

CRIMINAL REVISION.

Before C. C. Ghose and Panton JJ.

CORPORATION OF CALCUTTA

v

T. H. E. EDWARDS.*

1929

May 2.

Costs—Nuisance—Costs for abatement of nuisance, if can be subsequently made
—*Calcutta Municipal Act (Beng. III of 1923), s. 535, sub.-s. (2), cls. (a), (c).*

There is nothing in the terms of section 535 of the Calcutta Municipal Act or in any other section of that Act, which prevents a magistrate from taking into his consideration the question of costs and compensation on a date subsequent to the date of the order under section 535(2) (a) of the Act.

CRIMINAL RULE.

One Edwards, a ratepayer of the Corporation of Calcutta, complained to the Corporation to the effect that an adjoining house was kept in a very insanitary condition, a number of cows, goat and horses being kept therein. The Corporation not having taken any action in the matter, he lodged a complaint before the Municipal Magistrate under section 535 of the Calcutta Municipal Act. The Magistrate, being of opinion that there was no nuisance, refused to pass any order. Edwards then moved the High Court, which passed an order under section 535 (2) (a), and directed the Magistrate to pass a written order directing the Corporation to prevent or abate the nuisance. In pursuance of this, the Magistrate sent a written order to the Corporation on the 10th August, 1929. Subsequently, Edwards applied for the award of costs against the owner and tenant of the house. That application was considered to be misconceived and allowed to be withdrawn. Thereupon, Edwards made another application against the Corporation under section 535(2)(c) for award of costs and compensation. The Municipal Magistrate, after going into the matter, awarded Rs. 501 as costs against the Corporation. Hence this Rule.

*Criminal Revision, No. 236 of 1929, against the order of S. N. Basu, Presidency and Municipal Magistrate of Calcutta, dated Dec. 21, 1928.

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Mr. H. D. Bose (with him *Mr. Debendranath Bagchi, Jr.*, and *Mr. Gopendrakrishna Banerji*), for the Corporation. The Magistrate had no power under the law to award costs and compensation at a stage subsequent to the passing of the order under section 535(2)(c). The proper time was when the order itself was passed.

Mr. Mrityunjay Chattopadhyay and *Mr. Jnan-chandra Ray*, for the opposite party.

C. C. GHOSE AND PANTON JJ. The short facts necessary for the purposes of this judgment are as follows:—Edwards is a ratepayer of the Corporation of Calcutta and he has his house in Burdwan Road at Alipur. Immediately to the south of his house, there is another house belonging to a gentleman, Amulyadhan Addy, and tenanted by D. M. Ray. In the compound of this last-mentioned house, were erected certain huts with *cutcha* floorings, in which were kept a number of cows, goats and horses. The result was that the whole place was turned insanitary and Edwards complained to the Corporation of Calcutta for the purpose of inducing the latter to take action to prevent or abate the nuisance. Nothing was apparently done and, in the last resort, Edwards complained before the Municipal Magistrate under section 535 of the Calcutta Municipal Act. The Magistrate came to the conclusion that there was no nuisance and refused to pass any order. The matter then came to this Court and, after an examination of the record, this Court passed an order under section 535 (2) (a), by which it directed the Magistrate to pass a written order directing the Corporation to prevent or abate the nuisance. Thereafter, the Corporation, it would appear, took steps to abate and remove the nuisance in question. The date on which the Magistrate, in pursuance of this Court's order, made the written order referred to above is 10th August, 1928. Thereafter, Edwards made an application for the award of costs to him against Messrs. Addy and Ray. That application

was considered to be misconceived and it was allowed to be withdrawn. Subsequently, Mr. Edwards made an application against the Corporation of Calcutta under the provision of section 535 (2) (c) of the award of costs and compensation against them. The Magistrate has gone into the matter and has awarded a sum of Rs. 501 against the Corporation of Calcutta and in favour of Edwards. It is against this last mentioned order that a Rule was obtained and Mr. Bose has appeared in support of the Rule. His principal argument is that either the order is one which should have been made at the time when the Magistrate made the written order under section 535 (2) (a) or the order should not have been made at all. There is nothing, in our opinion, in the terms of section 535 of the Calcutta Municipal Act or in any other section, which prevented the Magistrate from taking into his consideration, on a date subsequent to the date of the order under section 535 (2) (a), the question of costs raised by Edwards. In that view of the matter, Mr. Bose's contention must be negatived. We have examined the terms of the judgment of the Magistrate assessing the amount of costs and it seems to us, on an examination of the circumstances present on the record and taking into account the submissions made by Mr. Bose, that the award of costs must be substantially varied and we think that the ends of justice will be sufficiently met if we reduce the amount of costs and compensation from Rs. 501 to Rs. 100. With this variation, the Rule is discharged.

Nothing that we have said will prevent the Corporation of Calcutta, if so advised, from making any application against any body whom they might choose to proceed against in respect of costs incurred for abatement of the nuisance.

S. R.

Rule absolute.

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