

(1920) 08 CAL CK 0004
In the Calcutta High Court
Case No : Criminal Revision No. 576 of 1920

Narayan Kissen Sen

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 30-08-1920

Acts Referred:

Citation : (1920) 08 CAL CK 0004

Judgement

Chatterjea and Cuming, JJ.—The two Petitioners, Narayan Kissen Sen and Priya Lal Sen, have been convicted by the Municipal Magistrate of Calcutta and sentenced to pay a fine of Rs. 10 each, under the rules made u/s 559(18) of the Calcutta Municipal Act.

2. The Rule runs as follows:

No person shall place "or leave any blind, shade, covering, awning or other "projection which has not been sanctioned by the "General Committee u/s 340(4) over or along "any public street, drain, aqueduct or land vested in "the Corporation....

3. The contentions of the Petitioners are two-fold: first, that the tin-shed in question is a fixture, and therefore, a notice should have been given to them u/s 341 of the Act; and secondly, that the prosecution is time-barred. The facts would appear to be these. The so-called tin-sheds appear to be sheets of tin which are attached by their inside to their shop by hinges and are supported at the other end by props. They thus form a verandah over the street. When the props are taken away the sheets hang down straight. It cannot be said that these structures are so attached to the house or shop as to have become a part of it and we agree with the learned Magistrate that they cannot be considered as fixtures. The next question to be considered is whether the prosecution is barred by limitation under the terms of Section 631.

4. Now, admittedly these tin sheets have been used as blinds or awnings to these shops for more than three months before the date of this prosecution. The

Magistrate finds that they were placed much longer than three months back. The offence was committed first clearly more than three months before the date of the present prosecution. The learned Magistrate would seem to hold that the period of limitation would run not from the date when the obstruction or projection was first made but the last date on which the obstruction or projection was in existence.

5. We are disposed to think that the period of limitation u/s 631 must be held to run from the date of the first commission of the offence, the date when the obstruction or projection was first placed over the street.

6. In this view of the law, the present prosecution is time-barred. The finding and conviction are, therefore, set aside and the two Petitioners are acquitted. The fine, if paid, will be refunded.