

**(1897) 12 CAL CK 0001**  
**In the Calcutta High Court**  
**Case No : Revision No. 756 of 1897**

Lutfer Rahaman Naskar

APPELLANT

Vs

The Calcutta Municipal Corporation

RESPONDENT

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**Date of Decision :** 14-12-1897

**Acts Referred:**

**Citation :** (1897) 12 CAL CK 0001

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## Judgement

1. This is a Rule calling upon the District Magistrate to show cause why the conviction and sentence in this case should not be set aside, on the ground that the provisions of sec. 382 of the Calcutta Municipal Consolidation Act (II of 1888, B.C.) have not been contravened by the Petitioner in this case. No one appears to show cause; and the learned District Magistrate in his letter to the Registrar of this Court says that the Deputy Magistrate who tried this case has no cause to show. The offence complained of is stated in the record in these terms:--"Permitting corpses to be buried at the Talbagan burial ground after it had been closed as seen on the 28th June 1897 and 9th July 1897.

2. The plea of the accused was that he could not say whether there was any burial on those two particular dates mentioned, but since then several burials have taken place; that he was one of the proprietors of the Talbagan burial ground; and that he did not know that it was closed; and therefore allowed the burial of corpses on that ground. There was evidence adduced to show that burials alleged did take place there; upon that fact being proved and the Magistrate being of opinion that the period of two months allowed in this case for closing the burial ground ran from the date of the certificate mentioned in sec. 281 of the Act, which was the 28th of April 1897, he has convicted the Petitioner under sec. 382 of the Calcutta Municipal Consolidation Act (II of 1888, B.C.) and sentenced him to pay a fine of Rs. 10 and annas 8 as costs. The contention urged on behalf of the Petitioner before us is, that the conviction is wrong, because the certificate issued under sec. 381 of the Act does not definitely specify any time as required by the section; and that if it does name any, it has not been shown that burials have taken place since the expiry of such time. Sec. 382, under

which the Petitioner has been convicted, runs thus :-- "Whoever, after due publication of such certificate, buries or burns, or causes, permits, or suffers to be buried or burned any corpse contrary to the last preceding section, shall be liable to a fine not exceeding Rs. 200.

3. The offence in this case is said to consist in the Petitioner having permitted or suffered corpses to be buried in the burial ground in question contrary to the provisions of sec. 381. Now sec. 381 enacts, we refer only to so much of it as has bearing upon this case, that if, after certain preliminaries are complied with, the Commissioners shall "certify that a fitting place for interment or burning (as the case may be) exists within a convenient distance and is available, no person shall after a lime (not less than two months) to be named in such certificate, bury or burn, or permit or suffer to be buried or burned any corpse in, upon, within or under the ground to which the certificate relate-," and the latter part of sec. 381 enacts that "every such certificate shall be published in the Calcutta Gazette and a translation thereof in Bengali shall in the case of a burial or burning ground be affixed conspicuously on some part of the said ground.

4. In the present case the certificate that was made by the Commissioners, and is filed with the record as Ex. H, bears date the 28th April 1897, and runs in the terms:--" The Commissioners in meeting thereby certify that the condition of the cemeteries of Gobra, New Kasia Bagan, Talbagan and Khoyrati is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, and that a fitting place for interment exists within a convenient distance and is available. No person shall after two months bury or permit to be buried any corpse in, within or under the ground to which the certificate relates;" and this certificate was published in the Calcutta Gazette on the 2nd June 1897. There was also, what purports to be, a translation in Bengali of the certificate affixed on some part of the burial ground. The certificate, Ex-H, though it specifies the period as being two months, does not name the time from which the two months will run. In what purports to be a translation of it in Bengali, certain words are inserted which do not occur in the original, and which have the effect of making the period run from the date of the certificate. That will appear from Ex. D. And the questions for determination are whether the provisions of sec. 381, so far as they require the naming of a period in the certificate and the publication of the certificate in the two-fold manner prescribed by the section, have been complied with; and if these requirements have been complied with, whether the burials in question took place after the expiry of the period mentioned in the certificate.

5. We are of opinion that the first question must be answered in the negative. For, though a period is named in the certificate, Ex. H, the point of time from which the period is to run is not mentioned. We do not think that it would be reasonable to hold that in the absence of any express mention of the point of time from which the period is to run, it must be taken to run from the date of the certificate itself because the law requires that a time should be mentioned in the certificate, and it also requires that the certificate should be published in the

Gazette, and affixed on a conspicuous part of the burial ground in question. These two provisions clearly indicate that before the use of a burial ground, closed under this section, can be treated as an offence punishable under the next following sections, the public should have sufficient notice given to them; and to ensure this, sec. 381 provides that a time should be mentioned in the certificate, which must not be less than two months; and it is for the authority issuing the certificate to determine the point of time from which the period of two months or such other period as may be fixed is to run, the point of time being evidently intended to be so determined that it may be anterior to the date of the publication contemplated by the last para of the section, that is to say, the publication in the Gazette and the posting of the certificate in some conspicuous part of the ground. It would be manifestly contravening that intention to hold in a case like this, that in the absence of any express mention of the point of time from which the period is to run, the starting point should be the date of the certificate, especially when it appears in this case that it was not published until the 2nd of June nor was it affixed conspicuously on the spot until the 21st of May.

6. That being so, it becomes unnecessary to consider the second question. We must hold that the provisions of sec. 381 have not been complied with in the matter of the issuing and publishing of the certificate. The conviction and sentence in this case must, therefore, be set aside, and fine, if realized, refunded.