

(1972) 01 CAL CK 0010
In the Calcutta High Court
Case No : Criminal App. No. 369 of 1968

Madhuri Sarkar

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 06-01-1972

Acts Referred:

Calcutta Municipal Act, 1951 — Section 30, 34, 537, 552
Calcutta Municipal Rules, 1951 — Rule 5(1), 5(2), 5(3)
Criminal Procedure Code, 1898 (CrPC) — Section 200

Citation : (1972) 2 ILR (Cal) 115

Hon'ble Judges : S.K. Chakravarti, J;P.C. Borooah, J

Bench : Division Bench

Advocate : Samir Kumar Mukherji, for the Appellant;Durga Pada Dutta and Prasanta Kumar Bandopadhyay for State, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chakravarti, J.—The Appellant before us, Sm. Madhuri Sarkar, was found guilty under Rule 5(1), Sch. XVII, read with Section 537 of the Calcutta Municipal Act, 1951, and convicted and sentenced to pay a fine of Rs. 500, in default, the distress warrant was to issue. She is the owner of premises No. 21F Sabjee Bagan Lane. She was served with a notice under Rule 5(1) of Sch XVII of the aforesaid Act to secure and repair the building, the C.I. shed and the privy within thirty days from the date of the service of the notice. The notice was signed by the Chief Insecure Building Surveyor on June 14,1965, and it has not been questioned that he has got the authority to sign such a notice. For some reasons or other, the owner did not comply with the notice. Thereupon, an application for summons u/s 537 of the Calcutta Municipal Act, read with Rule 5(1) of Sch. XVII, was filed before the Municipal Magistrate and the Commissioner, Corporation of Calcutta, has not signed it personally but a facsimile signature appears on it and it has been signed by the Chief Insecure Building Surveyor and the City Architect. The Appellant pleaded not guilty, but the learned Magistrate found her guilty and convicted and sentenced her as stated above.

2. Thereafter this instant appeal has been filed and our learned brother Talukdar J. has referred this case to the Division Bench in view of the conflicting decisions with regard to the point at issue as to whether facsimile signature by the Commissioner of Calcutta would be good enough to file the complaint in the absence of a proper delegation to the officer concerned signing thereupon.

3. In the Corporation of Calcutta Vs. Bivabati Basu, this Court has held that facsimile signature will not do. Mr. Dutt, appearing on behalf of the Corporation, submits that u/s 552 a facsimile signature of the Commissioner is sufficient. This point has already been answered against the Commissioner of Corporation in the decision referred to above, and that was a Bench decision. Section 552, as it stands, shows that?

Every licence, written permission, notice, notice of demand, bill summons or other document which is required by this Act or by any rule or by-law made thereunder to bear the signature of the Commissioner or any municipal officer, shall be deemed to be properly signed if it bears a facsimile of the signature of the Commissioner or such municipal officer, as the case may be, stamped thereupon. Now, a petition of complaint has to be signed not because of any provision in the Calcutta Municipal Act. or any rule or by-law made thereunder but under the provision of the Code of Criminal Procedure. There is no provision in the Calcutta Municipal Act under which such a complaint will have to be signed by the Commissioner. If there had been any such provision in this Act itself then that might be delegated to any municipal officer by the Commissioner u/s 34, but the complaint has to be signed by the complainant under the provision of the Code of Criminal Procedure. Though Section 200 of this Code does not specifically call upon the complainant to sign the complaint, still it has been judicially determined that it must bear the signature of the complainant (vide Rany Abhoyeswari Devi v. Kishori Mohan Banerjee and Ors. 18 C.W.N. 1020.) Neither the complainant, namely the Commissioner, nor any officer was examined u/s 200 of the Code of Criminal Procedure as soon as it was filed. In the circumstances, it must be held that the complaint, in this particular case, has not been properly signed or filed. A complaint which is not a legal or proper one cannot form the basis of any prosecution and, in this view of the matter, the instant proceedings have to be quashed.

4. Mr. Dutt appearing on behalf of the Corporation has further submitted that in the instant case the complaint! has been signed by the Chief Insecure Building Surveyor and also the City Architect under their own hand and, in these circumstances, it might be construed that it has been properly signed and filed. It is not disputed that the Commissioner has been delegated the power by the Corporation to file complaint u/s 30 of the Calcutta Municipal Act. Exhibit 6 would show that the Commissioner has delegated his power under Sch. XVII, Rule 5(1), (2), (3) to the Chief Insecure Building Surveyor and the City Architect. The power to file complaint is not covered by that Rule and, therefore, that delegation will not authorize these officers to file this complaint. What is more,

P.W. 1 Sudhir Bhusan Roy, the Insecure Building Surveyor of the Calcutta Corporation, who inspected the building, in his evidence, makes it quite clear that the signatories of the complaint did not have the delegated power to sign the complaint and file the same. Nothing has been produced by the Corporation to show that there has been any such delegation or authorization by the Commissioner to any officer to file such a complaint. In the circumstances, the signatures on the complaint by these officers cannot make this complaint a legal and valid one.

5. In this view of the matter, we do not consider it necessary, to enter into the facts involved. The appeal is allowed and the proceedings instituted against the Appellant be and hereby are quashed. Of course, it would be open to the Corporation to take necessary steps to file a proper complaint if it considers it so necessary and if the law allows it.

P.C. Borooah, J.

6. I agree.