

(1925) 12 CAL CK 0035
In the Calcutta High Court

Umesh Chandra Mitra

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision : 03-12-1925

Acts Referred:

Calcutta Municipal Act, 1923 — Section 175, 402

Citation : AIR 1926 Cal 614 : 93 Ind. Cas. 1045

Hon'ble Judges : Duval, J;C.C. Ghose, J

Bench : Division Bench

Judgement

1. In this case the accused Umesh Chandra Mitra has been convicted under s. 175/492 of the Calcutta" Municipal Act (Act III B. C. of 1923), and has been sentenced to pay a line of Rs. 75 and in default to undergo simple imprisonment for one month.

2. The facts are as follows: It appears that on or about the 7th June 1924 a notice was served by the Corporation of Calcutta upon the accused under Schedule VI, Rule 12 of the Calcutta Municipal Act, of 1923, calling upon the accused to take out a license on payment of a fee of Rs. 50 for carrying on the business of a broker during the year 1924-25. The accused thereupon pointed out by a letter dated the 13th June, 1924, addressed to the Chief Executive Officer, that he did not carry on any independent business or trade and that he was merely a salesman in the Hardware Department of the Bombay Co., Ltd. and, that, therefore, the notice dated the 7th June, 1924, should be cancelled. In reply to this letter the Corporation wrote on the 1st July, 1924, to say that the accused was liable to take out a license and they demanded a sum of Rs. 10 to be paid by the accused. The accused wrote again to the Corporation, pointing out that inasmuch as his employers had taken out a trade license, it was not necessary for him to take out a license again. He further pointed out that during the previous years 1923-24 he was obliged to take out a license on protest. To this letter there was a reply from the License Officer to the Corporation of Calcutta, in which it was intimated that the accused a representation was

receiving attention. It does not appear what the Corporation of Calcutta finally decided about this matter, but it is alleged by the accused and it is not denied" on behalf of the Corporation that the accused received no further communication whatsoever from the Corporation and that the next thing that he heard in connection: with this matter was on the 26th February, 1925, when he was summoned to appear before the Municipal Magistrate of Calcutta to answer a charge u/s 75 of the Calcutta Municipal Act for having failed to take out a license in compliance with the notice which had been issued on the 7th June, 1924. The matter came on before the Magistrate on the 16th March, 1925, when the accused was directed to produce before the License Officer to the Corporation of Calcutta a letter from the Bombay Co., Ltd., in support of the accused's case that he was merely a salesman in the employ of the Bombay Co., Ltd. On the 18th April, 1925, the accused wrote to the License Officer, annexing a note in terms called for from the Bombay Co., Ltd., but notwithstanding this the accused was put upon his trial before the Municipal Magistrate. The matter was disposed of by the Magistrate on the 12th August, 1925, and by his judgment bearing the said date the Magistrate held that he had" no power to go into the question of the accused's liability to take out a license inasmuch as a notice had been issued under Schedule VI, Rule 12, of the Calcutta Municipal Act and inasmuch as the accused had not availed himself of the provisions of Rules 13 and 14 of Schedule VI, of the Act. He held, therefore, that the accused was under a liability to take out a license as demanded by the Corporation and he accordingly convicted the accused as indicated above.

3. Now, it appears to us that if the accused's allegation is true, as it admittedly is, that he did not get any further communication from the Corporation of Calcutta after the 7th July, 1924, when he was informed that his representation for the cancellation of the notice was receiving attention, the accused was under no obligation whatsoever to avail himself of the provisions of Rule 13 and 14 of Schedule VI of the Calcutta Municipal Act, assuming that he could properly be called upon to take out a license. In other words, in our opinion, on the facts of the present case, it is quite clear that the matter of the accused had not got to the stage when it was necessary for him to seek redress at the hands of the Tribunal set up under Rules 13 and 14 of Schedule VI of the Act. We think that the Magistrate was wrong in the circumstances of this case in refusing to go into the question of the accused's liability to take out a license as demanded by the Corporation of Calcutta. Before the Magistrate could convict the accused in the circumstances disclosed in the evidence in, this case, he was under an obligation to satisfy himself that the accused was legally liable to take out a license. In other words, the Magistrate, apart from the question of the accused's availing himself or not of the provision of Rules 13 and 14 of Schedule VI of the Calcutta Municipal Act, had to satisfy himself that the accused's allegations were not correct, namely, that he was merely a salesman in the employ of the Bombay Co., Ltd., and that his employers having taken out a trade license, it was unnecessary for him to take out a separate license. That has not been done by

the Magistrate and we think, therefore, that the accused has made out a sufficient case for our interference in this matter. We think that the accused has not been properly treated in this matter and we accordingly make the Rule absolute.

4. The result, therefore, is that the conviction and sentence are set aside and the fine, if paid, will be refunded to the accused.