

CRIMINAL REVISION.

Before Cuming J.

SURENDRANATH DATTA

v.

CORPORATION OF CALCUTTA.*

1930

Dec. 3.

Municipality—"Grain", if means "dāl"—*Calcutta Municipal Act (Beng. III of 1923)*, ss. 386 (1) (a), 488 (2), Sch. XIX, cl. (8).

The word "grain" as used in the Schedule XIX, clause (8) of the Calcutta Municipal Act of 1923 is confined to seeds of cereal plants and does not include "dāl" which is a pulse.

The storing of *dāl* without license from the Corporation of Calcutta is not an offence under the Calcutta Municipal Act.

RULE on behalf of the accused in a proceeding under sections 386 (1) (a) and 488 (2) of the Calcutta Municipal Act of 1923.

The petitioners were the owners of the premises No. 106, Ahiritola Street, in the town of Calcutta and took a license from the Corporation of Calcutta to carry on a *bāzār* at the premises. The tenants of the petitioners had some *dāl* shops on the said premises. About the end of 1929, the Corporation of Calcutta started proceedings against the petitioners for the removal of the said *dāl* shops, which resulted in an *ex parte* conviction of the petitioners on the 6th of January, 1930. Thereafter, the Corporation of Calcutta again started another case against the petitioners (which was defended), in which the Corporation could not prove that the petitioners permitted their tenants to store *dāl* in the said premises. On the 30th August, 1930, the petitioners were convicted by the Municipal Magistrate of Calcutta under section 386 (1) (a) read with section 488 (2) of the Calcutta Municipal Act. The petitioners moved the High Court against the aforesaid order of conviction and obtained this Rule.

Prabodhkumar Das (with him *Kshiteeshchandra Chakravarti*, *Panchanan Ghoshal* and *Hiralal Ganguli*) for the petitioners. There are two grounds

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upon which this conviction cannot stand. Firstly, the storing of *dāl* is not an offence under the Calcutta Municipal Act, as *dāl* is not "grain" as contemplated in the Schedule XIX, clause (8) of the said Act. The word "grain" means entire seed and not the finished product like *dāl*. See the meaning of the word "grain" in the Oxford Dictionary. Secondly, as there is no proof that the petitioners permitted their tenants to store *dāl* on the premises, the petitioners cannot be convicted for an offence under section 386 (1) (a) of the Calcutta Municipal Act: *Nandalal Ray v. Corporation of Calcutta* (1).

Prabodhchandra Chatterji (with him *Gopendranath Banerji*) for the opposite party. The word "grain" includes *dāl*.

[Cuming J. referred to the words *dāl* and "pulse" in the Oxford Dictionary.]

CUMING J. The six petitioners before the court were convicted by the Municipal Magistrate of Calcutta under section 488 (2)/386 (1) (a) of the Calcutta Municipal Act for continuing to store *dāl* without a license. The ground on which this Rule has been granted is that the facts alleged and proved do not disclose an offence under section 386 (1) (a) of the Calcutta Municipal Act. It has been contended, first of all, that *dāl* is not grain and, secondly, that the petitioners are not the persons who are using or permitting the premises to be used for the purpose of storing *dāl*. They are the owners and not the actual occupiers and it is contended that they cannot be held liable under the section. It is the actual occupiers, the tenants, who are using the premises, who are responsible for storing *dāl*.

The first point to be decided is whether *dāl* is "grain." Schedule XIX of the Calcutta Municipal Act, clause (8) sets forth a list of articles for which premises may not be used without a license and among these articles "grain" is mentioned. It is contended on behalf of the Corporation that *dāl* is grain. I

presume the word "grain" is used in the schedule in its popular sense. If that is so, I am prepared to say that pulse is not included within the expression "grain." "Grain," as I understand it, is confined to the seeds of cereal plants such as barley, oats, *etc.* The Oxford Dictionary defines "grain" as seed of cereal plants and later extends collectively to the fruit or seed of wheat and the allied food plants or grasses and rarely of beans, *etc.* As far as I am aware, the expression "grain" is confined popularly to seed or cereal plants. That being so, *dál* cannot be held to be included in the expression "grain." *Dál* is a pulse and belongs to the leguminous family of plants. It is, therefore, clearly not necessary for the petitioners to have taken out a license for storing *dál*. That being so, they obviously committed no offence in neglecting to take out a license.

In this view of the case, it is not necessary for me to determine the other point taken in the case.

The convictions of and sentences passed upon the petitioners are set aside and they are acquitted. The fines, if paid, must be refunded.

Rule absolute.

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