

(1917) 06 CAL CK 0031
In the Calcutta High Court

Charles Henry Brooke

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 12-06-1917

Acts Referred:

Calcutta Police Act, 1866 — Section 66(4)(a)

Citation : 41 Ind. Cas. 129

Hon'ble Judges : Teunon, J;Richardson, J

Bench : Division Bench

Judgement

1. In this case the petitioner has been convicted under the Calcutta Police Act (Bengal Act IV of 1866), Section 66, Sub-section 4 (a), and sentenced to pay a fine of Rs. 20.

2. It appears that the petitioner is a building contractor and has undertaken the erection of a masonry or brick building at premises No. 40/1 on the Strand Road. In the course of his building operations on the 20th of March last the petitioner unloaded and deposited some 2,000 bricks on the foot-path or pavement in front of the said premises and thereby, it has been found, caused obstruction in or on the foot-path for a period of some six hours or more.

3. That the foot-path or pavement in question is part of a public thoroughfare and that obstruction was caused in the manner set out has not been disputed and the defence is that the acts complained of, having been done in pursuance of and in conformity with a license granted by the Chairman of the Corporation of Calcutta, the petitioner had not thereby committed any offence. The present Rule was issued in order to the further examination of that defence.

4. The license which we have now examined is one granted under the 2nd of the bye-laws framed under the provisions of Section 559, Sub-section (18), of the Calcutta Municipal Act and authorizes the licensee "to make an enclosure in (a) portion of the public street measuring 40 feet into 4 feet, equal to 160 square feet, for the purpose of depositing mortar, bricks, etc.... during the building.... of

premises No. 40/1...."

5. We further find endorsed on the license a condition to the effect that the license is granted on condition that the portion to be occupied must be fenced off with a temporary fence.

6. It is conceded that in this case there was no enclosure or surrounding fence, and the first contention before us then is that inasmuch as the Corporation had authorized the occupation by the petitioner of a certain specified area of the foot-path, it was immaterial whether he left the bricks lying loose on that space, or surrounded and enclosed the space and the bricks by means of a fence.

7. In the alternative it is contended that the petitioner has at most committed a breach of the bye-law tender which his license was granted and that proceedings should have been taken against him only under the Municipal Act and at the instance of the Corporation.

8. On the other hand it is suggested by the Deputy Legal Remembrancer that in view of the provisions of Section 66, sub-Section (4) (a) of the Calcutta Police Act, the license and the bye-law under which it was granted should be held to be invalid and ultra vires of the Corporation.

9. In support of the petitioner's contentions reference is, made to the provisions of Section 336, Section 354 and of Section 559, Sub-section (18). These sections and sub-section vest the public streets in the Corporation and authorize the General Committee to discontinue or close such streets, and to make bye-laws prohibiting or regulating the placing of obstructions or the depositing of materials thereon.

10. We are, however, unable to accede to either of the petitioner's contentions. The petitioner's license authorized him to obstruct the pavement or foot-path by a well-defined enclosure, but did not authorize him to obstruct or endanger the safety of persons using the foot-path by means of loose and unprotected heaps of bricks. The petitioner, therefore, it is plain, has committed a breach of the bye law under which; his license was granted, but his offence also falls clearly within the provisions of Section 66, Sub-section (4) (a) of the Police Act., and as he is not protected by. his licanse there is no reason why those provisions should not be applied.

11. The suggestion made by the Deputy Legal Remembrancer appears to involve the further contention that Sub-section (4) (a), introduced into Section 66 of the Police Act by the Amending Act pi 1910 (Bengal Act III of 1910 overrides or repeals the provisions regarding the regulation of obstructions to be found in the Calcutta Municipal Act. As in the present case the petitioner's conduct was not within his license on which he relies, we need not definitely decide the point, but we may say that as1 at present advised we are of opinion that if by the Amending Act of 1910, the Legislature had intended to repeal any portion of the Calcutta Municipal Act such repeal would have been effected by express provision.

12. For the reasons given, this Rule is discharged.