

(1954) 07 CAL CK 0031**Calcutta High Court****Case No:** Criminal Revision Case No. 458 of 1954

Howrah Municipality

APPELLANT

Vs

N.N. Das and Sons

RESPONDENT

Date of Decision: July 21, 1954**Acts Referred:**

- Calcutta Municipal Act, 1923 - Section 492

Citation: (1956) 1 ILR (Cal) 488**Hon'ble Judges:** Chunder, J**Bench:** Single Bench**Advocate:** Bhola Nath Roy, for the Appellant; S.C. Talukdar and Panchanon Samaddor, for the Respondent

Judgement

Chunder, J.

These two Rules were issued at the instance of the Howrah Municipality in connection with two cases of acquittal of the opposite party with regard to offences u/s 492(b) of the Calcutta Municipal Act, 1923, as extended to the Municipality of Howrah. The same point arises in both the cases. The acquittal is not on facts, but on law. It is said that the opposite party has got two different stalls within the Howrah Station. In one of the stalls he is carrying on the work of selling fruits, in the other he deals with cigarettes. The Howrah Municipality asked him to pay two license fees under Rule 5, Schedule 6 of the Act as, according to the Municipality, these were two different businesses. The Act makes a license fee payable in respect of each separate business. If the business is one, but is carried on in two adjoining premises even then one license fee has got to be paid. According to the learned Magistrate as Howrah Station is one premises, therefore the opposite party is not to pay two license fees and, therefore, the demand for two license fees for what the Municipality considered two different businesses was not legal and, therefore, the accused was entitled to an acquittal. The learned Magistrate uselessly went into the question of sameness of the premises, for as I have pointed out even if the premises

are different, but the business is the same, one license fee is chargeable. License fee is chargeable not for each premises, but for each business. What the learned Magistrate should have decided is whether vitamin supplying health giving fruit business is one and same business with death dealing cancer producing cigarette business. If he comes to the conclusion that they are one business, then one license fee would be payable. If the Learned Magistrate finds that they are two different businesses carried on in two different stalls then two license fees would be payable. The quest of fact as to whether they form the same or different business should be decided by the Magistrate. The present ground on which acquittal is based cannot be supported.

2. The acquittal in both the cases is set aside and the cases remanded to the learned Magistrate for a further decision in the right of this judgment. It is desirable that the case should be reheard by some other Magistrate selected by the sub divisional Magistrate of Howrah.