

(1944) 03 CAL CK 0018
In the Calcutta High Court

Bhupendra Nath Roy

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 27-03-1944

Acts Referred:

Bengal General Clauses Act, 1899 — Section 25

Citation : AIR 1945 Cal 103

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This is a rule calling on the Municipal Magistrate and the Chief Executive Officer of the Calcutta Corporation to show cause why the conviction of the petitioner should not be set aside. He has been found guilty of the violation of a bye-law made under the powers conferred upon the Corporation u/s 559 (18) of Act 3 of 1899. The petitioner was the secretary of an association formed to hold a religious celebration and festival from 17th November 1941 to 14th December 1941. He applied to the Chief Executive Officer for a licence to hold it on a vacant plot of Corporation land. The licence was granted but nothing was said about the payment of fees. The conservancy officer in charge of that part of the town took the apparently reasonable view that some fees ought to be paid. The petitioner, perhaps unwisely, adopted an uncompromising attitude and refused to pay anything. The conservancy officer seems to have been a gentleman of very considerable ingenuity. He calculated that a fair sum would be Rs. 246 and odd. He knew that this sum was more than 12 times the maximum penalty prescribed for violation of the bye-law. He accordingly launched 13 prosecutions against the petitioner for the same offence. His anticipation that the maximum penalty would be imposed proved to be correct and by this indirect method he has realised what he regards as a fair fee and penalty.

2. In view of what took place at the trial the most that the Corporation could demand, would be a re-hearing. In the first place the case was heard ex parte. Such a trial is provided for in Section 533 of the Act. The petitioner, however,

appeared in compliance with the summons. It was held by Jack J. in *Kusum Kumri Debi and Another Vs. Corporation of Calcutta*, that in such a case the Magistrate cannot hear the case ex parte on some subsequent date to which the trial had been adjourned. Mr. Roy appearing on behalf of the Crown did not challenge the correctness of that decision and I respectfully agree with it. Then in the second place no reasons have been given for the order and there is no memorandum of evidence. It is simply impossible to say on what view of the facts the Magistrate convicted. Prima facie, it is difficult to see how this conviction could be supported in the face of the license granted by the Chief Executive Officer. Mr. Ghose appearing on behalf of the Corporation explained that the contention of the prosecution is that there was an overflow from the vacant land on to the adjoining footpath and the offence is alleged, to have been committed on the footpath.

3. On the merits it has been contended on behalf of the petitioner that the bye-law is no longer in force. It was made, as I have already noted under the powers conferred by Section 559 (18) of Act 3 of 1899. That Act has been repealed. The prosecution must rely on s. 25, Bengal General Clauses Act. Act 3 of 1899 has been repealed and replaced by Act 3 of 1923. Section 478 (17) of the latter corresponds to Section 559 (18) of the former. They are in identical terms. No bye-laws have been made under the latter. The result is that those made under the former are still in force. I am not, however, prepared to order a retrial. The complaint is that the petitioner erected a shed and thereby deposited building materials on the footpath. There is no allegation that before the erection of the shed the petitioner deposited the materials on the footpath rather than on the land. Mr. Ghose pointed out that the bye-law also prohibits the deposit of furniture etc. on a public street. I am not satisfied with the bona fides of the prosecution and I shall certainly not give them an opportunity to make out a new case.. The rule is made absolute. The conviction and sentence are set aside and the fine, if paid, will be refunded. I am glad to say that Mr. Ghose did not defend the procedure by which 13 prosecutions were launched. On any view of the matter, the petitioner can only be convicted once. I shall, therefore, accept the petition filed at the hearing and direct that the convictions in cases Nos. 623B to 634B be also set aside and the fines, if paid, refunded.