

S. Mukherjee Vs. Manager, Harun Tar Mohammed and Co.

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Court : Kolkata

Decided On : Jan-31-1928

Reported in : AIR1928Cal484

Appellant : S. Mukherjee

Respondent : Manager, Harun Tar Mohammed and Co.

Judgement :

1. This rule was granted, against the order of acquittal under Section 245, Criminal P.C., passed by the-Deputy Magistrate of Howrah. On 27th August 1927, a complaint was made under the orders of the Chairman of the Howrah Municipality against the Manager of Messrs. Tar Mahomed and Company 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, Municipal Act (Act 3 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, and 574 of the Act in question. had been extended to Howrah by a notification under Act 3 of 1899, that Act had been repealed and re-enacted by the Calcutta Municipal Act (Act 3 of 1923), and no fresh notification had been issued extending any part of the new Act to Howrah.

2. It is contended on behalf of the petitioner that though the Act of 1899 has been repealed, a prosecution under it is competent by virtue of the provisions of Section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, Bengal General Clauses Act (1 of 1899). Section 25 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When any enactment is, after the commencement of this Act, repealed and re-enacted by a Bengal Act with or without modification, then, unless it is otherwise expressly provided, any order, scheme, rule, bye-law, notification, or form issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been issued under the provisions so re-enacted, unless and until it is superseded by any order, scheme, rule, bye-law, notification, or form issued under the provisions so re-enacted.

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 The question, therefore, is whether this section in the notification can serve to support the prosecution under the repealed Act.

4. 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 In support of this view it is urged that the provisions of Section 466 of the repealed Act, and those of Section 386 of the new Act, are not consistent; also that the punishments provided by the two Acts are not the same.

5. 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, 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, indicate 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.

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

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