

Hooghly - Chinsura Municipality Vs. Keshab Chandra Pal

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Court : Kolkata

Decided On : Aug-12-1931

Reported in : AIR1933Cal347

Appellant : Hooghly - Chinsura Municipality

Respondent : Keshab Chandra Pal

Judgement :

S.K. Ghose, J.

1. One Keshab Ch. Pal was charged under Section 273(2), Bengal Municipal Act (3 of 1884) for having used a place as a kiln for making tiles within the Municipality of Hooghly-Chinsura without a license from the Commissioners as contemplated by Section 261 of the Act. The case was tried summarily and the accused was convicted and sentenced to pay a fine of Rs. 30 in default simple imprisonment for 30 days. It appears that the Municipality is in existence from the year 1864. There is a resolution of the Municipality dated 12th February 1867 by which under Section 77, Municipal Act of 1864 (B. C. Act 3 of 1864), the whole of the municipal area was declared to be a prohibited area within which bricks, &c., could not be manufactured without a licence. Ex. 6 (1) is the resolution. In 1868 by Ex. 6 (2), a resolution dated 27th July 1868, the prohibition was extended to tiles under the same section. The Act of 1864 was repealed by B. C. Act 5 of 1876. Section 285 of the latter Act corresponds to Section 77 of the Act of 1864. This section finds a place in Part 7 of the Act of 1876. Sections 233 and 234 of the Act lay down the procedure by which the provisions of this part are extended and published. The present Act (of 1884) provides by Section 220 that such a provision of the Act of 1876 if once extended will be deemed to have been in force without further express extension thereof under the new Act. In this case the Municipality has not proved that any publication was made under Section 234 of the Act of 1876 and as such it cannot be said that the prohibition for making tiles is in force legally. The learned Magistrate in his explanation says that official acts may be presumed to have been regularly performed, but such presumption cannot supply deficiency in the proof: vide *Mookram Ali v. Cuttack Municipality* (1913) 14 Cr L J 91.

2. It further appears that the provisions of Section 342, Criminal P. C., have not been followed. It appears from the summary form that the accused was examined once during the trial but the date of such examination does not appear from the form or from the order sheet. It however appears that on 23rd February 1931 long after the closing of the case and hearing of arguments the learned Magistrate examined: 'One witness for the Municipality under Section 540, Criminal P. C.' He also admitted into evidence several documents for prosecution on the same date and proceeded to pass orders in the case. Without examining the accused further under Section 342,

Criminal P. C., or giving him an opportunity if he so desires to. rebut all this evidence. The procedure in my opinion was highly irregular and prejudicial to the interest of the accused person. Section 540, Criminal P. C., was not meant to justify such a procedure and cannot cure the irregularities thereof. The whole trial was vitiated by the failure to follow the provisions of Section 342, Criminal P. C. I accordingly recommend on the above grounds the setting aside of the conviction and sentence on the accused person.

3. This Reference must be accepted for the reasons stated in the letter of the learned Sessions Judge of Hooghly. The conviction of the petitioner Keshab Chandra Pal under Section 273(2) read with Section 261, Bengal Municipal Act (3 of 1884) and the sentence passed on him are set aside. The fine if paid must be refunded.

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