

(1962) 02 CAL CK 0024

In the Calcutta High Court

Case No : Criminal Revision No. 1303 of 1961

Rampalat Shaw

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 05-02-1962

Acts Referred:

Calcutta Municipal Act, 1951 — Section 583

Citation : AIR 1966 Cal 99 : (1966) CriLJ 260

Hon'ble Judges : S.K. Niyogi, J

Bench : Single Bench

Advocate : N.C. Talukdar and Jahar Lal Roy, for the Appellant; Balin Basu, for the Respondent

Judgement

S.K. Niyogi, J.—This Rule is directed against an order of a Municipal Magistrate, Calcutta, directing the removal of a particular nuisance complained of within a month from the date of the order u/s 583 of the Calcutta Municipal Act, 1951.

2. The petitioner Sri Rampalat Shaw runs a rolling Mill at 120/A, Manicktalla Main Road styled as Messrs. Bharat Steel Industries Works. The Mill started working from the month of March 1960. It appears that the structure of the Mill was completed but before the work of running the workshop was started, the citizens of the locality, apprehending that a nuisance would be created by the running of the said Mill to the detriment of the health and peace of the inhabitants of the locality, submitted a petition signed by many apparently respectable persons of the locality to the District Health Officer, Narkeldanga Main Road, Calcutta Corporation, by Exhibit I. On receipt of this petition the Sanitary Officer of the Manicktalla area, Calcutta Corporation, visited the locality and at the time of his inspection the Mill had already started working. Thereafter, an application u/s 583 of the Calcutta Municipal Act, 1951 was filed before the Municipal Magistrate by the Corporation of Calcutta on 25-4-60. This application is signed by the Commissioner of the Calcutta Corporation and several officers of the Corporation. The allegation was that the above workshop was creating nuisance of sound and

smoke by the running of the Mill and that was a source of danger to the life, health and property of the adjoining neighbours.

3. The processes having been issued the present petitioner submitted to trial and his contention before the learned Municipal Magistrate was that this case had been instituted out of grudge against him as he refused to pay subscription for the Saraswati Puja to the local boys and his main defence seems to have been that this was in fact a factory area and that there were other Mills in the same locality and no sort of nuisance of sound or smoke was caused by the running of the Mill.

4. Several witnesses were examined for the prosecution to prove its case. The learned Magistrate has described these witnesses as very respectable persons. Some witnesses were also examined by the defence. On a consideration of the evidence the Magistrate held that the prosecution proved the existence of "terrible nuisance" and that the present petitioner Rampalat Shaw was the person who was really responsible for the nuisance. The learned Magistrate, thereafter, proceeded to make the following impugned order:

"Hence, the prayer of the Calcutta Corporation is granted and in my opinion, immediate action to prevent such a terrible nuisance is necessary and if the opposite party fails to remove the nuisance within a month from this day, such immediate action may be taken as contemplated under Clause (3) of Section 583 of the Calcutta Municipal Act by the Corporation authorities."

5. Mr. N. C. Talukdar, learned advocate appearing for the petitioner, has urged several grounds for interference with the decision of the Magistrate in this respect. His first ground is that the petitioner Rampalat Shaw is not alone the owner of the workshop in question but that he had two other partners and that they not having been made parties to this proceeding, it should be held that there was defect of parties, inasmuch as the order of the learned Magistrate was not executable. I think this contention of Mr. Talukdar must be repelled. In a criminal prosecution of the nature it is not necessary to make all the co-sharers parties to the proceeding. Besides, it has not been shown that it was within the knowledge of the Corporation Authorities at the time the complaint was filed that Rampalat Shaw had any other partners in the said workshop. As we have seen, the complaint was made on 25-4-60 and the Municipal license, Exhibit B, relied upon by Mr. Talukdar in this behalf, is dated 22-12-60, that is, long after filing of the complaint. The learned Magistrate has definitely held Rampalat Shaw as the person responsible for creating that nuisance. Therefore, there is not much substance in this contention of Mr. Tahikdar.

