
(1971) 07 GAU CK 0001
In the Gauhati High Court

Silchar Municipal Board

APPELLANT

Vs

Sudhir Chandra Das

RESPONDENT

Date of Decision : 15-07-1971

Acts Referred:

Assam Municipal Act, 1956 — Section 171(I), 176

Citation : (1972) CriLJ 534

Hon'ble Judges : P.K. Goswami, C.J.; M.C. Pathak, J

Bench : Division Bench

Judgement

P.K. Goswami C.J.

1. This appeal is at the instance of the Silchar Municipal Board by special leave against an order of acquittal passed by the Magistrate, Silchar.

2. The respondent, who will be described hereinafter as accused, was summoned for an offence u/s 176 for contravention of Section 171 (I) of the Assam Municipal Act, 1956. That section prohibits a person from constructing a house, inter alia without the sanction of the Municipal Board. It is admitted that the accused had a shed which was found by the retired Overseer P. W. 1 on 13th April, 1966. Some enquiry was made and a certain notice was also issued to the accused, and ultimately, prosecution was launched and sanction from the Chairman was obtained on 23rd September 1966. The offence report was received by the Court on 29th September, 1966 and the accused was summoned u/s 176 of the Assam Municipal Act, 1956 on 27th October, 1966. For the purpose of this case, therefore, the case was instituted on 29th September, 1966 when the offence report was received by the Magistrate.

3. The offence was u/s 176 of the Act for constructing the shed without sanction. From the prosecution evidence it was found by the Magistrate that the construction was made prior to 13th April, 1966, as P- W. 1 found the shed on that date. The accused has not shown any sanction from the Municipal Board and the prosecution allegation that the shed was constructed without sanction is

established, The learned Magistrate acquitted the accused, as according to him, the prosecution was launched more than three months after the alleged offence. He also held that the offence charged against the accused was not a continuing offence in order to attract a larger period of limitation of six months.

4. We find that the offence u/s 176 with which the accused is charged is not a continuing offence. His offence is that he constructed the shed without sanction. Therefore, when the shed was constructed without sanction, the offence was complete. There is no definite evidence when the shed was constructed. The Overseer P. W. 1 found the shed at site on 13-4-1966. Institution of the case more than three months after 13-4-1966 is clearly barred u/s 324 of the Act, since the offence is not a continuing one. The case should have been instituted latest by 13th July, 1966.

5. Mr. B. K. Das, the learned Counsel for the Board states that this may be treated as a continuing offence and the institution of the case is not barred as the offence report was received on 29th September, 1966, i. e. within six months of notice of the offence to the Chairman. We are, however, unable to accept this submission. When an offence is for construction of a house without sanction, the offence is complete when the construction, is made. The offence will not be continuing like the one we are familiar with in criminal trespass.

6. The acquittal of the accused is, therefore, justified. The appeal is dismissed.

M.C. Pathak, J.

7. I agree.