

(1986) 05 CAL CK 0006

In the Calcutta High Court

Case No : Criminal Rev. No's. 244 to 246, 2117 to 2128 and 183 of 1982

Gyaneswar Prosad Agarwal

APPELLANT

Vs

Corporation of Calcutta and Another

RESPONDENT

Date of Decision : 16-05-1986

Acts Referred:

Calcutta Municipal Act, 1951 — Section 426(B)

Citation : 91 CWN 268

Hon'ble Judges : S.S. Ganguly, J

Bench : Single Bench

Advocate : Balai Chandra Roy and Bhudeb Bhattacharyya, for the Appellant;
Amal Chandra Chatterjee, Seklar Basu and Alok Kumar Ghosh for Corporation,
B.K. Sinha for State, for the Respondent

Judgement

S.S. Ganguly, J.—Criminal Cases numbered below have been started against the accused petitioners u/s 426(B) of the Calcutta Municipal Act, 1951.

Rev No.

Criminal Case No.

Pending in the Municipal Magistrate Court Calcutta

244 of 1982

153-B of 1981

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246 of 1982

151-B of 1981

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183 of 1982

150-B of 1981

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245 of 1982

152-B of 1981

"

2117 of 1982

553-B of 1981

"

2118 of 1982

554-B of 1981

"

2119 of 1982

556-B of 1981

"

2120 of 1982

557-B of 1981

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2121 of 1982

558-B of 1981

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2122 of 1982

559-B of 1981

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2123 of 1982

560-B of 1981

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2124 of 1982

561-B of 1981

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2125 of 1982

562-B of 1981

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2126 of 1982

563-B of 1981

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2127 of 1982

564-B of 1981

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2128 of 1982

565-B of 1981

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2. The petitioners contend in all these cases that these cases are not maintainable in view of the non-compliance of the mandatory provisions of section 426 of the said Act. Section 426 in its entirety may be reproduced as below :

426 : - Notwithstanding anything contained in section 424 when building operations are being carried on in any premises, or when any premises are used for carrying on any manufacture, trade or business, the Commissioner may.-

a) by written notice, direct the person responsible for such building operations or the occupier of the premises, as The case may be, to collect all rubbish and offensive matter accumulating on such premises in the course of such operations, manufacture, trade or business and to remove the same, at such times, in such courts or receptacles and by such routes as may be specified in the notice, to a public receptacle, depot or place provided or appointed u/s 423, or

b) after giving such person or occupier written notice of his intention to do so, himself cause all the rubbish and offensive matter to be removed, and charge the person or occupier for such removal such periodical fee as may be a specified in the notice.

Provided that the requisition under clause (a) shall not be enforced by the Commissioner nor shall action be taken by him under clause (b) until such person or occupier has been given an opportunity of being heard within such time as may be specified in the written notice that is served on him.

2. It is urged from the side of the petitioners that the action contemplated in the aforementioned section cannot be taken without serving the written notice contemplated in clause "A" &: "B" and without affording the person concerned

an opportunity of being heard as contemplated by the provisions below Clauses "A" & "B" It is urged that notices have not been served on the present petitioners and that nor they were afforded with any opportunity of being heard as required by the section, It is urged that in the circumstances stated the cases started against them in the court of the learned Municipal Magistrate cannot proceed and must be quashed. These cases were taken up for hearing on an earlier occasion when the Corporation was given an opportunity of swearing an affidavit affirming that the requirement as per section 426 were complied with and also to produce necessary papers to show that this was so. In other words the Corporation was given an opportunity to show that the notices as contemplated in Clauses "A" & "B" were served on the petitioners and that they were also given an opportunity of being heard. Today the matter is again taken up for hearing. No affidavit has been filed from the side of the Corporation nor any papers to show that the provisions of the said section were complied with before the cases were started against the present petitioners. In that view of the matter it may be safely presumed that the notices in question were never served on the present petitioners and that nor they were provided with an opportunity of showing causes as required by the provisions. Since the mandatory provisions of section 426 were not complied with in these cases the Corporation had no right to start the Criminal Proceeding against the present petitioners in the court of the Municipal Magistrate, Calcutta. The present cases being without jurisdiction shall therefore have to be quashed which I hereby do. The rules in all the aforementioned cases are made absolute. Send the L.C.R. back to the learned Municipal Magistrate immediately.