
(1910) 02 CAL CK 0045
In the Calcutta High Court

Sarat Chandra Mukherjee

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision : 18-02-1910

Acts Referred:

Calcutta Municipal Act, 1899 — Section 341(1), 450(3), 574(3), 631

Citation : 5 Ind. Cas. 644

Hon'ble Judges : Stephen, J;Carnduff, J

Bench : Division Bench

Judgement

1. This case arises under the Calcutta Municipal Act, 1899, and the effect of the sections of that Act that we are concerned with is as follows:

By Section 341(1) where any fixture has been attached to a building and causes an encroachment over any public street, the general committee may require the owner or occupier to remove it. By Section 450(3) if within the time prescribed in the notice the fixture is not duly removed, the general committee may apply to a Magistrate and he may make an order directing that the fixture be demolished by the Chairman at the expense of the owner, By Section 574(3) whoever fails to comply with any requisition lawfully made upon him u/s 341, among others, "shall be punished with a fine which may extend" to two hundred rupees.

2. By Section 631 "no person shall be liable to punishment for any offence against this Act...unless complaint of such offence is made before a Magistrate within three months next after the commission of such offence."

3. What happened in this case is as follows: In January 1907, a notice u/s 341 was served on the petitioner calling on him to remove a fixture which was alleged to be an encroachment on a public street. In October 1907, proceedings were instituted against the petitioner u/s 450. On the 30th October 1909, the Municipal Magistrate found that a fixture had been attached to the petitioner's house so as to cause an encroachment on a public street, and u/s 450(b) he directed that the fixture should be demolished by the Chairman at the expense of

the owner, that is the petitioner.

4. We have granted a Rule on the Magistrate to show cause why the Order should not be set aside on the ground that the proceeding was barred by Section 631.

5. The point that the petitioner has sought to establish is that he has been made liable to punishment for an offence against the Act. His argument is as follows. The petitioner failed to comply with a requisition lawfully made on him u/s 341 of the Act within the meaning of Section 574 and thereby made himself liable to a penalty of two hundred rupees. The application u/s 450 was a complaint and the Magistrate could either have punished him u/s 574, which he did not, or made an order u/s 450, which he did. But as he was liable to punishment the proceeding was subject to the limitation provided in Section 631. This argument is not one to which we can assent. Section 574 may make non-compliance with a requisition u/s 341(1) an offence, but if it does, the offence must be tried according to law in the regular way, that is, on a complaint which in this case would be such a complaint as is mentioned in Section 4 of the Criminal Procedure Code. No steps were taken to this end in the present case, and, therefore, Section 631 has no application. What was done was that a special remedy provided by Section 450 was applied, but there is no necessary connection between this remedy and the punishment of an offence. The two things are quite distinct and are so from the beginning; the limitation in Section 631 applies to the one and not to the other. The result this Rule is discharged.