

CRIMINAL REVISION.*Before C. C. Ghose and Dinal J.*

SISIR KUMAR MITTER

v.

CORPORATION OF CALCUTTA.*

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Jan. 29

Prosecution—Withdrawal—Withdrawal of prosecution by the Calcutta Corporation—Refusal of the Magistrate to permit the same—Legality of his order of refusal—Criminal Procedure Code (Act V of 1898), s. 248—Calcutta Municipal Act (Beng. III of 1923), s. 537.

The provisions of s. 248 of the Criminal Procedure Code have not been affected or abrogated by s. 537 of the Calcutta Municipal Act in proceedings instituted by the Calcutta Municipal Corporation. S. 537 of the Act is merely an enabling provision, and the powers thereunder can be exercised only in accordance with the provisions of the Code.

S. 248 of the Code does not confer an absolute power of withdrawal on the complainant: it is only when he satisfies the Magistrate that there are sufficient grounds for permitting the withdrawal that such permission can be granted.

The facts of the case were as follows. One Prasad Kanta Roy, the proprietor of a soorkee mill at 35-1, Ballygunge Circular Road, mortgaged it to the petitioner in 1921. The mill was worked by lessees at first. The petitioner alleged that in January 1925 he began to work it himself. On the 2nd February 1925 he applied to the Calcutta Corporation for a license. In June a prosecution was instituted against him under ss. 488 and 386 (1) (a) of the Calcutta Municipal Act [III of 1923 (B. C.)] for using the premises as a soorkee mill without a license for 1924-25. The case was taken up on the 26th June when the complainant,

* Criminal Revision No. 1079 of 1925, against the order of N. N. Gupta, Municipal Magistrate of Calcutta, dated Nov. 26, 1925.

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a Sanitary Inspector of the Corporation, was examined, and the trial then continued. The prosecution case closed on the 5th August, and the defence on the 15th October. On the 28th October the petitioner applied to the Chief Executive Officer of the Corporation for withdrawal of the case, and on the 5th November the complainant filed a petition of withdrawal. The Magistrate rejected the application by an order of the same date as follows:—

The Corporation Pleader puts in a petition for withdrawal. Such application at this stage is extraordinary. I do not see any ground for the withdrawal. Case to be argued. To 26th November 1925 for orders.

On the latter date the accused was absent, a warrant was issued against him, and an order was recorded as set forth in the judgment of the High Court.

The petitioner then obtained the present rule on the ground that the Magistrate should have allowed the withdrawal.

Mr. Narendra Kumar Bose, Advocate (with him *Babu Sikhar Kumar Bose*), for the petitioner. The Calcutta Municipal Act, III of 1923 (B. C.) was introduced in the Bengal Legislative Council with the previous sanction of the Governor-General under s. 80A of the Government of India Act. S. 537 of the Calcutta Act repeals s. 248 of the Code in cases instituted by the Corporation. The Magistrate has no discretion, and he was bound to allow the withdrawal of the case by the Chief Executive Officer.

Babu Bhudar Haldar, for the Corporation. S. 537 does not override the general provisions of the Code. Section 248 of the latter is unaffected, and the Magistrate rightly refused to permit the case to be withdrawn in the circumstances of this case. The Corporation does not now desire to withdraw.

C. C. GHOSE AND DUVAL JJ. In this case a rule was issued calling upon the Municipal Magistrate of Calcutta and the Chief Executive Officer of the Corporation of Calcutta to show cause why the orders dated the 5th and the 26th November 1925, passed by the Municipal Magistrate, should not be set aside, and the case instituted against the petitioner allowed to be withdrawn.

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The facts, shortly stated, are as follows: In or about the month of June 1925, the Corporation of Calcutta prosecuted the petitioner Sisir Kumar Mitter, under ss. 488 and 586 (1) (a) of the present Calcutta Municipal Act, for using premises No. 35-1, Ballygunge Circular Road, for manufacturing soorkee without a license for 1924-25. The case came on for hearing on the 26th June 1925, when the examination of Dr. R. R. Bhattacharjee, Sanitary Inspector, on behalf of the Corporation, was proceeded with. After Dr. Bhattacharjee had been partially examined, the case was adjourned to the 9th July for further hearing. On the last mentioned date, Dr. Bhattacharjee was further cross-examined, and the hearing was adjourned to the 16th July. The next effective hearing was on the 5th August 1925, when the case for the Corporation was closed. On the 27th August 1925, the accused made his statement to the Court. On the 9th September 1925, the accused called evidence in support of the defence. Evidence was closed on behalf of the defence on the 15th October 1925, and the case thereafter stood over for arguments to be addressed to the Magistrate. A fresh adjournment was obtained by the pleader for the defence to enable him to prepare his argument, and the hearing was fixed for the 5th November 1925. On the last mentioned date, Dr. Bhattacharjee, on behalf of the Corporation, filed the following application before the

