IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 284 of 2001

Calcutta Municipal Corporation

-Versus-

Poddar Jewellers & Anr.

For the Appellant : **Ms. Sreyashee Biswas,**
Ms. Puja Goswami.

For the Respondents : **Mr. Sumit Mandal,**
Mr. Subrata Banerjee.

Hearing concluded on : **09.09.2026**

Judgment On : **09.09.2026**

(In Court:-)

Prasenjit Biswas, J:-

1. This appeal has been filed at the instance of the appellant/Calcutta Municipal Corporation challenging the impugned judgment and order of acquittal dated 14.11.2000 passed by the learned Trial Court in connection with Case No. 1466C of 1994.

2. By passing the impugned judgment and order, the learned Trial Court acquitted the respondent/accused of the charge framed under Section 199 of the Calcutta Municipal Corporation Act, 1980.

3. Being aggrieved by and dissatisfied with the said judgment and order of acquittal, the present appeal has been preferred at the instance of the appellant/Calcutta Municipal Corporation.

4. In brief, the case of the prosecution, as emerging from the written complaint and the evidence adduced before the learned Trial Court, may be delineated as follows:

> *"It is the case of the prosecution that a written complaint was lodged by Sri Alok Kumar Seth on 31st March, 1994, alleging commission of an offence punishable under Section 199 of the Calcutta Municipal Corporation Act, 1980 by the respondents/accused. On the basis of the said complaint, the instant case was instituted before the learned Trial Court.*
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> *The substance of the allegation made in the complaint is that, on 31st March, 1994, the License Inspector, acting on behalf of the appellant/Calcutta Municipal Corporation, conducted an inspection of a jewellery shop carrying on business under the name and style of "M/s. Podder Jewellers", allegedly situated at premises No. 5, Nalini Seth Road, Kolkata–700007. The purpose of the inspection was to verify whether the respondent/accused possessed a valid licence for carrying on the said business in accordance with the provisions of Section 199 of the Calcutta Municipal*

Corporation Act, 1980 for the relevant licence year, namely, 1993–94.

According to the written complaint, at the time when the inspection was conducted, the proprietor of the said jewellery shop was not present at the premises. The employee present at the shop was asked by the License Inspector to produce the requisite licence authorising the respondents/accused to carry on the jewellery business from the said premises. However, despite such demand, the employee allegedly failed to produce any valid licence for the year 1993–94. On the basis of such alleged failure to produce the requisite licence, the License Inspector prepared a written report/complaint and submitted the same before the competent Municipal Court, resulting in initiation of the present proceeding against the respondents/accused."

5. The prosecution, in order to substantiate the allegations contained in the complaint, examined three witnesses before the learned Trial Court. The prosecution also relied upon and proved certain documentary materials which were duly marked as exhibits during the course of trial. The evidence of the prosecution witnesses was directed principally towards establishing the inspection conducted at the premises in question, the nature of the business allegedly carried on there from, and the alleged failure of the respondents/accused to produce a valid licence for the relevant period.

6. It is significant to note, however, that the respondent/accused did not adduce any oral evidence in support of his defence. No witness was examined on his behalf to substantiate the defence sought to be set up by him. The only documentary evidence relied upon by the respondent/accused was a single document, which was marked as Exhibit-A. Thus, the defence of the respondent/accused essentially rested upon the cross-examination of the prosecution witnesses and the materials already brought on record during the course of the trial.

7. Upon completion of the trial and after considering the oral and documentary evidence adduced by the prosecution, as well as the defence taken during the examination of the respondents/accused under Section 313 of the Code of Criminal Procedure, the learned Trial Court ultimately came to the conclusion that the prosecution had failed to establish the charge under Section 199 of the Calcutta Municipal Corporation Act, 1980 beyond reasonable doubt and accordingly acquitted the respondent/accused.

