

(1949) 11 CAL CK 0051
In the Calcutta High Court
Case No : Criminal Revn. No. 808 of 1949

Jatindra Nath

APPELLANT

Vs

Manindra Nath and Another

RESPONDENT

Date of Decision : 21-11-1949

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 268, 290

Citation : AIR 1950 Cal 330 : 54 CWN 384

Hon'ble Judges : Sen, J

Bench : Single Bench

Advocate : Amaresh Chandra Roy, for Bireswar Chatterjee, for the Appellant;

Judgement

Sen, J.—This rule has been obtained by an accused person who has been convicted for having committed an offence punishable u/s 290, Penal Code and sentenced to pay a fine of RS. 100, in default to undergo simple imprisonment for one month.

2. The facts alleged against the petitioner briefly are as follows: He is the tenant in respect of certain premises in Nabadwip. In these premises live a number of young women of immoral character. Men of bad character come to the house and disturb the neighbour-hood by singing obscene songs and having drunken brawls. The occupants of the premises also throw dirty rags on the road and near the premises occupied by the neighbours. The defence taken is that the petitioner is the Secretary of an institution known as the Nari O Shishu Ashram. The Society carried on philanthropic work by rescuing unfortunate women and giving them protection in the premises where it is alleged by the prosecution this public nuisance has been committed. The petitioner is the Secretary of this Association and he lives at Calcutta. He goes to the house occasionally. He denies that there was any public nuisance committed and in any event he states that he cannot be made liable for committing any public nuisance upon the evidence adduced.

3. The trial Magistrate convicted the petitioner and this conviction has been upheld by the Sessions Judge of Nadia. Against the order of conviction and sentence the present rule has been obtained. Learned advocate on behalf of the petitioner contends firstly that the evidence does not establish that any public nuisance has been committed and secondly that the commission of such public nuisance cannot be brought home to the petitioner inasmuch as he does not reside in the aforesaid premises but is an occasional visitor therein. Lastly, he argues that the petitioner was not properly examined in accordance with the provisions of Section 342, Criminal P. C., inasmuch as the salient points alleged against him were not brought to his notice.

4. In my opinion all these grounds should prevail. The evidence adduced is contradictory and in my opinion does not lead to any reasonable conclusion of the commission of a public nuisance. It seems to me that the Courts below have constituted themselves not only as Courts of law but also as Courts of morals. It may be (I do not say that this is so) that in the premises some immoral acts may have been committed but although that may offend the susceptibilities of the neighbours it certainly does not constitute a nuisance. The learned Magistrate in the opening part of his judgment indicates that he has no clear idea of what a public nuisance is. He says that the allegation is that clandestine prostitution is being carried on in this house. If the prostitution is carried on in a clandestine or hidden manner, there can be no public nuisance although persons who come to know of the immoralities committed in the house may feel their moral sense outraged. "Public nuisance", has been defined in Section 268, Penal Code, and before any finding can be arrived at that a public nuisance has been committed the elements contained in that section must be established. Common injury, danger or annoyance mentioned in the section must be to the public at large dwelling in the vicinity and not to a particular individual. In my opinion the evidence is discrepant and the conviction cannot be based upon such evidence. Further, I would point out that the petitioner has been found guilty of a public nuisance by virtue of an illegal omission. That is the finding of the Court below. I cannot understand how the petitioner can be found guilty of any illegal omission. There is no evidence given that he has failed to do something which he was lawfully bound to do. Again, it is established from the evidence that the petitioner is not a resident of the premises but he visits it occasionally. I do not see in these circumstances how he could be found guilty of committing a public nuisance unless it is found also that he engaged the premises for such purposes as would inevitably result in a public nuisance. There is evidence to prove that the premises were engaged for a very laudable purpose. If in the absence of the petitioner there were irregularities or misconduct on the part of the occupants I cannot see how the petitioner can be found guilty.

5. As regards the complaint that the provisions of Section 342, Criminal P. C., have not been observed I am of opinion that it is well found, ed. All that the petitioner was asked was this: ""You have heard all the evidence. Have you anything to say ? " The petitioner replied that he was not guilty. This sort of

perfunctory examination does not constitute a proper examination under the provisions of Section 342, Criminal P. C. It was not explained to the accused what the circumstances against him were. The duty of the Court in an examination u/s 342, Criminal P. C, is to explain to the accused the facts appearing against him. This is very necessary in a case of the present description. The defence suggestion is that the landlord of the premises wishes to eject the petitioner and that this case has been got up by the landlord with the help of certain neighbours. In my opinion this suggestion of the defence is not without foundation.

6. In the circumstances I set aside the order of conviction and sentence and make this rule absolute. The fine, if paid, shall be refunded.