

In Re: the matter of the High Courts' Criminal Procedure Act (X of 1875) and Vs. the Corporation for the Town of Calcutta

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Court : Kolkata

Decided On : May-23-1882

Reported in : (1882)ILR8Cal891

Judge : Prinsep and ;O'Kinealy, JJ.

Appellant : In Re: the matter of the High Courts' Criminal Procedure Act (X of 1875) and ;In Re: the matter of t

Respondent : The Corporation for the Town of Calcutta

Judgement :

Prinsep, J.

1. The petitioner Wood has been convicted under Section 77, Beng. Act IV of 1876 (the Calcutta Municipal Consolidation Act) of having, during 1881, exercised the profession of boardinghouse-keeper without the license required by Section 75, and has been fined Rs. 75.

2. Several questions have been raised before us on the merits of the case, and of these the most important is, whether or not petitioner Wood keeps a boarding-house within the meaning of the Act. The term 'boarding-house' is not defined in the law. Looking, however, at the manner in which it is used in Calcutta, we think

that, in order to obtain a conviction, it must be shown that the accused held himself out to the public as one whose business or profession it is to receive boarders for profit. In the present case there is evidence on the record sufficient to justify the finding of the lower Court, that the petitioner Wood kept a boarding-house. Nevertheless the sentence of fine cannot be upheld. The law (Section 77) limits the fine in such a case to three times the amount payable in respect of the license which has not been taken out. There is absolutely no evidence on the record to show what is the amount payable on account of the petitioner's license, nor is there any evidence regarding the amount of assessment on petitioner's house or place of business on which any calculation of the amount payable on account of such business could be made.

3. Under such circumstances, we set aside the order passed, and direct that the fine, if paid, be refunded. We altogether agree with the remarks of the Magistrate regarding the result of such prosecution being left in the hands of an inexperienced Municipal officer. Much valuable time has been wasted in this Court on arguments arising from irregularities and omissions which would not have taken place if the prosecution had been properly conducted; and we consider that the employment of the Advocate-General in this Court to defend the conviction would in all probability have been avoided, if some legal practitioner, even of the lowest grade, had been retained to appear before the Magistrate.