
(1941) 11 CAL CK 0029
In the Calcutta High Court

Chairman, Tollygunj Municipality

APPELLANT

Vs

M. Masiah Ahmed

RESPONDENT

Date of Decision : 25-11-1941

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438

Citation : AIR 1942 Cal 288

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

Bench : Full Bench

Judgement

Lodge, J.—This is a reference u/s 438, Criminal P.C., by the Sessions Judge of 24-Parganas. The material facts are as follows : An application was made at the instance of the Chairman of the Tollygunj Municipality for an order u/s 330, Bengal Municipal Act of 1932. The application was made to the Sub-Divisional Officer of Alipore and was by him transferred to Mr. H.C. Barori, a Magistrate of the First Class, for disposal. Mr. Barori after hearing the parties passed an order for demolition u/s 330, Bengal Municipal Act, on 29th May 1941. The learned Sessions Judge has recommended that this order be set aside for the reason that the Magistrate, who passed the order, had no jurisdiction to do so. Section 3 (54), Bengal Municipal Act, reads as follows:

"Magistrate" includes the District Magistrate, the Magistrate in charge of a division of the district, in which division a municipality is constituted, and every Magistrate of the First Class subordinate to the District Magistrate to whom the District Magistrate may have made over any duties under this Act.

2. It is conceded that Mr. H. C. Barori is not a Magistrate to whom the District Magistrate has made over any duties under this Act. If, therefore, Section 3(54) is an exhaustive definition of the term "Magistrate" as used in the Bengal Municipal Act, it is clear that Mr. H. C. Barori had no jurisdiction to pass an order u/s 330 of the Act. It has been contended on behalf of the municipality that as Section 3(54) uses the word "includes," the definition is not exhaustive and other Magistrates are also included in the definition. If this contention were correct, it

would mean that any Magistrate whether of the first class, or second class or even third class would also be included in. the term "Magistrate" and would have all the powers conferred upon a Magistrate under the Act. We are unable to accept this contention and we are therefore of opinion that the definition in Section 3 (54) is exhaustive. Such being the case, we are of opinion that Mr. H.C. Barori was not a Magistrate entitled to pass an order u/s 330, Bengal Municipal Act.

3. It has further been contended on behalf of the Municipality that even if Mr. Barori had no jurisdiction to pass the order complained of, still inasmuch as he did it in good faith, these proceedings should not be set aside merely on the ground that he was not empowered to pass the order ; and our attention was drawn to Section 529, Criminal P.C. Section 529 does not refer specifically to action taken under the Bengal Municipal Act and therefore strictly speaking has no application. But, even if the provisions of the Criminal Procedure Code are considered and applied as far as possible to proceedings under the Municipal Act, in our opinion Section 530 would be the proper section to apply rather than Section 529. In our opinion, the order of the Magistrate passed was without jurisdiction and is liable to be set aside. We therefore accept the reference and set aside the order of demolition passed by Mr. H.C. Barori on 29th May 1941.

Roxburgh, J.

4. I agree.