
(1942) 01 CAL CK 0010
In the Calcutta High Court

Mati Lal Nag

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 06-01-1942

Acts Referred:

Calcutta Municipal Act, 1923 — Section 386(1)(b), 488

Citation : AIR 1943 Cal 39

Hon'ble Judges : Roxburgh, J

Bench : Division Bench

Judgement

Roxburgh, J.—This rule was issued against an order of the Municipal Magistrate, Calcutta, dated 9th June 1941, convicting the accused of an offence u/s 386(1) (b) read with Section 488, Calcutta Municipal Act, 1923, and sentencing him to pay a fine of Rs. 20 in default to undergo ten days' simple imprisonment. The accused is the landlord of certain premises No. 7 Romesh Mitter Road, and let them out to one Atul Mistry, who has for sometime been carrying on a business of building bodies for omnibuses. Atul Mistry has failed to obtain a license for the said business, and the Corporation of Calcutta are of opinion that this business is likely to create a nuisance. Though it is not strictly relevant to the present case, it may be stated that Atul Mistry has previously been convicted in respect of these premises but that in this case the Magistrate refused to pass an order u/s 388 of the Act directing that the premises should no longer be used for that purpose. It appears that on 24th January 1940, the Health Department of the Corporation wrote to the present accused informing him that the licence for the "bus body building workshop" at the premises in question had been refused, and that unless he took steps for the removal thereof within one month he would be liable for prosecution u/s 386(1)(b) of the Act. In reply the accused wrote a letter (EX. 2) dated 3rd February protesting that the refusal of the license was unwarranted urging that no licence was required and that no nuisance was created by the business and that, therefore, he did not feel himself called upon to comply with an illegal requisition. The question for decision here is whether the accused has, first, by letting the premises, and secondly by writing his letter

brought himself within the terms of Section 386 so that it can be said that he has permitted the premises to be used for a purpose which, in the opinion of the Corporation, is likely to create a nuisance and without license granted by that Corporation.

2. In my opinion it cannot be said that the accused is liable under the section. He has let the premises out and so far as he is concerned he may well have known, when they were let, that they would be used for this purpose. There is no suggestion and no evidence that he intended that the letting should be for the purpose of carrying on the business without a license, if a license was necessary and could not be obtained. The fact is that when he was told to do something by the Corporation's letter of 24th January which he had no power to enforce, namely, to have the business removed instead of merely saying that he had never permitted the work to be done without a license and the matter was not within his control, he, on the contrary, proceeded to argue with the Corporation as to the need for a license or not which was really irrelevant. It does not seem to me in any way to establish that he had permitted the carrying on of the business within the terms of the section. The facts are very similar to those reported in the two cases in *Nanda Lal Roy and Another Vs. Corporation of Calcutta*, and *Nanda Lal Roy and Another Vs. Corporation of Calcutta*, , and respectfully agree with the reasons given therein by Cuming J. for his decisions. He has stated, in the second case that a person cannot be said to have allowed a thing to be done which is not in his power to prevent. It has not been shown in this case how the landlord could prevent the present business being carried on. I do not go so far as to say that in no case could a landlord be found liable u/s 386, but I am clear that in the present case it has not been established that this landlord is so liable. The rule is accordingly made absolute and the orders of conviction and sentence are set aside. The fin, if paid, will be refunded.