

(1947) 07 CAL CK 0010
In the Calcutta High Court

B.N. Chatterjee

APPELLANT

Vs

Dinesh Chandra Guha

RESPONDENT

Date of Decision : 07-07-1947

Acts Referred:

Calcutta Municipal Act, 1923 — Section 291(2)

Citation : AIR 1948 Cal 58

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—After hearing the learned advocate for the parties, I am of opinion that this reference must be rejected. The case briefly is as follows: One Dinesh Chandra Guha is alleged to have effected alteration in the water pipe of his house by persons who are not plumbers licensed by the Municipality and thereby having disobeyed the provisions of Section 291 (2), Calcutta Municipal Act, as extended to Howrah, Disobedience of the provisions of Section 291 is made punishable by Section 483 of the aforesaid Act read with the table annexed to the aforesaid Section. He was prosecuted by the Municipality and his defence was a total denial of having effected the alteration. The learned Magistrate trying the case has found that the alteration was effected by Dinesh Chandra Guha employing certain Ooriya mistries. The Magistrate also found that the Ooriya mistries were not licensed plumbers. On these findings he convicted Dinesh Chandra Guha and sentenced him to pay a fine of Rs. 30 in default to suffer simple imprisonment for a period of two weeks. Against this decision the Sessions Judge was moved and he has made this reference. In his letter of reference he says:

It can be taken as an established fact now that a water pipe of the house of the accused at No. 27 Kshetra Mitra Lane, Howrah, was shifted and the level of the water tap lowered without any permission from the Municipality.

He goes on to say however in his letter that there was no evidence to show that the work was done by an unlicensed plumber. The learned Judge states that as there is no evidence that the plumbers who did the work had no license the

prosecution has ailed and he has therefore recommended that the order of conviction be set aside and the fine be remitted.

2. In my opinion, the learned Judge is wrong in this view. It has been established beyond all doubt that the work was done by certain Ooriya plumbers or mechanics. It has also been established beyond all doubt that these plumbers or mechanics did not take any permission from the Municipality. Under the rules framed under the Calcutta Municipal Act as extended to Howrah no licensed plumber shall do work of the nature above described without permission of the "Municipality. Now the Municipality having proved these facts, can it be said that the conviction of the accused is wrong? The accused gave no evidence and did not disclose the names of the persons employed by him. As a matter of fact he denied having caused the work to be done at all. Now it is not possible for the Municipality to know who the plumbers employed by the accused were. That is a fact peculiarly within the knowledge of the accused and it was, in my opinion, for the accused to show that the persons employed by him were licensed plumbers. In this connection I would draw the learned Judge's attention to the provisions of Section 106, Evidence Act. I fully realise that the provisions of Section 106, Evidence Act, should be applied with great care and caution in criminal cases but it cannot be said that it has no application to criminal cases. Here the gravamen of the offence consists of the employment of a person who has no license. The employer is often the only one who can say who has been employed. If he does not disclose the name of the person employed and gives no reasonable explanation for such non-disclosure, then it can be reasonably presumed that he employed somebody who did not possess a license.

3. In the present case, I am of opinion that it was for the accused to disclose the names of the person he employed or to give some explanation for such non-disclosure. It was also open to the accused to show that the persons whom he employed had a license. The accused has done none of these things and, in my opinion, the Court was right in inferring from all the facts and circumstances of this case that the persons employed by the accused had no license. The reference is accordingly rejected, and the order of conviction is upheld.