
(1976) 01 CAL CK 0020

Calcutta High Court

Case No: Criminal Appeal No. 20 of 1973

Superintendent and
Remembrancer of
Legal Affairs

APPELLANT

Vs

Jaydeb Paul

RESPONDENT

Date of Decision: Jan. 14, 1976

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245(1)
- West Bengal Shops and Establishments Act, 1963 - Section 2(2), 21(1)

Citation: (1976) 2 ILR (Cal) 1

Hon'ble Judges: A.N. Banerjee, J

Bench: Single Bench

Advocate: S.K. Palit, for the Appellant; Nemai Chandra Kumar and Bithika Chakraborty, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Banerjee, J.

This appeal is directed against an order of acquittal u/s 245(1) of the Code of Criminal Procedure. It appears that the Respondent Jaidev Pal and two others were tried by the learned Magistrate in respect of an offence u/s 21(1) of the West Bengal Shops and Establishments Act, 1963, for having failed to get the shop registered under the Act.

2. The prosecution case in brief was that the accused persons have their oil shop at 113A Raja Dinendra Street, Calcutta, under the name of Jaidev Oil Mill. On December 22, 1970, an Inspector of Shops and Establishments visited the shop but the accused failed to produce registration certificate and other documents.

3. The defence was that the premises were used for manufacturing oil and that the Jaidev Oil Mill was registered as a factory under the Factories Act and that all the employees

were governed under that Act. The learned Magistrate found that the provision of the Shops and Establishments Act, 1963, did not apply to the clerical establishment of the factory which was already governed by the Factories Act, 1948. Accordingly, he acquitted the accused. Mr. Palit, learned Advocate appearing for the Appellant, submitted that the learned Magistrate was wrong in acquitting the accused persons inasmuch as the definition of "commercial establishment" as given in Section 2(2) of the West Bengal Shops and Establishments Act, 1963, included clerical department of a factory within the meaning of "commercial establishment" and that, as such, the learned Magistrate went wrong in thinking that the clerical department of a factory registered under the Factories Act would not be governed by the West Bengal Shops and Establishments Act, 1963. Mr. Kumar, learned Advocate appearing for the Respondents, submitted that the learned Magistrate was justified in acquitting the accused persons first because the prosecution failed to establish that there was a clerical department in the factory concerned and secondly, because all the workers of a factory would be governed by the Factories Act.

4. Having heard the learned Advocates of the respective parties and on a consideration of the materials before me I see no reason to interfere with the order of acquittal as passed by the learned Presidency Magistrate, Sixteenth Court, Calcutta. In doing so I want to make it clear that the learned Magistrate was wrong in thinking that there could be no clerical department of a factory registered under the Factories Act to come within the meaning of "commercial establishment" as given in Section 2(2) of the West Bengal Shops and Establishments Act, 1963. The views as expressed by the learned Magistrate will mean that the definition of "commercial establishment" as given in the aforesaid Act, is meaningless and nugatory. But, in the present case, it was correctly pointed out by the learned Magistrate that the only witness examined on the side of the prosecution, namely P.W. 1, who was also the complainant, stated that he did not see any clerical department in the Jaidev Oil Mill. On the basis of such evidence it cannot be urged that the prosecution could establish the fact that there was any clerical department inside the premises of Jaidev Oil Mill so as to bring such department within the meaning of "commercial establishment" as given in the West Bengal Shops and Establishments Act, 1963. Accordingly, the accused persons were rightly acquitted by the learned Magistrate.

5. In the result, the appeal is dismissed.