

**(1907) 06 CAL CK 0010**  
**In the Calcutta High Court**

Kumud Kumari Dassi

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

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**Date of Decision :** 05-06-1907

**Acts Referred:**

Calcutta Municipal Act, 1923 — Section 408, 419, 574

**Citation :** (1907) ILR (Cal) 909

**Hon'ble Judges :** Mitra, J;Caspersz, J

**Bench :** Division Bench

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**Judgement**

Mitra and Caspersz, JJ.—This is a Rule involving a question of limitation arising out of the institution of a prosecution u/s 408 read with Section 574 of the Calcutta Municipal Act. The matter relates to a bustee.

2. On the 1st March 1906, a notice was issued u/s 408 of the Act requiring improvements in the bustes within three months from that date. The notice, it appears, was served on the 3rd March. The three months expired on the 2nd June, and the offence was committed on the 3rd June. Subsequently, on the 21st June 1906, the Corporation sent a reminder. There was no necessity for it, but the Corporation wanted to give the proprietress of the bustce every opportunity of making the improvement. On the 2nd July 1906, after the offence had been committed, a notice was sent by the petitioner u/s 419 of the Act. The effect of a notice u/s 419 is ordinarily to enlarge the time by six months.

3. Is six months" time to be given after the offence has been committed? We think not. A notice u/s 419, in order to be effectual, must be served before the offence is committed. In the present case, as the Municipal Magistrate points out, the offence was committed on the 3rd June. The Sub-Committee of the Corporation as well as the General Committee granted time till the 2nd January. But all these proceedings took place after the offence was committed. They could not extend the period of limitation u/s 574 of the Act. The prosecution in this case was started on the 23rd January, that is, more than three months after the expiry of the notice u/s 408.

4. It is true that the Corporation acted with great consideration in allowing time; but we cannot permit the law of limitation to be infringed. It is the duty of this Court to enforce the law of limitation. It might be that the Corporation should have given a fresh notice three months before the expiry of the term of six months, on the 2nd January, if it was not disposed to grant further time beyond the 2nd January. But the Corporation did not do so. The Corporation might also have given another notice, though it is true that such notice after, the 2nd January would have had the disastrous result of keeping the bustee unclean for another three months at least. We are, therefore, constrained to set aside the order of the Municipal Magistrate and direct that the fine, if paid, be refunded.