
(1931) 02 CAL CK 0009
In the Calcutta High Court

Mon Mohan Pande

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 09-02-1931

Acts Referred:

Calcutta Municipal Act, 1923 — Section 391
Criminal Procedure Code, 1898 (CrPC) — Section 69

Citation : AIR 1932 Cal 62 : 136 Ind. Cas. 135

Hon'ble Judges : Cuming, J

Bench : Division Bench

Judgement

Cuming, J.—The petitioner in this case has been found guilty u/s 391, Calcutta Municipal Act, and sentenced to pay a fine of Rs. 120. The ground on which the rule has been granted is first of all that no summons having been served on the petitioner his conviction in his absence was illegal. The contention appears to be well founded. The summons itself bears the endorsement "served on the durwan." Section 69, Criminal P.C., provides that a summons shall, if practicable be served personally on the person summoned and Section 70 provides that if by the exercise of due diligence he cannot be found in a Presidency Town a duplicate may be left with his servant.

2. The peon's return does not show that any attempt was made to find out the petitioner. Obviously no attempt has been made to comply with the provision of the Code for service of summons and for that reason the Magistrate's order is illegal. The rule must be therefore made absolute and the conviction set aside, I cannot part with the case without dealing with what I can only describe as the extraordinary way in which from start to finish the case has been dealt with in the Magistrate's Court. The record to be appreciated requires to be seen. It consists in a printed form for application of summons which apparently was supplied by the Corporation of Calcutta, It bears at the bottom the signature of the Chief Executive Officer and it was filed in. Court on 6th March 1929. The Magistrate proceeds to use the application as an order sheet. These orders are not recorded in any particular order. They seem to be recorded anywhere where

there is a blank space and finally all round the edge of the piece of paper. It is perhaps for this reason somewhat difficult to follow the order in which the orders are made, and as some of the orders are written over them it is difficult to discover how many orders are passed.

3. As I have stated it requires to be seen to be appreciated. There seem to be some 30 or 40 orders beginning on 6th March 1929, and ending on 13th October 1930 when the case was finally disposed of. As far as can be gathered from them the parties one or both were usually absent. This does not seem to have caused the Magistrate the slightest concern. He merely fixed another date and when on this date parties were again absent fixed another. He fixed some 30 or 40 of these dates.

4. Finally on 13th October 1930 the Magistrate noted that accused was absent, offence proved and he fined Rs. 120.

5. Not the slightest attempt is made by the Magistrate to comply with the provision of Section 370. All he has recorded is that accused M. M. Pandey is fined Rs. 120 u/s 391. Who is the complainant, what was the offence, what was the date of commission, etc., he makes no attempt to record. I may here say that this is not a solitary case. I have a batch of some eight cases tried by the same Magistrate in the same slovenly and unsatisfactory way. The attention of the Chief Presidency Magistrate is drawn to this matter and he is requested to take steps at once so that the record of the Municipal Magistrate may be properly kept and also that the provision of Section 370, Civil P.C. are properly and strictly complied with. There is a proper form for trial of cases and it is to be used. Let a copy of this order be sent to the Local Government.