
(1952) 11 CAL CK 0009
In the Calcutta High Court
Case No : Criminal Revn. No. 1259 of 1951

Corporation of Calcutta

APPELLANT

Vs

S.B. Trading Co. Ltd.

RESPONDENT

Date of Decision : 28-11-1952

Acts Referred:

Calcutta Municipal Act, 1923 — Section 179, 180(2), 492(1)

Citation : AIR 1953 Cal 506 : 57 CWN 197

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : Santosh Kumar Basu and Pashupati Ghosh, for the Appellant; Narendra Kumar Basu and Bankim Chandra Roy, for the Respondent

Judgement

P.N. Mookerjee, J.—This Rule is directed against an order of the learned Municipal Magistrate, Calcutta, acquitting the accused opposite party S. E. Trading Co. Ltd., of a charge u/s 492, Calcutta Municipal Act, 1923, read with Section 179 (b) and Schedule 9 of the said Act. The offence alleged was the exercise of the calling of a market-owner without a license for the first half year of 1950-51 and the prosecution was launched on 29-12-1951.

2. According to the prosecuting Municipal authorities the accused were liable under the Act to pay a scavenging tax of Rs. 2340/- for the said first half year of 1950-51 in respect of the place alleged by the prosecution to be a "market" and popularly known as Raja Katra in the Burra Bazar area of this city and to take out on such payment a license u/s 179 (b) of the Act for the said period, and they having failed to make the payment, and for such payment several demands were said to have been made, and take out the license and having actually exercised the calling of a market-owner in respect of the above place without such a license on and after the 1st day of June, 1950, that is, "on or after the 1st day of June in the year" as contemplated in Section 492 (1) (c) of the Act, the year being the financial year (vide Section 3 (69) 1950-51) committed the offence u/s 492 (1) (c) of the Act and were liable to be punished under the said statutory

provision.

3. The defence "inter alia" was that the place in question popularly known, as said above, as Raja Katra was not a market, at any rate, it had ceased to be a market and was not a market at the relevant time, -- and as such - its owners were not liable to pay the scavenging tax demanded, or, for the matter of that, any such tax at all, or to take out any license u/s 179 of the Act, and that, accordingly, the prosecution was unsustainable. A further defence taken was to the effect that there was no valid or proper determination of the daily average quantity of offensive matter or refuse removed from the alleged market, and in the absence of such determination no liability to pay the scavenging tax or take out the license u/s 179 (b) could arise and no prosecution could be maintained u/s 492(1) (c) of the Act. Several other defences appear on the record, but they are not of much substance, and as before me no reference was made to them on behalf of the parties they may safely be left aside.

4. The learned Magistrate has acquitted the accused on two grounds, either of which, if sound in law, is sufficient to throw out the prosecution. The learned Magistrate has found that the disputed place Raja Katra is not a market under the municipal law, it being a mere collection of some fixed shops, hotels and residential quarters and is not a bazar too as there is no declaration to that effect as required by law. He has further found that there has been in this case no proper determination of the average quantity of refuse, or, to put it in statutory language, "offensive matter or rubbish" removed daily from the said place and no proper assessment of the scavenging tax by the Corporation without which no prosecution like the present is maintainable in law in the face of the decision of this Court reported in -- "Kumar Jitendra Mullick and Another Vs. Corporation of Calcutta, .

5. The propriety of the above views of the learned Magistrate has been subjected to severe criticism by Mr. Santosh Kumar Basu, appearing for the City Corporation, and I am not prepared to say that the said criticism is without force or wholly unfounded or unjustified. In the view, however, which I am taking it is unnecessary to examine the merits of the rival contentions of the parties upon the above two points, nor is it necessary to decide the question of limitation raised in this Court on behalf of the opposite parties as a bar to the present prosecution under either of the two Clauses (a) and (b) of Sub-section (1) of Section 534 of the Act, Clause (b) being read with Sub-section (2) of the said section. and considered in the light of the decisions of this Court reported in -- Corporation of Calcutta. Vs. Ganesh Chandra Dhar and Another, , and -- "Nagendra Nath v. The King" AIR 1949 Cal 664 (C).

To both the learned Advocates, Mr. Santosh Kumar Basu for the Corporation and Mr. N.K. Basu for the opposite parties, I am indebted for very elaborate arguments and valuable assistance on all the above points, but as, in the special circumstances of this case to be presently indicated below, I do not feel inclined or justified to interfere with the order of acquittal passed by the trying

Magistrate, I would reserve my views on the said questions for appropriate future occasions.

6. The special circumstances to which I have referred above reflect adversely on the character of the municipal administration of this city, and they ought to engage the immediate and serious attention of the authorities concerned. Under the Act the exercise of the calling of a market owner after the first day of June in any year without the statutory license for the first half year of that year is punishable (vide Sections 179 (b), 180(2) and 492(1)(c) and this license is to be obtained upon payment of the scavenging tax or fee calculated at the rate mentioned in Schedule 9, Part 2, upon the quantity of offensive matter and rubbish removed daily, as determined by the Corporation (vide Section 179(b)).

Clearly, therefore, it is the duty of the Corporation to determine the average quantity of offensive matter and rubbish removed daily from the market in question and without such determination the tax or the fee cannot be paid or the license issued or obtained and as u/s 180(2) such license is to be taken out not later than the 1st day of June if, as in the present case, the first half year is the period concerned, it is imperative and, in any event, it is quite reasonable to think that the law contemplates that the determination must be made by the Corporation before that date or, at any rate, before the expiry of the relevant half year, viz., the 30th September at the latest, taking the year to mean the financial year (vide the definition clause, Section 3(69), as above stated).

The records, however, disclose that measurements of refuse continued from time to time up to about the end of June and the average was determined, and the tax or fee calculated, some time in August and though objection was taken forthwith by the party to the said determination and average the Corporation authorities did not care to take up the matter before November, and then they revised their own previous determination and assessment thus showing that these had not been correctly done, and, in these circumstances, when the prosecution authorities neglected or failed to do what was required of them under the statute and thereby made it impossible for the party to take out the license in time or even before the end of the half year concerned and thus in a way contributed to a large extent to their alleged failure to comply with the law and save themselves from the mischief of the penal section, it would be unjust, unfair and improper to interfere with the order of acquittal passed by the trial Court, even assuming that the learned Magistrate was wrong in holding that the place Raja Katra was not a market under the Act and that the Corporation's manner or method of determination of the statutory average had not been proper or according to law, and assuming further that the opposite party's plea in this Court raising the time bar u/s 534 of the Act is not sound.

I would not, therefore, interfere with the order complained against in this Rule, not merely because it is an order of acquittal, such orders being, in my opinion, clearly revisable by this Court in appropriate cases in the exercise of its revisional jurisdiction vide -- N.N. Bose Vs. Manager, Kedar Nath Jute Manufacturing Co.

Ltd., , but because in the special circumstances of this case, as set out above, the revisional powers of this Court should not be exercised to the prejudice of the accused. This relieves me from the necessity of examining the scope and effect of the decision reported in -- Corporation of Calcutta Vs. Bengal Dooars Railway Co. Ltd., , cited by the opposite party, as, even apart from that, the order of acquittal should not, in my opinion, for the reason, already stated, be interfered with in the present case.

7. This Rule, therefore, fails and is discharged, but this will not in any way affect the Corporation's right, if any, to recover the scavenging tax or license fee from the opposite party in other appropriate legal proceedings.