

Bholanath Roy Vs. Ranigunj Municipality

LegalCrystal Citation : legalcrystal.com/865384

Court : Kolkata

Decided On : Mar-21-1951

Reported in : AIR1954Cal351

Judge : Chunder, J.

Acts : [Bengal Municipal Act, 1932](#) - Sections 3(54) and 503; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 5(2)

Appeal No. : Criminal Revn. No. 1283 of 1951

Appellant : Bholanath Roy

Respondent : Ranigunj Municipality

Advocate for Def. : S.S. Mukherji, Adv. for ;Kishore Mukherji, Adv.

Advocate for Pet/Ap. : Arun Prakash Chatterji, Adv.

Judgement :

ORDER

Chunder, J.

1. This Rule was issued at the Instance of the petitioner who has been convicted and fined by a First Class Magistrate under Section 503, Bengal Municipal Act read with bye-law 25 framed under the provisions of the Bengal Municipal Act. The definition of Magistrate in Section 3(54), Bengal Municipal Act is 'the District Magistrate, the Magistrate in charge of a Division of the District in which Division a municipality is constituted and every Magistrate of the First Class, subordinate to the District Magistrate to whom the District Magistrate may have made over any duties under this Act'. It is not disputed that the Magistrate who tried this case had not been specially empowered by the District Magistrate with the duties of trying cases under the Bengal Municipal Act or this particular case under Section 5(2), Criminal P. C., special definition of Magistrate will be attracted to the class of court which will try offences under the Bengal Municipal Act under the 2nd Schedule of the Criminal P. C. Therefore, Magistrate will have to be read in the 2nd schedule of the Criminal P. C. in the light of the definition of Magistrate as given in Section 3(54), Bengal Municipal Act.

2. Mr. Sudhansu Sekhar Mukherjee appearing on behalf of the Municipality has drawn my attention to the word 'includes' which he points out is not the same as 'means'. 'Includes' in this context has the significance of excluding any other class of

Magistrate.

3. Under the circumstances, the case was not tried by a proper court and therefore as the learned Magistrate had no jurisdiction to try, the conviction and sentence must be set aside.

4. It may be pointed out that the order of daily fine also is not proper. There must be first disobedience of the order and in the subsequent proceedings the court must find that there has been such daily disobedience. Therefore, the order imposing a fine and a daily fine cannot be passed together, if after the order imposing a fine is passed the offender still persists in committing the offence daily then for such daily offences as are actually committed there must be a fresh proceeding, a fresh finding and a fresh conviction.' Mr. Mukherjee has conceded that he cannot support the order of daily fine.

5. Under the circumstances, the Rule is made absolute. The conviction and sentence are set aside and the case is sent back for retrial by a proper Magistrate as mentioned in Section 3, Clause (54), Bengal Municipal Act. The fines, if paid, will be refunded.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com