
(1944) 05 CAL CK 0013
In the Calcutta High Court

Bireswar Banerji

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 12-05-1944

Acts Referred:

Calcutta Tramways Act, 1880 — Section 21
Criminal Procedure Code, 1898 (CrPC) — Section 204(8)

Citation : AIR 1944 Cal 417

Hon'ble Judges : Roxburgh, J;Edgley, J

Bench : Full Bench

Judgement

Roxburgh, J.—Rule 921 has been obtained by the petitioner against an Order of conviction u/s 21, Calcutta Tramways Act (Bengal Act 1 of 1880) in a case in which the learned Presidency Magistrate inflicted no substantive sentence, but, as he expressed it, warned and discharged the accused. Rule 995 has been obtained by the same petitioner against an Order of the Chief Presidency Magistrate acquitting a conductor and an inspector of the Calcutta Tramways Company against whom he had directed processes to issue on a complaint made by the petitioner. The two cases arise out of the same matter. It appears that the petitioner who is a young lawyer had concluded that the Tramways Company were acting improperly in demanding that the exact fare should be tendered by the passengers and in refusing to give change. He offered a rupee for his fare from Esplanade to Alipore and demanded that change should be given before he would hand over the rupee. There can be no doubt that he took a wrong view of the law in the matter. He appears to have been misled by discovering that under the Indian Coinage Act (Act 3 of 1906) a rupee is legal tender. Perhaps, he does not appear to have observed that u/s 26, Reserve Bank of India Act (Act 2 of 1934) Bank notes which may be of denominational values from rupees five to rupees ten thousand are also legal tender. If his view were a correct one, he might equally board a tram and offer a ten thousand rupee note to the conductor and demand change.

2. Under by-law (7) framed by the Calcutta Tramways Company under the Act, it

is provided that every passenger shall upon demand pay to the conductor the fare legally demand-able for the journey. It is well settled that in Order to make a valid tender of a sum, the exact amount must be tendered, or if a larger amount is tendered, the tenderer must be prepared to forgo any demand for the change. There is no obligation on the part of the receiver to provide the change in Order that the tender may be for only the exact amount due. Reference may be made to *Betterbee v. Davis* (1811) 3 Camp. 70, and other cases referred to in para. 277 of Halsbury's Laws of England, Edn. 2: vide also AIR 1944 135 (Nagpur) , As a result of the dispute on the tram about the liability to give change evidently some heat was engendered and eventually both parties found themselves at Hastings thana, and the petitioner was challaned for "non-payment" of the tram fare u/s 21, Calcutta Tramways Act. He in turn filed a complaint before the Chief Presidency Magistrate against the conductor and the inspector of the Tramways and also against the agent and the director of the Tramways Company. The Chief Presidency Magistrate directed summons to issue against the conductor and the inspector only. On the date fixed for their appearance, 6th August 1943, the petitioner was being tried in another Court in the same building in the petty case u/s 21, Calcutta Tramways Act. For some reason or other, he had failed to deposit the process fees for the issue of the summons, and finding this to be the case and in the absence of the petitioner or his lawyer, the learned Chief Presidency Magistrate passed an Order acquitting the two men against whom summonses had not been issued.

3. As regards the case against the petitioner u/s 21, Calcutta Tramways Act, though he was in error in thinking that his offer of a rupee provided the change was given was a proper payment of the legal fare, we think that in the circumstances of the case it cannot be said that he wished to avoid payment within the meaning of Section 21 of the Act. The question whether particular acts or omissions amount to avoidance of payment of the fare within the meaning of this section is a question of fact to be determined on the circumstances of each case. In the present case, it appears that the petitioner considered himself as a protagonist of the Calcutta Tramway riders and sought to establish their right to obtain change. Though he was mistaken in doing so, we think that the correct Order should have been to acquit him on that particular charge. As regards his own case against the tramways employees, it is sufficient to remark that the Order of the learned Chief Presidency Magistrate appears to be incorrect. The proper procedure in the circumstances of the case before him was for him to have dismissed the complaint u/s 204 (8), Criminal P.C. He had merely directed that summons should issue, process fees for the summons had not been filed, and no summons had issued. Section 204 (3) provides for the proper procedure in these circumstances. The Order of the acquittal is not strictly correct. Learned advocate for the petitioner, however, has stated that in view of the Order proposed to be passed in Rule 921 he did not press his application in Rule 995. The result is that Rule 921 is made absolute, the Order of conviction is set aside and the accused is acquitted on the charge u/s 21, Calcutta Tramways Act. Rule

995 is discharged.

Edgley, J.

4. I agree.