

(1951) 04 CAL CK 0023

Calcutta High Court

Case No: Criminal Revision Case No. 810 of 1950

D.N. Chakrabarti

APPELLANT

Vs

P.N. Nilkantan

RESPONDENT

Date of Decision: April 20, 1951**Acts Referred:**

- Calcutta Municipal Act, 1923 - Section 175, 492, 492(6)

Citation: (1952) 2 ILR (Cal) 173**Hon'ble Judges:** P.N. Mookerjee, J; Das Gupta, J**Bench:** Division Bench**Advocate:** Bholanath Roy and Satya Charan Pain, for the Appellant; Suresh Chandra Talukdar and T.C. Nath, for the Respondent

Judgement

P.N. Mookerjee, J.

This Rule is against an order of acquittal. The question that arises for decision here is whether a person storing; an article of merchandise in which he is carrying on business elsewhere can be held in law to be carrying on trade at a place where he merely stores that article but does not deliver it to. any customer. The prosecution was instituted by the Howrah Municipality against the Dunlop Rubber Co., India, Ltd. alleging that by storing some goods manufactured by the company at a place inside the municipal limits pf Howrah, it was carrying on trade inside the Howrah Municipality, but as it has not taken out any license for this purpose it was liable to punishment under the provision of Section 492(6) of the Calcutta Municipal Act which provision is applicable to the Municipality of Howrah. The admitted fact is that the Dunlop Rubber Company has stored some of its goods within the municipal limits of Howrah. The municipal authorities tried also to prove delivery of goods from that godown in Howrah to customers. In that they have failed. The position on which we have to decide the case is that there is no delivery of goods to any customer within the Municipality of Howrah, but there is merely storage of goods within the Municipality of Howrah. The Company brings the goods to that godown

for storage and takes these away from the godown to other places, shops or showrooms, from where delivery is made.

2. As far as we could ascertain, there is no decision in any case of any of the Courts that storage in a place, where no delivery is made to a customer, amounts to carrying on trade in that place. We are asked by the learned advocate for the municipality to interpret the words "carrying on trade" in a wider sense so as to cover every act which is necessary for the purpose of the trade. Pushed to its logical conclusion, this proposition would result in some curious consequences. Thus, for the purpose of carrying on trade, say in rubber goods, it is necessary to store them somewhere before delivery is made to the customers, and it is necessary to carry those goods from one part of the country to another if the ultimate purpose of delivery and sale to the customers is to be achieved. It is absurd to suggest, however, that a person is carrying on trade in rubber goods at every place through which these rubber goods are carried on their way from the factory or from the port of importation to the place where delivery is made to the customer. In our judgment, there is no justification for such a wide interpretation of the words "carrying on trade".

3. The question whether a person can be said to carry on trade at a particular place arose before the English courts in certain cases in connection with the question whether conditions in restraint of trade had been violated or not. In several cases it was decided that a person applying for orders or supplying goods inside an area would be held to be carrying on trade in that area even if he had no premises therein (Halsbery, Part V, p. 485). There appears to be no case, however, where it was held that a person was carrying on trade at a place where he merely stored the goods but did not deliver it to any customer. It is worth remembering in this connection that in essence, this requirement to take out a license is a fiscal provision of law and in interpreting it the court should incline in favour of the subject.

4. Our conclusion, therefore, is that a person does not exercise or carry on trade within the meaning of Section 175 of the Calcutta Municipal Act merely by storing certain goods within the limits of the Municipality. The learned magistrate has, therefore, rightly acquitted the accused of the charge u/s 492(e) of the Calcutta Municipal Act.

5. The Rule is accordingly discharged.