
(1958) 02 CAL CK 0021

In the Calcutta High Court

Case No : Criminal Revision Case No. 1150 of 1957

Kashi Nath Dey

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 07-02-1958

Acts Referred:

Bengal General Clauses Act, 1899 — Section 12

Calcutta Municipal Act, 1951 — Section 177, 218, 541, 582

Citation : (1959) 2 ILR (Cal) 134

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Anil Kumar Sett, for the Appellant; Monmohan Mukherjee, for the Respondent

Judgement

Debabrata Mookerjee, J.—This Rule is directed against an order of the 4th Municipal Magistrate, Calcutta, convicting the Petitioner u/s 541 of the Calcutta Municipal Act, 1951 and sentencing him to pay a fine of Rs. 40 in default to suffer simple imprisonment for six weeks.

2. The case against the Petitioner was that he had been carrying on the trade of a retail shop-keeper in a room of premises No. 88A, Dharamtolla Street, during the year 1954-55 without taking out a license u/s 218 of the Calcutta Municipal Act. A complaint was filed on July 1, 1955 and the Petitioner was summoned to answer the allegation made against him.

3. The defence was that he was not liable to pay the sum of Rs. 24 which was claimed by the Municipality as being payable by him. His case further was that the proceedings instituted against him were barred by limitation.

4. The learned Magistrate considered the evidence in the case and found that the Petitioner did commit an offence u/s 541 of the Act and sentenced him as Stated above.

5. Two objection have been raised against the validity of the conviction made by

the Magistrate. The first relates to the complaint having been filed beyond the time prescribed by law and the second to the question of the license fee to which the Petitioner had been assessed by the Municipality.

6. As has been stated above, the prosecution related to failure to take out a license for the year 1954-55. The prosecution was commenced against the Petitioner on July 1, 1955. Section 218 provides that every person who carries on in Calcutta a profession, trade or calling included in Schedule IV, has to take out annually a license before the 1st day of July in each year or within one month of his taking up the profession, trade or calling, as the case may be, and pay for the same such fee as is mentioned in that behalf in the said "schedule. Section 582 says that no person shall be liable to punishment for any offence under the Calcutta Municipal Act or against any rule or by-law made there under, unless complaint of the offence is made before a Magistrate within three months, or, if the offence be against the provisions of Section 177, within six months next after the date of commission of such offence. It also provides that failure to take out a license under the Act is to be deemed for the purpose of this section to be a continuing offence until the expiration of the period for which the license is required to be taken out. Taking these provisions together, it is quite clear that the Corporation was obliged to commence the proceedings against the Petitioner on June 30, 1955 at the latest; but that date being a public holiday, the complaint was actually filed on the day following, that is, on July 1, 1955. This delay of one day is accounted for by the fact that the 30th June was a closed day. The provisions of Section 12 of the Bengal General Clauses Act 1899 make it clear that when any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within the prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. In view of the provisions of the [Bengal General Clauses Act which I have just read, it seems obvious that the Corporation was entitled to institute or commence its proceeding on July 1, 1955. There is, therefore, no substance in the first contention raised on behalf of the Petitioner.

7. Turning to the second objection, it seems clear that the Corporation's claim to levy a license fee was founded upon Item No. 108, of Rule 1 of Schedule IV of the Act. Rule 1 provides that every license shall be granted under one or other of the classes mentioned in the table following and there shall be paid annually for the same the fee mentioned in that behalf in the table. Item 108 governs the cases of hotel-keeper, boarding-house-keeper, lodging-house keeper, manufacturer, retail trader or shop-keeper. There can be no question that the Petitioner was a retail trader or a shop-keeper and that his case is not included in any of the other classes, namely, class II, class III, class IV, class v. or class VI mentioned in the schedule, and the fair letting value of his place of business was Rs. 30 per mensem or upwards. Rule 6 of the schedule further provides that when a place of business occupies only a portion of one set of premises and has

not been separately valued under Chapter XI, the valuation thereof for the purpose of these rules in the schedule shall be the rate per mensem at which such place of business might,, in the opinion of the Commissioner, reasonably be expected to let. In this case evidence was led by the Corporation to indicate that the fair letting value of the premises was Rs. 35 per month. Obviously, that was the basis of the claim for levy of license fee made by the Municipality. On behalf of the Petitioner it was somewhat faintly urged that the Corporation had failed to adduce satisfactory proof upon which a conclusion could be rested that Item 108 in the table attached to Rule 1 of the Schedule was attracted to his case. I am afraid I cannot accept this contention. The Corporation's case clearly was that the Petitioner was liable to pay license fee in the sum of Rs. 24 and that claim was sought to be founded upon certain materials of which proof was offered at the trial before the Magistrate. Quite obviously, the Magistrate believed the evidence and on a consideration of it came to the conclusion that the Petitioner had failed to take out a license in accordance with the provisions of the Act. This contention raised on behalf of the Petitioner also fails.

8. In the result, the conviction must be held to have rightly made.

9. The Rule is accordingly discharged.