8. The said finding of acquittal is the subject matter of challenge in the present appeal.

9. Learned Advocate appearing for the appellant/Calcutta Municipal Corporation assailed the impugned judgment and order of acquittal passed by the learned Trial Court, contending that the same is illegal, erroneous and improper and is, therefore, not sustainable in law. It is submitted that the prosecution case arose out of an inspection conducted by the License Inspector in a jewellery shop situated at premises No. 5, Nalini Seth Road, Kolkata. According to the appellant, at the time of such inspection, the respondent/accused, who was found to be carrying on the business of a jewellery shop at the said premises, failed to produce any valid licence authorising him to carry on such trade or business there from for the relevant licence year, namely, 1993–94, as required under Section 199 of the Calcutta Municipal Corporation Act, 1980.

10. It is further submitted on behalf of the appellant that the evidence adduced by the complainant sufficiently established the factum of inspection as well as the failure on the part of the respondent/accused to produce the requisite licence in respect of the shop situated at 5, Nalini Seth Road. According to learned Advocate, the witnesses examined on behalf of the complainant consistently supported the prosecution case and stated that, on the relevant date and at the relevant time, the respondent/accused was found conducting or connected with the jewellery business at the aforesaid premises but could not produce any licence authorising them to carry on such business at that particular address.

11. It is argued that the learned Trial Court, despite the aforesaid evidence, failed to appreciate the prosecution case in its proper perspective and, without assigning sufficient weight to the evidence of the prosecution witnesses, extended the benefit of doubt to the respondents/accused and recorded an order of acquittal. It is the further contention of the appellant that the document relied upon by the defence, being Exhibit-A, does not confer any authority upon the respondent/accused to carry on the business of manufacturing or dealing in jewellery at a place other than the premises in respect of which the licence had been granted. A licence issued in respect of one particular premises cannot, according to the appellant, be treated as a licence for carrying on the same business at another premises.

12. Learned Advocate for the appellant has also submitted that Exhibit-A merely relates to payment of licence fee in respect of the business carried on at 1, Nalini Seth Road and cannot, by itself, establish that the respondent/accused was authorised to carry on the business of a jewellery shop at 5, Nalini Seth Road. It is further argued that the said document does not establish that the respondent/accused had no business establishment at 5, Nalini Seth Road, nor does it answer the specific allegation made in the complaint that a jewellery shop was being operated at the said premises without a valid licence.

13. On such premises, learned Advocate for the appellant has prayed that the impugned judgment and order of acquittal be set aside and the respondent/accused be convicted in accordance with law for having carried on the business of a jewellery shop at 5, Nalini Seth Road without obtaining the requisite licence under Section 199 of the Calcutta Municipal Corporation Act, 1980.

14. Per contra, learned Advocate appearing for the respondent/accused has submitted that there is no legal or factual infirmity in the impugned judgment warranting interference by this Court in an appeal against acquittal. It is submitted that the prosecution has failed to establish, beyond reasonable doubt, the very foundational fact that the respondent/accused was carrying on a jewellery business at 5, Nalini Seth Road.

15. It is candidly submitted on behalf of the respondent/accused that he had no jewellery shop at 5, Nalini Seth Road. Their establishment, namely, "Poddar Jewellers", was situated at 1, Nalini Seth Road, Kolkata, and the respondent/accused possessed a valid licence for carrying on their business at the said premises. Learned Advocate has drawn the attention of the Court to Exhibit-A, which is the payment receipt relating to licence fee under Section 199 of the Calcutta Municipal Corporation Act, 1980 for the relevant year 1993–94, and has contended that the said document corroborates the defence version that the respondent/accused was duly licensed to carry on their business at 1, Nalini Seth Road.

16. It is further submitted that the learned Trial Court correctly appreciated the evidence and found that although the inspection was allegedly conducted at 5, Nalini Seth Road, the prosecution failed to establish that the respondent/accused had any shop or business establishment at that premises. On the contrary, the documentary evidence placed before the Court established the existence of the business of the respondent/accused at 1, Nalini Seth Road, for which a licence had been obtained.

17. Learned Advocate for the respondents/accused has, therefore, contended that the prosecution case suffers from a fundamental deficiency because the identity and existence of the alleged unlicensed establishment at 5, Nalini Seth Road itself have not been satisfactorily proved. In the absence of proof of such foundational fact, the respondent/accused could not have been held liable merely on the basis of an alleged inspection. It is accordingly prayed that the impugned judgment and order of acquittal be affirmed.

