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**(1929) 05 CAL CK 0053**  
**In the Calcutta High Court**

Juman Sadagar

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

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**Date of Decision :** 22-05-1929

**Acts Referred:**

Calcutta Municipal Act, 1923 — Section 271, 488

**Citation :** AIR 1929 Cal 490

**Hon'ble Judges :** Mukerji, J

**Bench :** Division Bench

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**Judgement**

Mukerji, J.—This Rule has been is-issued to show cause why the conviction of the petitioner u/s 488 read with Section 271, Calcutta Municipal Act, (Act 2 B.C. of 1923) should not be set aside or such other or further order made as to this Court may seem fit and proper. The facts necessary to be stated are the following. The petitioner holds a certain property, to wit, premises No. 7 Gas Street, Calcutta, on a lease. The premises in question were in the occupation of a tenant Kissen Ram Shaw who, it is said, held the same under a registered kabuliat for two years from 8th December 1920 and on the expiry of the term has been holding over. In October 1927 the Corporation of Calcutta served a notice on the petitioner u/s 271, Calcutta Municipal Act, requiring him to erect two connected privies in the premises. The petitioner, having failed to comply with this requisition, was convicted at first on 3rd April 1928, and sentenced to pay a fine of Rs. 25 and again on 12th June 1928 and sentenced to pay a fine of Rs. 30. The present conviction against which this rule has been issued was upon an application in which it was stated that the petitioner continued in not complying with the aforesaid notice u/s 271 of the Act from 13th June 1928 to 10th September 1928.

2. The fact that there was non-compliance with the notice in question between the dates to which reference has just been made was admitted on behalf of the petitioner by the pleader who appeared for him before the learned Municipal Magistrate. The Rule that has been issued by this Court has been sought to be

supported by reference to certain proceedings in other Courts and on a reference to which it has been argued that the conviction is not maintainable. I shall presently refer to those proceedings. The petitioner appears to have filed a suit in ejectment against the tenant being title Suit No. 715 of 1927 of the Court of the Munsif at Sealdah. This suit was filed sometime in the year 1927. It ended in a decree against the tenant Sri-kissen Ram on 19th July 1928. The petitioner states that when he tried to execute the ejectment decree for getting khas possession of the said premises, one Jiblal Shaw alleging that he was the tenant's brother filed a declaratory suit against the petitioner on 13th August 1928 being suit No 209 of 1928 in the Court of the Subordinate Judge at Alipore and on 14th August 1928 obtained an injunction against the petitioner restraining him from taking possession of the said premises. On being called upon to answer the charge with regard to which the petitioner has now been convicted he appeared before the Court and on 4th December 1928 placed all the facts before the Municipal Magistrate and upon that he was advised to make an application u/s 527 of the Act in the Small Cause Court of Sealdah in order to obtain facility for getting possession of the premises for the purpose of constructing the privies thereof.

3. The petitioner states that on his undertaking to make the said application the case was adjourned and on that he on 13th December 1928 did, in point of fact, file the said application in the said Court. That application, the petitioner states, is yet pending. On these facts, the petitioner contends that the order of conviction which was passed against him was one which was not justifiable.

4. Now, it seems to me upon the provisions of the law as it stands that the pendency of a suit in ejectment against the tenant or the existence of an injunction against the petitioner or for the matter of that the mere filing of an application u/s 527 of the Act would not be sufficient to relieve the petitioner from a liability for a conviction for noncompliance with a requisition such as there was in the present case u/s 271, Calcutta Municipal Act. At the same time, however, it seems to me that in order to consider the gravity of the offence which one commits in not complying with a requisition of this character at a time when proceedings of the nature to which I have already referred are pending, one cannot entirely overlook the fact of the existence of those proceedings. It is true that Section 527 of the Act says in Clause (3) of it that:

after eight days from the date of any such order, the said occupier shall afford all such reasonable facilities to the owner for the purpose aforesaid as may be prescribed in the said order ; and in the event of his continued refusal to do so, the owner shall be discharged, during the continuance of such refusal from, the liability which he would otherwise incur by a reason of his failure to comply with the said provision or requisition.

5. But the Sub-section does not mean that the pendency of an application u/s 527 or for the matter of that, of other proceedings bona fide taken by one for getting khas possession of the property, need not be considered for the purpose

of determining what should be a proper sentence to be imposed upon him for his failure to comply with the requisition. I am not oblivious of the fact that the application u/s 527 was made only on 13th December 1928 and not at any time during the period from 13th June 1928 to 10th September 1928 during which the offence is said to have continued.

6. The fact that it was not made within the period aforesaid only means that the application does not absolve the petitioner from liability. The proceedings that the petitioner took for the purpose of getting khas possession of the property, I am clearly of opinion, were taken by him bona fide and I think he was perhaps wrongly advised in not taking proceedings u/s 527 of the Act in the first instance. Having regard to those proceedings and in view of the fact that that application has been made and is actually pending, some consideration, in my opinion, should be shown to the petitioner in the matter of the sentence that is to be passed on him and in that view of the matter I would reduce the sentence passed on the petitioner to a fine of four annas per diem for the 75 days for which the learned Magistrate has convicted him in other words, that the petitioner should be sentenced to pay a fine of Es. 18-12-0 in default to undergo simple imprisonment for 18 days.

7. It appears from a perusal of the order-sheet of the case which has been started on the application u/s 527 of the Act that on several occasions the petitioner was ready with his witnesses but on the prayer of the opposite party the hearing of the application was adjourned and it further appears that on the last two days for which the case was fixed, namely, 20th April 1929 and 11th May 1929 the opposite party was ready but the petitioner for some reason or other asked for and obtained an adjournment. The petitioner will be well advised not to apply for such an adjournment again and to have the matter brought to an end in order that if he obtains an order u/s 527, Sub-section 3 in his favour he may get the benefit which that section would confer on him. The Rule will be made absolute only to this extent that while the petitioner's conviction stands the sentence passed on him will be reduced as aforesaid. Balance of the fine, if paid, will be refunded.