

(1938) 11 CAL CK 0010
In the Calcutta High Court
Case No : Criminal Rev. No. 818 of 1938

Binode Behari Dhar

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision : 29-11-1938

Acts Referred:

Citation : (1938) 11 CAL CK 0010

Judgement

Edgley, J.—In this case the Petitioner, Binode Behari Dhar, was prosecuted under Bye-law 2, issued under sec. 559 (18) of the Bengal Act III of 1899. The latter Act has since been repealed; but the material clause thereof has been re-enacted by sec. 478 (17) of the Bengal Act III of 1923. This being the case, bye-laws under the former Act remain in operation by virtue of sec. 25 of the Bengal General Clauses Act, Act I of 1899. The allegation against the Petitioner was to the effect that on the 9th May, 1937, he had obstructed the public footpath and the refuge island opposite premises No. 8, Priya Nath Mullick Road, by keeping building materials thereon in violation of the terms of a license granted to him under the bye-laws mentioned above. The bye-law in question reads as follows:

No person shall, except in accordance with a license from the Chairman in this behalf and paid for according to the rate specified in the schedule annexed, deposit any building material or put up any fence, pole or plank, for (the protection of the same in any public street or over any drain or aqueduct or on any land vested in the Corporation

In order, therefore, to sustain a conviction in respect of a violation of this bye-law, it is necessary for the prosecution to show that the accused person has actually deposited building materials, etc., in a public street or on any land vested in the Corporation and that he did so against the terms of a license granted to him in this behalf or without having obtained a license at all. The finding of the learned Magistrate is to the effect that the Petitioner was the actual licensee for the deposit covering 120 Sq. ft. for a period of one month from the 6th July onwards, but there is no finding to the effect that it was he who actually

made the deposit in violation of the terms of the license which has been issued in this behalf by the Corporation. The evidence adduced before the learned Magistrate was to the effect that the deposit of building materials with respect to which the Corporation complained, was actually made by a contractor named G.P. Paul, who was engaged in building a house for the Petitioner's wife. It is true that there was evidence to the effect that the license issued by the Corporation had, through some mistake, been issued in the name of the Petitioner and not in the name of the contractor. The fact remains, however, that there is nothing to indicate that it was the Petitioner who was actually responsible for depositing the building materials opposite to premises No. 8, Priya Nath Mallick Road and there is no finding to this effect in the judgment of the Court below. Having regard to the circumstances of the case it would appear that the Corporation authorities, if they had wished to prosecute anybody at all in respect of this offence, should have instituted proceedings not against the Petitioner but against the contractor, who was actually responsible for the building operations. In view of what I have stated above, I am of opinion that the Petitioner has been improperly convicted.

2. This Rule must, therefore, be made absolute. The conviction of the Petitioner is set aside and the Petitioner is acquitted. The fine, if paid, will be refunded.