

(1893) 01 CAL CK 0006
In the Calcutta High Court

Kheroda Prosad Paul

APPELLANT

Vs

The Chairman of the Howrah Municipality

RESPONDENT

Date of Decision : 27-01-1893

Acts Referred:

Citation : (1893) ILR (Cal) 448

Hon'ble Judges : Prinsep, J;Ameer Ali, J

Bench : Division Bench

Judgement

Prinsep and Ameer Ali, JJ.—It is unnecessary, in the view we take of this matter, to consider more than the first objection raised to the conviction and sentence u/s 218 of the Municipal Act of 1884. That objection is that the prosecution has been instituted without proper authority within the terms of Section 353, read with Sections 44 and 45 of the Act. It is not denied that no order or consent of the Commissioners was previously obtained before prosecution, nor has it been contended that the Chairman, exercising the powers of a Commissioner u/s 44, ordered this prosecution, nor that the Chairman, by any written order, delegated to the Vice-Chairman this duty. But it has been stated by the District Magistrate, who heard the appeal--and this has been repeated in the explanation given on the issue of the rule--that some months past the Vice-Chairman had his express consent to institute proceedings u/s 353 of the Act. It seems to us that the law requires not express consent, but a written order where such general powers are delegated by the Chairman. No doubt the proviso sets out that nothing done by the Vice-Chairman which might have been done under the authority of a written order from the Chairman, shall be invalid for want or defect of such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained. But we do not understand that proviso to altogether override the body of the section to which it is annexed. It seems to us rather that the proviso relates to specific acts in which an express or implied consent may have been given or held to have been given. In this particular instance the authority contended for is a general authority which had been given many months previously. We think that is not the authority contemplated by the Act.

We think, therefore, that the prosecution has been improperly instituted, and that the conviction and sentence should be set aside.