

(1950) 08 CAL CK 0003
In the Calcutta High Court
Case No : Criminal Revn. No. 576 of 1950

Peninsular Motor Corporation Ltd.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 23-08-1950

Acts Referred:

Calcutta Municipal Act, 1923 — Section 386(1), 488, 501

Citation : AIR 1952 Cal 220

Hon'ble Judges : Roxburgh, J

Bench : Single Bench

Advocate : M.M. Sen and Prasanta Kumar Ghose, for the Appellant; Bireswar Chatterjee, for the Respondent

Judgement

Roxburgh, J.—This is a Rule against an order of conviction u/s 386 (1) (b) read with Section 488 of the Calcutta Municipal Act. The petitioner is a company carrying on a business of motor repairs which evidently in the opinion of the Corporation officials creates noise and is a nuisance to the neighbourhood. The attention of the firm was drawn to the matter by a letter on the 2nd August, 1948. The firm was given a license u/s 385 of the Calcutta Municipal Act and told that a license u/s 386 would also be necessary. Finally, on a report by the Sanitary Officer, dated the 27th December, 1948, the Chief Executive Officer passed an order on the 11th January, 1949, stating: that the business was creating a nuisance unless certain conditions on the back of the order were complied with and a license was refused. Accordingly, the present case was started.

2. The main point urged on behalf of the accused company is that u/s 386 (1) (b) the opinion of the Corporation that the purpose of the business is likely to create a nuisance is necessary as a foundation for the requirement of a license. The trial Court has referred to a decision by Henderson, J. in the case of "Atul Chandra v. Corporation of Calcutta ILR (1941) Cal 308, in which he said with reference to the same section that for the purpose of this provision the

Corporation means the Chief Executive Officer. But Mr. Sen, appearing on behalf of the petitioner, points out the clear provisions of Section 501 of the Act, which show that where under the Act it is necessary to prove the opinion of the Corporation, then a written document signed by the Secretary of the Corporation shall be sufficient evidence of the existence of such opinion.

3. In the present case it is evident that the opinion of the Corporation as such was not taken on the matter at all. At present it is true the functions of the Corporation are being carried on by an Administrator under the Calcutta Corporation Temporary Super session Act, but in any case it is clear that the very foundation of the requirement of a license has not been shown in this case.

4. The result is that conviction and the sentence of fine imposed in this case must be set aside and the fine, if paid, will be refunded.