18. I have considered the rival submissions advanced by the learned Advocates appearing for the respective parties and have carefully gone through the entire materials available on record, including the oral and documentary evidence adduced before the learned Trial Court.

19. It appears from the written complaint that the prosecution case is founded upon an inspection allegedly conducted by the License Inspector in a jewellery shop situated at 5, Nalini Seth Road, Kolkata, for the purpose of verifying the existence of a valid licence under Section 199 of the Calcutta Municipal Corporation Act, 1980 for the licence year 1993–94. The gravamen of the allegation is that the respondent/accused was carrying on jewellery business from the said premises without holding the requisite licence.

20. Therefore, the primary question which falls for consideration is not merely whether the respondent/accused possessed a licence in respect of some jewellery business, but whether the prosecution has been able to establish that the respondent/accused was in fact carrying on the alleged business at 5, Nalini Seth Road and, if so, that he had no valid licence authorising him to conduct such business from that particular premises.

21. On a careful consideration of the evidence, it appears that the respondent/accused admittedly had a jewellery establishment at 1, Nalini Seth Road, Kolkata, under the name and style of "Poddar Jewellers". Exhibit-A is the payment receipt relating to the licence fee under Section 199 of the Calcutta Municipal Corporation Act, 1980 for the year 1993–94. The said document lends support to the defence case that the respondent/accused possessed a licence in respect of his business at 1, Nalini Seth Road.

22. It is true that possession of a licence in respect of one premises would not, as a matter of law, authorise a licensee to carry on the same business from a different premises for which no licence had been granted. However, before such a legal consequence can follow, the prosecution must first establish by cogent and reliable evidence that the accused was actually carrying on the alleged business at the other premises. A conviction cannot rest merely upon an assumption that because a particular business establishment was recorded at one address, the same business was also being conducted at another address.

23. In the present case, Exhibit-I, being the certified copy of the T.P. Demand Register, has been relied upon by the prosecution to demonstrate the existence of a jewellery shop named and styled "Poddar Jewellers" at 5, Nalini Seth Road, Kolkata. However, the mere presence of an entry in such register, without satisfactory evidence connecting the said establishment with the respondent/accused, cannot by itself be treated as conclusive proof that the respondent/accused was carrying on the said business from that premises without a licence.

24. The evidence of PW2, the complainant, also does not appear to furnish the necessary degree of certainty on this aspect. In particular, the witness was not able to satisfactorily explain the basis on which the address of "Poddar Jewellers" came to be incorporated in the Demand Register. Such uncertainty assumes significance because the precise address of the alleged unlicensed business is the foundation of the prosecution case.

25. PW3, while deposing before the Court, proved a document which was marked as Exhibit-3. In cross-examination, the witness specifically stated that the trade licence relating to 1, Nalini Seth Road was in respect of the business of "Silver Mansion" and that the licence was issued for the year 1993–94. However, the witness did not produce any independent documentary material establishing that the respondent/accused was carrying on a jewellery business under the name and style of "Poddar Jewellers" at 5, Nalini Seth Road.

26. Significantly, none of the other prosecution witnesses has been able to produce any convincing documentary material demonstrating that the respondent/accused owned, occupied or operated a jewellery shop at 5, Nalini Seth Road. There is also no satisfactory evidence showing that the business establishment of the respondent/accused had been shifted from 1, Nalini Seth Road to 5, Nalini Seth Road. The prosecution has not placed on record any licence application, assessment record, ownership or tenancy document, municipal record, inspection report containing particulars of the alleged establishment, or any other contemporaneous document which could satisfactorily connect the respondent/accused with the alleged shop at 5, Nalini Seth Road.

27. This deficiency in the prosecution evidence is material and goes to the root of the case. The burden was upon the complainant/appellant to establish the essential facts constituting the alleged contravention. The prosecution could not merely rely upon the fact that an establishment bearing the name "Poddar Jewellers" appeared in a municipal register at 5, Nalini Seth Road; it was necessary to establish that such establishment was in fact owned, possessed or operated by the respondent/accused. That vital link appears to be missing.

