(1923) 04 CAL CK 0027

Calcutta High Court

Case No: None

Shermull and Others		APPELLANT
	Vs	
The Corporation of Calcutta		RESPONDENT

Date of Decision: April 10, 1923

Acts Referred:

- Calcutta Municipal Act, 1923 - Section 631
- Criminal Procedure Code, 1898 (CrPC) - Section 247

Citation: AIR 1923 Cal 725 : 77 Ind. Cas. 892

Hon'ble Judges: Suhrawardy, J; Newbould, J

Bench: Division Bench

Judgement

1. On the 23rd March 1020 Dr. S.N. Ghose, Food Inspector of the Corporation of Calcutta, filed a complaint in the Court of the Municipal Magistrate asking for summons against the petitioners u/s 574-495A(1) of Act III (B.C.) of 1899 as amended by the Calcutta Municipal Amendment Act of 1917. The offence complained of was that the petitioners had been selling adulterated ghee on the 17tn February 1920. The Magistrate ordered summons to issue for the 17th April 1920. On that date the petitioners appeared by Pleader and the Magistrate passed an order directing that proceedings be stayed for six weeks as the Food Inspector was on leave. On the record no further order appears until 29th November 1912. On that date the Food Inspector prayed for the revival of the case and the Magistrate directed the record to be put up. On the 16th December 1932 the Magistrate passed the following order "Case revved. Issue fresh summons for 13th January 1923." The petitioners hive obtained this Rule calling on the Municipal Magistrate and on the Chairman of the Corporation to show cause why this order reviving the proceedings should not be set aside on the following ground: "For that having regard to the great delay which had occurred from the date when the proceedings were stayed until the applicant on for revival (namely 17th April 1920 to 29th November 1922) it mast be assumed that these proceedings were abandoned and that the application

for revival of the 29th November 1922 was at least a fresh complaint and being more then three months after the date of the alleged offence the proceedings could not go on in view of Section 631 of the Calcutta Municipal Act."

2. In support of the Rule reliance is placed on the decision of a Bench of this Court in the case of Nando Lal Guha v. Corporation of Calcutta 56 Ind. Cas. 862 : 24 C.W.N. 467 : 31 C.L.J. 442 : 21 Cri.L.J. 558. We hold 1hat the facts of that case are clearly distinguish able from the facts of the present case. The point of resemblance he two cases is that an order was passed reviving the case after the proceedings had been in abeyance for a very long time. But the point on which the decision of this Rule depends is whether the original proceedings were abandoned so that the application of the 29th November 1922 must be regarded as a fresh complaint: if this were fresh complaint the issue of summons thereon was c early illegal having regard to the provisions of Section 631 of the Calcutta Municipal Act which prevents a Magistrate from taking cognizance of an offence under the Act unless the complaint is made within three months of its commission. But having regard to the Magistrate''s explanation we cannot hold that original proceedings were abandoned. The Municipal Magistrate is a Presidency Magistrate and u/s 441 Criminal Procedure Ode, we are bound to consider his explanation before setting aside his order. It appears that since the amendment of the Calcutta Municipal Act by the Act of 1917 the Corporation have instituted a large number of prosecution s for adulteration of ghee. These cases are usually strongly contested and as the evidence in the majority of cases is more or less similar it is inconvenient for the Corporation and the accused as also for the Court for these cases to go on at one and the same time. Consequently some of the cases including the present case have been stayed consistently with a procedure prevailing in the Court for the last 20 years. It further appears that several other similar cases were instituted against two of the three pet timers and that they were fully aware of all the circumstances having regard to these J acts we see no reason to hold that the proceedings were abandoned. Further we are satisfied that the petitioners were not prejudiced by the delay and were not led by it to believe that the prosecution has been dropped.

3. But the most important difference between this case and the case of Nando Lal Guka v. Corporation of Calcutta 56 Ind. Cas. 862 : 24 C.W.N. 467 : 31 C.L.J. 442 : 21 Cri.L.J. 558 cited above is in the form of the applications on which the orders reviving the case were passed. In the reported case the application, which is set out in lull in the report, contained statements of facts which were subsequent to a stay of proceedings. Here the application is on a printed form and is in the following terms. "The prosecution prays that case No. 3011 B of 1920 on which proceedings were stayed in this Court in 17th April 1920 may be revived." This was certainly not a complaint on which the Magistrate could have taken fresh cognizance of the offence. His order directing issue of summons was an order passed in a pending case of which he had taken cognizance within three months of, the alleged commission of the offence and the provisions of Section 631 of Calcutta Municipal

Act were not contravened.

4. It was urged of behalf of the petitioners that the case -ceased 1o be a pending case when the complainant did not appear after the expiry of six weeks from the 17th April 1920 since the Magistrate ought then to have acquitted the petitioners u/s 247, Criminal Procedure Code. But that section gives the Magistrate a discretion and we hold that the absence of a complainant in a summons case cannot result in the acquittal of the accused without the Magistrate passing any order in exercise of that discretion.

5. But though we find no illegality in. this case which requires our interference we feel bound to express our disapproval of the procedure followed by the Magistrate. There is obviously something wrong in a procedure that results in a delay of over three years between the alleged commission of the offence and the commencement of the trial and such a procedure cannot be justified even by twenty years prevalence. We fully appreciate that these cases when contested necessitate a lengthy trial. But that does not justify the Magistrate in disregarding the provisions of Section 344 of the Code of Criminal Procedure. When the six weeks'' adjournment ordered on the 17th April 1920 came to an end the Magistrate should hive made an order in writing stating the reason for a further adjournment and adjourning the case for such time as he considered reasonable. In the present case the convenience of parties would have been a sufficient reason for adjourning the case and the circumstances of the case would have rendered remands for lengthy periods reasonable. Had the procedure prescribed by law been followed it would not have been necessary to issue this Rule.

6. As already stated we hold that the ground on which this Rule was granted has not been established and the Rule is accordingly discharged.