6. However, the other contention of Mr. Talukdar seems to be based on stronger grounds. Before dealing with these grounds, I may say that another contention has been raised by Mr. Tahikdar to the effect that the petition, Exhibit I, written and signed by a large number of people of the locality bore the date 28-12-59, that is, at a date when the Mill had not yet started working at all and so this was

a misconceived petition. But I have looked into the contents of the petition and it appears therefrom, that the people were apprehensive that if such a Mill was started in that locality nuisance would be created.

7. Mr. Talukdar has urged that the learned Magistrate has not at all considered the question that this is not a prohibited area and there is some evidence given by the witnesses on either side to the existence of several other factories in the locality. I have looked into the evidence of the witnesses for the prosecution, as well as for the defence, and it does appear therefrom that some of those witnesses have testified to the existence of several other factories, some of them being bigger in size than the workshop in question in that particular area. In the circumstances, the question of nuisance should have been considered by the learned Magistrate with reference to the existence of several other factories in that area. In *Sturges v. Bridgman*, reported in (1879) 11 Ch D 852 their Lordships have observed at p. 865:

"As regards the first, it may be answered that whether anything is a nuisance or not is a Question to be determined, not merely by an abstract consideration of the thing, itself, but in reference to its circumstances; what would be nuisance in Belgrave Square would not necessarily be so in Bermondsey: and where a locality is devoted to a particular trade or manufacture carried on by the traders or manufacturers in a particular and established manner not constituting a public nuisance, Judges and Juries would be justified in finding, and may be trusted to find, that the trade or manufacture so carried on in that locality is not a private or actionable wrong."

8. So, in considering the question of nuisance the Magistrate should have applied his mind to the nature of the locality, that is, whether it might be called a factory area and all other surrounding circumstances before he came to a decision on this point. In his judgment the learned Magistrate has not at all dealt with this question.

9. It appears that in course of his deposition the accused petitioner made an offer to take steps for abatement of the nuisance. As a matter of fact, he had already closed down his Mill for about three months before his deposition before the court. The learned Magistrate should have first of all addressed himself to the question of abatement before giving direction for removal of the nuisance in the way that he has done. Indeed, it was his clear duty to see what step should be considered to be adequate for the purposes of either abating, preventing, removing or remedying the nuisance. As observed by Debabrata Mookerjee, J. in an unreported case, namely, Criminal Revn. No. 1478 of 1955 (Cal):

"The words of Section 583 are, to my mind, quite clear and they leave a wide discretion to the Magistrate to direct such steps as he might feel advised to do, to be taken either for the purpose of abating the nuisance or for preventing or remedying the same. In extreme cases, the remedy may be by removal; but there are cases, quite conceivably, where remedy may be provided by adequate

steps to abate or to prevent the nuisance."

10. The learned Magistrate has not given any indication in the judgment whether it was possible to take any such step for the abatement of the nuisance before proceeding to give that drastic order for the removal of the nuisance.

11. With regard to Mr. Talukdar's further contention that the direction given by the learned Magistrate under Sub-section (3) of Section 583 was wrong and the learned Magistrate should have first of all given direction under Sub-section (2) of Section 583, it appears that no direction is required to be given by a Magistrate under Sub-section (3). which contemplates that if the person directed to take action by an order under Sub-section (2) fails to do so within the time specified in the order, the Commissioner may, on the expiry of the period, proceed to take action. The Magistrate has given one month's time for the removal of the nuisance by the petitioner. Therefore, there is no substance in this contention of Mr. Talukdar.

12. For the reasons stated above, this case must be sent back on remand to the Court below for first of all applying its mind to the questions discussed in the body of this judgment and then to take action according to law.

13. The Rule is, accordingly, made also lute. The order complained of is set aside. The case be now remanded back for disposal in accordance with law by some Municipal Magistrate other than Sri H.N. Mukherjee, Municipal Magistrate, Calcutta, on the evidence al ready on the record and on such further evidence as he may deem it necessary to take, bearing in mind the observations made in the body of this judgment.

,