

CRIMINAL REVISION.

Before Cuning J.

NANDALAL RAY

v.

CORPORATION OF CALCUTTA.*

1930

March 27.

Municipality—Landlord and Tenant—Landlord, liability of, for the tenant's using the premises for certain trades, etc., without license and also allowing accumulations of offensive matters on the premises—Calcutta Municipal Act (Beng. III of 1923), ss. 386 (1) (c), 488, 478 (29), by-law 5.

In the absence of evidence of his permission, the landlord is not liable for the acts of the tenants in using the demised land for keeping horses (for hire or sale) and milk cows for selling milk without license from the Corporation of Calcutta under section 386 (1) (c) of the Calcutta Municipal Act of 1923; nor is he liable for the tenants' allowing accumulations of offensive matters on the demised premises in contravention of by-law No. 5† made under section 478 (29) of the aforesaid Act.

RULES on behalf of the accused.

The petitioners who were owners of a plot of vacant land, No. 37, Chittaranjan Avenue, South, let out the same to one Pradyumna Missir, at a monthly rental of Rs. 165. The said Pradyumna Missir allowed the said land to be used for keeping cattle, horses, cows, etc., for sale and hire and also for selling the milk of the cows without a proper license from the Corporation of Calcutta under section 386 (1) (c) of the Calcutta Municipal Act of 1923. The said Pradyumna Missir also allowed offensive

*Criminal Revision, Nos. 172 and 173 of 1930, against the orders of N. N. Gupta, Municipal Magistrate of Calcutta, dated Dec. 16, 1929.

†Bye-law 5 under section 478 (29) of the Calcutta Municipal Act of 1923 :—

5. No owner or occupier of any building or land or any portion of such building or land shall allow any offensive matter or sewage to accumulate, flow, soak or be thrown therefrom or shall keep or suffer to be kept any rubbish or offensive matter therein or thereupon so as to be a nuisance or shall negligently suffer any privy receptacle or other receptacle or place for the deposit of sewage, rubbish or offensive matter in his premises to be in such a state as to be offensive or injurious to health.

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[Sanctioned by the Local Government on the 23rd February, 1927, and published in the *Calcutta Gazette* of 3rd March, 1927.]

matters to accumulate on the said premises in breach of bye-law 5 made under section 478 (29) of the Calcutta Municipal Act of 1923. Thereupon, the Corporation of Calcutta prosecuted the petitioners (landlords) and also the said tenant Pradyumna Missir under section 386 (1) (c) read with section 488 and bye-law 5 made under section 478 (29) of the Calcutta Municipal Act of 1923. On the 25th of November, 1929, the tenant Pradyumna Missir was convicted by the Municipal Magistrate of Calcutta, under section 386 (1) (c) read with section 488 of the Calcutta Municipal Act of 1923 and fined; but what happened to him for the charge for infringing bye-law 5 made under section 478 (29) of the Calcutta Municipal Act of 1923 was not apparent from the records. On the 16th of December, 1929, the Municipal Magistrate convicted them *ex parte* for both the charges under section 386 (1) (c) read with section 488 and section 478 (29), bye-law 5 and fined them.

The petitioners (landlords) moved the High Court against the aforesaid orders of convictions and obtained these Rules.

Hiralal Ganguli for the petitioners in both the Rules.

Prabodhchandra Chatterji for the opposite party in both the rules.

His Lordship delivered separate judgments in the two Rules.

Criminal Revision No. 172 of 1930.

CUMING J. In the case, out of which this Rule has arisen, the two petitioners Nandalal Ray and Puleenkrishna Ray were fined Rs. 50 each under section 386 (1) (c) of the Calcutta Municipal Act for permitting certain premises, namely, No. 37, Chittaranjan Avenue, South, to be used for the purpose of keeping cattle and horses for hire, for sale and for the sale of the produce thereof, without a license from the Chief Executive Officer. The two petitioners contend that they are not in actual occupation of the premises, that they are the landlords

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of the premises and that the premises have been let by them to one Pradyumna Missir and that in such circumstances they cannot be held liable if the premises are used for the purpose of keeping horses for hire and milk cows for selling milk without a license. It would appear that the premises have been let by these two petitioners to one Pradyumna Missir. It would also appear and it is not denied that Pradyumna Missir has been fined Rs. 25 in respect of the same premises and for the same offence for which the two petitioners have also been fined. The learned advocate who appears for the petitioners contends that the landlords cannot be said to have permitted the premises to be used for the purposes in contravention of section 386 of the Calcutta Municipal Act. As far as I can see, this contention is well founded. The facts are that the premises have been let to Pradyumna Missir and he has used them for certain purposes which require a license to be taken. It has not been shown to me that the landlords, when letting the land to him, permitted him to use it for those purposes. It has not been also shown that the landlords could have prevented him from using the premises for those purposes. I do not think that, in the circumstances of the present case, the landlords could be held to have permitted the premises to be used for the purposes alleged by the prosecution.

The convictions and sentences are therefore set aside and the two petitioners are acquitted. The fines, if paid, will be refunded.

Criminal Revision No. 173 of 1930.

CUMING J. In the case, out of which this Rule arises, three persons, Nandalal Ray, Puleenkrishna Ray and Pradyumna Missir, were prosecuted under a bye-law made under section 478 of the Calcutta Municipal Act for allowing offensive matter to accumulate on a certain premises, namely, 37, Chittaranjan Avenue, South. Nandalal Ray and Puleenkrishna Ray were found guilty by the Magistrate and fined each Rs. 25. What happened to Pradyumna Missir is not apparent from the record.

The two petitioners contend that they cannot be found guilty, under section 478 (29), bye-law 5, of permitting the offensive matter to accumulate on the land. Their case is that they are the owners and under them there is a tenant—one Pradyumna Missir and that he is the person, if any, who is liable for any offensive matter having been accumulated there. It seems to me that the conviction of the two petitioners is bad in law. The land is let to a third person one Pradyumna Missir and he is the person who has allowed the offensive matter to accumulate on the land. A person cannot be said to have allowed a thing to be done which is not in his power to prevent. The two petitioners could not have prevented Pradyumna from allowing these offensive matters to accumulate on the land. It was not open to the two petitioners to go on the land or to insist that Pradyumna should clean the land. The conviction, therefore, of the two petitioners is bad in law and must be set aside. The conviction and sentences are, therefore, set aside and the petitioners are acquitted. The fines, if paid, must be refunded.

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Rules absolute.

A. K. D.