

(1928) 03 CAL CK 0019
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Ananta Dhar and Another

RESPONDENT

Date of Decision : 27-03-1928

Acts Referred:

Calcutta Municipal Act, 1923 — Section 488, 488(2)
Public Health Act, 1875 — Section 158

Citation : AIR 1928 Cal 336

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case a rule was issued at the instance of the Corporation of Calcutta requiring the opposite party to show cause why a certain order of acquittal passed by the Municipal Magistrate in favour of the opposite party should not be set aside on the ground that the Magistrate had misconcieved the law and acquitted the accused on an erroneous hypothesis and assumption.

2. It appears that the opposite party is the owner of a hut consisting of certain premises in Calcutta and that after the commencement of the Calcutta Municipal Act of 1925 he put new golpatta leaves upon the old framework of the roof of his hut. He was accordingly prosecuted under Rule 7, Schedule 17, Municipal Act, the Clause 1, whereof says that external roof of walls of buildings shall not, after the commencement of this Act, be made of grass, leaves, mats, canvas or other inflammable materials.

3. It appears that the charge against him on that occasion was that he had entirely re-thatched the roof of the hut with new golpatta. Thereafter the prosecution with which we are now concerned was instituted and it was contended on behalf of the Corporation that because the opposite party had not pulled down the golpatta roof or altered it in accordance with the requirements of Rule 7, Schedule 17, he was guilty of a continuing offence within the meaning of the Calcutta Municipal Act and was liable to a daily fine of Rs. 5. The Magistrate has held that the fact that the opposite party has not pulled down the golpatta

leaves is not in-continuation of the offence previously committed by him under Rule 7 above mentioned.

4. The relevant section for the present; purpose is first of all Section 488, Calcutta Municipal Act. It prescribes that certain penalties mentioned in the third column of a schedule thereto shall be incurred by persons who contravene any provision of the sections or rules of the Act mentioned in that schedule and also by any person who fails to comply with any lawful direction under any of the sections mentioned. Thereafter it prescribes by the second clause:

whoever, after having been convicted of any offence referred to in Clause (a), (b), or (c), Sub-section (1) continues to commit such offence shall be punished for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in this behalf in the fourth column of the said table.

5. The question is, therefore, whether or not this case comes within the terms of Clause (2), Section 488, i.e., whether the opposite party continued to commit the offence of which he was previously convicted under Rule 7, Schedule 17. This matter must be considered upon the basis of Rule 7 which I have mentioned and the language of Clause (2), Section 188. In view of the explanation attached to Clause (2), Section 488, it appears to me to be erroneous to put any stress upon the particular words in the second column of the table which is governed by Section 488. I, therefore, pass over the phrase "construction of external roofs or walls of buildings with inflammable materials" which is to be found in that table and go to the fountain head, that is to say, the term of Rule 7 itself. It is to be observed that that section is not expressed to say that in the case of external roofs or walls of buildings erected after the commencement of this Act the same shall not consist or be observed to consist of inflammable materials. It says that external roofs shall not, after the commencement of this Act, be made of inflammable materials; and the offence which was committed by the opposite party for which lie was rightly convicted was the offence of making the roof with an inflammable material. The leading case on this subject is the, case of *Marshall v. Smith* [1873] 8 C.P. 416 and is that case, which has never been dissented from in England, it was held under a very similar clause that the offence consisted in the building of the wall. It was also held that a mere failure, to pull down a wall or rebuild it in accordance with the statutory requirements was not a continuation of that offence. In consequence of that decision Section 158, Public Health Act, 1875, was made to provide that where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw shall be deemed to be a continuing offence.

6. No such provision has been incorporated into the Calcutta Municipal Act and if, therefore, we are to hold that the conduct of the opposite party in suffering the roof to remain is a continuation of the offence of making the roof, we have to do

a certain amount of violence to the language of Clause (2), Section 488 It is plain as a matter of right reason that suffering the roof to remain is not a continuation of the offence committed, i.e., of making the roof. When one looks at the scheme-and the language of the table which follows Section 488 one notices that the daily fine is one of Rs. 5, and no doubt it does occur to one that while a person may after conviction continue to erect a roof of inflammable materials a daily fine of Rs. 5 does not seem to be a very adequate or convenient method of coping with that particular form of persistency in illegal conduct At the same time it is possible to have a case where a person continues to erect or make a roof with inflammable materials after conviction and it cannot, therefore, be said that the Court is obliged by the frame of the table to extend the proper and ordinary meaning of the words "continues to commit such offence" found in Clause (2), Section 488. I quite appreciate that it is a serious, matter for the Corporation to be told that they have not the power to obtain a conviction in a case of this sort under Clause (2), Section 488. Also I am the last person to be unduly influenced by any archaic notions as to a strict construction to be applied to a statute which deals with many very complicated matters. Speaking for myself, if I am satisfied that the-meaning of what the legislature has said i3 to make this kind of conduct a continuation of the offence under Rule 7 mere correctness of language would not deter me from giving effect to the intention of the legislature.

7. In the present case, however, I am not of opinion that there is sufficient, in the language employed by the legislature to justify the Court in regarding this kind of conduct as a continuation of the offence within the meaning of Clause (2), Section 488. It seems to me that if the Corporation has not sufficient power, where any works are erected contrary to the Act, to order them to be removed and in default of compliance to remove them itself at the expense of the owner, the sooner it takes power to act in that way the sooner it will be equipped with what is necessary to protect the city from conflagration. Again, if it is thought useful to have the power of a daily fine in such a case the sooner the Corporation goes to the legislature for a clause on the lines of Section 158, Public Health Act, 1875 the better. It is not only difficult but it is in some respects objectionable that a matter of this sort should be dealt with by a Court of law straining the plain words continues to commit such offence" so as to supply the Corporation with a somewhat drastic power. In my judgment, the result of a consideration of the Calcutta Municipal Act is that I am satisfied that the view taken by the Magistrate is not only consistent with authority but is correct, and I think that this rule ought to be discharged.

C.C. Ghose, J.

8. I agree.