28. In this context, Exhibit-A assumes considerable significance. The document establishes that the respondent/accused had obtained a licence and had paid the requisite licence fee for carrying on business at 1, Nalini Seth Road for the relevant year. The production of Exhibit-3 relating to a business described as "Silver Mansion" at the same address does not, by itself, displace the evidentiary value of Exhibit-A, particularly when the prosecution has failed to establish by independent and reliable evidence that the respondent/accused was simultaneously carrying on another jewellery business at 5, Nalini Seth Road.

29. It is also noteworthy that the respondent/accused, in his examination under Section 313 Cr.P.C., consistently maintained that he had been carrying on their business under the name and style of "Poddar Jewellers" at 1, Nalini Seth Road for a considerable period. The said explanation cannot be rejected merely because the prosecution asserts that an inspection had taken place at 5, Nalini Seth Road. The prosecution was required to establish the place of business by positive and reliable evidence, particularly when the defence produced documentary material relating to a licensed business at another specific address.

30. An appeal against an order of acquittal stands on a somewhat different footing from an appeal against conviction. The presumption of innocence of the accused is reinforced by the acquittal recorded by the Trial Court. Therefore, where the view taken by the learned Trial Court is a reasonably possible view on the evidence, the appellate Court would not be justified in substituting its own view merely because another view may also be possible. Interference becomes warranted only where the findings are manifestly erroneous, perverse, wholly unreasonable or based upon a material misappreciation of evidence.

31. In the present case, the finding of the learned Trial Court that the prosecution failed to satisfactorily establish that the respondent/accused was carrying on the jewellery business at 5, Nalini Seth Road cannot be said to be perverse or unsupported by the materials on record. On the contrary, the evidence discloses a genuine uncertainty regarding the identity and location of the alleged unlicensed establishment. The prosecution has also failed to establish the necessary nexus between the respondent/accused and the alleged jewellery shop at 5, Nalini Seth Road.

32. Thus, while Exhibit-A cannot, in itself, be treated as a licence authorising the respondents/accused to carry on business at any premises other than 1, Nalini Seth Road, the question whether such licence was sufficient to absolve them does not arise unless the prosecution first establishes that the respondent/accused was actually carrying on the alleged business at 5, Nalini Seth Road. That foundational fact has not been proved to the requisite standard.

33. Mere production of Exhibit-3, disclosing a business under the name of "Silver Mansion" at 1, Nalini Seth Road, cannot outweigh the effect of Exhibit-A or otherwise establish that the respondents/accused were conducting an unlicensed jewellery business at 5, Nalini Seth Road. Equally, there is no positive evidence that the respondent/accused had shifted their business from 1, Nalini Seth Road to 5, Nalini Seth Road or that he was conducting two separate establishments simultaneously.

34. Upon an overall assessment of the oral and documentary evidence, I find that the prosecution has failed to prove the essential ingredients of the alleged offence beyond reasonable doubt. The uncertainty regarding the very existence of the alleged jewellery shop of the respondents/accused at 5, Nalini Seth Road creates a substantial and reasonable doubt in the prosecution case. The benefit of such doubt was, therefore, rightly extended by the learned Trial Court to the respondents/accused.

35. In view of the aforesaid facts and circumstances, I find no material illegality, irregularity, perversity or manifest error in the appreciation of evidence by the learned Trial Court warranting interference in the appellate jurisdiction of this Court. The findings recorded by the learned Trial Court are based upon a reasonable appreciation of the evidence and represent a possible view on the materials available on record.

36. Accordingly, the appeal fails and is **dismissed**.

37. The impugned judgment and order of acquittal passed by the learned Trial Court dated 14.11.2000 in connection with Case No. 1466C of 1994, whereby the respondents/accused were acquitted of the charge under Section 199 of the Calcutta Municipal Corporation Act, 1980, is hereby affirmed.

38. Let the Trial Court records, be sent back to the learned Trial Court forthwith along with a copy of this judgment.

39. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)