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MAHENDRA
NATH
KAMILYA
v.
KHETRA
MOHAN
BERA.

MUKERJI J.

thinking that the Subordinate Judge has not made a reasonable attempt to arrive at a decision and has set up for his guidance much too exacting a standard. None of the grounds, therefore, upon which the Subordinate Judge has thought fit to dismiss the suit, is sound.

The appeal, therefore, in my opinion, should be allowed, the decree of the Subordinate Judge dismissing the suit as against the defendants Nos. 1 and 2 should be set aside and the case should go back to the Lower Appellate Court so that the appeal of the said defendants may now be reheard and disposed of in the light of the observations contained in this judgment. The costs of this appeal will abide the result.

A. C. R. C.

Appeal dismissed.

CRIMINAL REVISION.

Before Chotsner and Gregory JJ.

LICENSE INSPECTOR, HOWRAH MUNICIPALITY

v.

MANAGER, TAR MOHAMMAD & CO.*

Acquittal—Revision—Acts—Repeal—Re-enactment—Notification extending Act—General Clauses Act (Beng. I of 1899) s. 25—License—Prosecution, competency of—Calcutta Municipal Acts, (Beng. III of 1899) ss. 466 (d), 574 J and (Beng. III of 1923) s. 386.

Where a Magistrate had acquitted the accused in a prosecution by the License Inspector of the Howrah Municipality instituted on the Chairman's orders under sections 466 (d), 574 of the repealed Calcutta Municipal Act of 1899 after its repeal and re-enactment by the Calcutta Municipal Act of 1923, no fresh notification extending any part of the new Act to Howrah having been issued subsequent to the notification under the earlier Act.

*Criminal Revision No. 1121 of 1927 against the order of B. K. Banerjee, Magistrate, 1st Class, Howrah, dated Sep. 21, 1927.

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Jan. 31.

Held (on revision), that the prosecution under the repealed Act was misconceived : and that the provisions of section 25 of the Bengal General Clauses Act indicated that the notification was attracted to the provisions so re-enacted, and that any prosecution founded upon such a notification had to be under the new Act.

RULE obtained by S. Mukherjee, complainant.

On 29th August 1927, one S. Mukherjee, License Inspector of the Howrah Municipality, under the Chairman's orders filed a petition of complaint before the Police Magistrate of Howrah against the Manager of Tar Mohammad & Co., for using or permitting to be used premises No. 2, Grand Foreshore Road, and No. 141, Foreshore Road for the purpose of storing molasses without obtaining a license from the Municipality. A preliminary objection having been taken by the defence that the prosecution did not lie the trying Magistrate, after hearing arguments on that point first, upheld the defence contention and, holding that the prosecution could not proceed, acquitted the accused under section 245, Criminal Procedure Code.

Thereupon the complainant moved the High Court and obtained a rule upon "the opposite party" (accused in the case) to show cause why the order of "acquittal should not be set aside and the accused "tried according to law."

The Advocate General (Sir B. L. Mitter), Mr. Narendrakumar Basu and Babu Haradhan Chattarjee, for the petitioner.

Sir B. C. Mitter, Mr. Bepin Chandra Mullick and Babu Probodh Chandra Chatturjee, for the opposite party.

Cur. adv. vult.

CHOTZNER AND GREGORY JJ. This Rule was granted against the order of acquittal under section 245

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Criminal Procedure Code, passed by the Deputy Magistrate of Howrah. On the 27th August, 1927, a complaint was made under the orders of the Chairman of the Howrah Municipality against the Manager of Messrs. Tar Mohammad & Co. for using, or permitting to be used, certain premises for the purpose of storing molasses without obtaining a license. The charge was in respect of an offence under sections 466 (d), 574, of the Calcutta Municipal Act (III of 1899), and the prosecution was under that Act. The order of acquittal was made on a preliminary objection taken and upheld that the prosecution did not lie, inasmuch as, though the provisions of sections 466, 574 of the Act in question had been extended to Howrah by a notification under Act III of 1899, that Act had been repealed and re-enacted by the Calcutta Municipal Act (III of 1923), and no fresh notification had been issued extending any part of the new Act to Howrah.

It is contended on behalf of the petitioner that though the Act of 1899 has been repealed, a prosecution under it is competent by virtue of the provisions of section 25 of the Bengal General Clauses Act (I of 1899) which runs as follows:—

“When any enactment is, after the commencement of this Act, repealed and re-enacted by a Bengal Act with or without modification, then, unless it is otherwise expressly provided, any order, scheme, rule, bye-law, notification, or form issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted continue in force, and be deemed to have been issued under the provisions so re-enacted, unless and until it is superseded by any order, scheme, rule, bye-law, notification, or form issued under the provisions so re-enacted”.

The question therefore is whether under this section the notification can serve to support the prosecution under the repealed Act.

It is not contended for the opposite party that a prosecution does not lie, but a prosecution, it is said,

must be under the new Act. In support of this view it is urged that the provisions of section 466 of the repealed Act, and those of section 386 of the new Act, are not consistent, also that the punishments provided by the two Acts are not the same. Moreover under the repealed Act a trading license had to be obtained from the Chairman who had vested in him the sole right to grant it, but a reference to the two Acts will show that the constitution of the Corporation has been entirely altered by the Act of 1923. The Chairman is not now vested with any power to grant the licenses. This right devolves now upon the Corporation, so that, as a matter of fact, at the present time, a literal compliance with old section 466 would not be possible. But apart from this particular difference in the two Acts, the provisions of section 25 of the Bengal General Clauses Act that a notification which is consistent with the re-enacted provisions, and which has not been superseded, shall continue in force, and be deemed to have been issued under the re-enacted provisions, indicates that the notification is attracted to the provisions so re-enacted, and that any prosecution founded upon it must be under the new Act. This is the finding of the learned Magistrate and in our opinion it is correct.

In this view of the matter we think the prosecution in this case under the repealed Act was misconceived, and the Rule must accordingly be discharged.

G. S.

Rule discharged.

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