

(1933) 08 PAT CK 0040

In the Patna High Court

Ram Kripal

APPELLANT

Vs

Chairman, Jamalpore Municipality

RESPONDENT

Date of Decision : 08-08-1933

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 186(3), 192

Citation : AIR 1933 Patna 585

Hon'ble Judges : Saunders, J

Bench : Division Bench

Judgement

Saunders, J.—The petitioner was convicted by a Magistrate with Third Class powers u/s 192, Bihar and Orissa Municipal Act, of having by the construction of a new door into a house and the raising of a platform made material alterations in a building of which he had given no notice to the Municipality. It was found after a local inquiry and established also by the evidence that what was described as a platform was not in fact a platform and the erection of it did not require any notice to the Municipality. The petitioner was convicted only in respect of the opening of the new door.

2. The appellate Court set aside the conviction and sentence but remanded the case for re-trial by the Subdivisional Magistrate or by such other experienced Magistrate as he might select. The grounds upon which the case was remanded were that a proper judgment had not been written by the Magistrate; that he was not sufficiently experienced to appreciate and deal with the point of law involved in the case, and that it had not been determined whether the opening of the door did in fact constitute a material alteration.

3. The expression "an alteration in a building" is defined in Sub-section (3), Section 186 of the Act. It is admitted that the only clause of this Sub-section which could possibly be applicable is Clause (a) which refers to an alteration which

affects or is likely to affect prejudicially the stability or safety of a building or the

condition of the building in respect of drainage, ventilation, sanitation or hygiene.

There was no allegation in the trial Court that the alteration in question had any of the effects mentioned in this clause. I do not think therefore that any useful purpose would be served by a re-trial of the case.

4. On the facts sought to be proved in the present case the making of a new door is not an alteration in a building which requires notice to the Municipality u/s 186. The application accordingly is allowed and the order of remand of the appellate Court is set aside. The result is that the acquittal of the petitioner by the Court holds good.