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Magistrate :—“ Under orders from the Chief Executive Officer, the undersigned prays that the Court may be pleased to allow the withdrawal of the above case, as the party has removed the mill from the place.” This application was rejected by the Magistrate on the same date, and the hearing of the case was adjourned to the 26th November 1925. On this date the accused was absent, and thereupon the Magistrate recorded the following order :—“ Corporation Pleader says that, in view of the defiant attitude of the accused at the trial, he leaves the matter in the hands of the Court. Accused absent, though he was directed to appear to-day. Issue warrant of arrest (bail Rs. 500) for December 17th.”

Against the said orders of the 5th and the 26th November 1925, the present rule is directed, and it is contended, on behalf of the petitioner, that inasmuch as the Chief Executive Officer had asked for the withdrawal of the case under section 537 of the Calcutta Municipal Act, the learned Magistrate ought to have permitted the withdrawal of the prosecution, and had no jurisdiction to pass the orders complained of. The argument is based on the suggestion that section 537 of the Calcutta Municipal Act controls, in cases of prosecution by the Corporation of Calcutta, the provisions of section 248 of the Code of Criminal Procedure. Section 537 of the Calcutta Municipal Act runs as follows :—

The Corporation may—

(a) institute, defend or withdraw from legal proceedings under this Act or under any rule or by-law made thereunder ;

(b) compound any offence against this Act or against any rule or by-law made thereunder which, under any enactment for the time being in force, may lawfully be compounded ;

(c) admit, compromise or withdraw any claim made under this Act or under any rule or by-law made thereunder ; and

(d) obtain such legal advice and assistance as they may from time to time think it necessary or expedient to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vesting in or imposed upon the Corporation or any Municipal officer or servant.

Section 248 of the Code of Criminal Procedure is as follows:—"If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused."

It is argued on behalf of the petitioner that the Calcutta Municipal Act being an Act later in point of time than the Code of Criminal Procedure, and as the Bill, which afterwards became the Calcutta Municipal Act of 1923, had been introduced in the Bengal Legislative Council with the previous sanction of the Governor-General under the provisions of section 80A of the Government of India Act, it must now be taken that the provisions of section 248 of the Code of Criminal Procedure had been modified in their application, in cases of proceedings instituted by the Corporation of Calcutta, by the provisions of section 537 of the Calcutta Municipal Act. In answer to the present rule, the Chief Executive Officer of the Corporation, through his learned Vakil, contended before us that section 248 of the Code of Criminal Procedure had not been affected as contended for on behalf of the petitioner, and further that the Corporation did not now want to withdraw the case against the petitioner, but desired that the proceedings should be brought to their natural termination.

It is perfectly true that the Calcutta Municipal Act is a piece of legislation which was introduced in the Local Legislature with the previous sanction of the Governor-General, and that it is in point of time an Act later than the Code of Criminal Procedure, but it does by no means follow that the provisions of section

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248 of the Code of Criminal Procedure have been affected or abrogated in cases or proceedings by the Corporation by the provisions of section 537 of the Calcutta Municipal Act. It is to be remembered that the Corporation is a creature of statute, and that specific power to institute, defend or withdraw from legal proceedings was needed, and had to be provided for under and by the statute which called the Corporation into existence. Section 537 of the Calcutta Municipal Act, as we read it, is merely an enabling section, and the powers given thereunder to do the various acts specified therein can, in our opinion, only be exercised in accordance with the provisions of the Code of Criminal Procedure. Section 248 of the Code of Criminal Procedure enables a complainant, at any time before a final order is passed by the Magistrate, to apply to the Magistrate for withdrawal of a case; it is only when he satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint that such permission is granted. It follows, therefore, that there is no absolute power of withdrawal, and that before a withdrawal can be permitted, there must be sufficient grounds to the satisfaction of the Magistrate.

In our opinion, on the facts of this case, there were abundant grounds entitling the Magistrate to refuse to permit the withdrawal of the case against the petitioner. The Magistrate was obviously right in declining to allow himself to be guided by the caprice of the complainant; we have examined the record for ourselves, and are satisfied that there are no grounds whatsoever, of law or of fact, for our interference in this matter at the present stage. The result, therefore, is that this rule must stand discharged.

E. H. M.

Rule discharged.