the date of the order. It appears that the order was passed by the learned Magistrate after he pleaded guilty by saying "Doshi". Plea was accepted and accordingly the impugned order was passed. It appears that Calcutta Municipal Corporation lodged a complaint against the petitioner wherein it alleged that the accused was using or permitting to be used premises no. 598/B, Rabindra Sarani for work place, run with electricity which is in the opinion of the Corporation dangerous to life, health or property and likely to create nuisance without a license from the Commissioner for the year ending 31st March 1985 in contravention of Section 437 of 195 1 Act. It was also prayed

for by the Corporation for an order u/s. 440 of the said Act.

2. Mr. Nandi has asserted mainly two ground in support of his application. He has submitted that the learned Magistrate acted without jurisdiction in passing the order inasmuch as the Calcutta Municipal Act, 1951 was repealed with effect from 4.1.1984. The date of the alleged offence as was alleged in the petition of complaint was 18th September 1984. In such circumstances if the allegations are found true there was no scope for the learned Magistrate to take cognizance of the offence or to pass an order of sentence and conviction under an act which stood repealed on the date of taking cognizance as well as on the date of passing the order. Mr. Roy appearing for the Corporation of Calcutta has not challenged that this complaint was filed after the repeal of the Calcutta Municipal Act, 1951 but he took the ground that by an amendment of Section 635 of the Calcutta Municipal Act 1980 the provision of Sections 216,222,229, 437,442,451,460 and 469 of the Calcutta Municipal Act, 1951 shall continue to remain in force until corresponding provisions are made by the Corporation by a Regulation in conformity with the provision of the Act. The amendment was made by the Calcutta Municipal Corporation, 2nd Amendment Act, 1984. This amendment came into force on 15th of May 1984 by notification dated 14th May 1984 in exercise of power conferred by sub-sec.2 of sec. 1 of the said Amendment Act. I have already noted the date of the commission of the alleged offence was 18th September, 1984. By the date when, the of fence is alleged to have been committed this amending Act has already come into force. In the complaint it was alleged that the offence committed violated the provision of Section 437(b). Section 437 appears to have continued to remain in force in terms of clause (h) of Section 635(1) of 1980 Act. Section 635 repealed Calcutta Municipal Act, 1951 with effect from the date of coming into force of the Act and also provided that notwithstanding such repeal the provision of section 437 of the 1951 Act shall continue to remain in force until corresponding provisions are made by the Corporation by Regulation in conformity with the provision of this Act. Effect of Clause (h) of Section 635(1) appears to be that it continued to remain in force even after the repeal of 1951 Act. Mr. Roy submitted that Section 618 of the Act of 1950 has provided general penalty for non-compliance with any notice order or requisition issued under the provisions of the Act and in respect of which no penalty has been expressly provided shall be punishable with fine which may extend Rs. 1000/- Mr. Roy contended that for violation of Section 437 Of the 1950 Act the offender can be penalized u/s. 618 of 1980 Act.

3. Mr. Roy submitted that by clause (h) of Section 635 (1) and Section 437 of the Old Act has been made a provision of the Calcutta Municipal Act, 1980. In some cases provision of another enactment is implanted in an Act but that is not the position here. Section 635 clause (h) only provided that Section 4 37 shall continue to remain in force which means that even though the Act of 1951 of which Section 437 was a part, though repealed Section 437 will continue to remain in force. By such an amendment this section has not been made a part of the new Act namely Calcutta Municipal Corporation Act, 1980. Moreover, this was

not also the allegation in the petition of complaint. Mr. Roy in this connection referred to me a decision reported in A.I.R.. 1951 Allahabad page 703. In the said decision the learned Judge repealed an argument that there was no logic behind the proposition that incorporation of a saving in an emergency legislation is inconsistent with the object of the legislation. In my view, this decision has no application on the facts of this case. Mr. Roy also relied on the authority of Mr. Crawford in the celebrated book the "construction of Statutes" at page 612. The passage on which Mr. Roy relied, in my view, has no application at all. Mr. Roy relied on the observation of Mr. Crawford that whether a saving clause is general or not it is regarded as much a part of every repealing Act as if written therein. Nevertheless they are subject to repeal by subsequent Acts but they will not save from repeal any provision unless repeal is clearly intended by the Legislature of the later Act. This observation of Mr. Crawford has no bearing in the present facts and circumstances of the case.

4. In the instant case the order of sentence and conviction was passed by the learned Magistrate under authority of Section 537 of the Act of 1951. Section 537 provided for penalty for contravention of any provision or any rule made under any of the said section, sub-section, clause or proviso as indicated in the table to the said section. This Section 537 was not saved by the Act of 1984 and the learned Magistrate had no authority to impose a penalty on the authority of a section of an Act which already stood repealed. I agree with Mr. Nandi that on passing the impugned order the learned Magistrate has acted without jurisdiction. The other point pressed by Mr. Nandi was that the learned Magistrate did not put to the accused, ingredients of the offence alleged against him. It appears from the order sheet that the learned Magistrate did not indicate that what were put to the accused persons but he said that substance of accusation is read over to him. Relying on this observation of the learned Magistrate in the order sheet. I do not accept the submission by Mr. Nandi.

In view of what has been stated above this application succeeds and the impugned order passed by the learned Magistrate is set aside and proceeding in question is also quashed and the rule is made absolute. Fine if realised, be refunded.