

**Emperor Vs. Alladatta**

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**Court :** Mumbai

**Decided On :** Mar-31-1941

**Reported in :** (1941)43BOMLR702

**Judge :** Broomfield and ;Divatia, JJ.

**Appeal No. :** Criminal Application for Revision No. 69 of 1941

**Appellant :** Emperor

**Respondent :** Alladatta

**Judgement :**

**Broomfield, J.**

1. This is an application for revision by one Alla Datta Mahamad Siddik against whom the Commissioner of Police, Bombay, has made an order under Section 27(1)(a) of the City of Bombay Police Act (Bom. IV of 1902) as amended by Bombay Act XIV of 1938 directing him to remove himself from the City of Bombay.

2. The Advocate General, who appears for the Crown, has taken a preliminary objection that the revision application does not lie. So far as we are aware the only precedent for an application to the High Court seeking to revise an order by the Commissioner of Police is Emperor v. Gulabdin Pathan (1935) Criminal Application for Revision No. 504 of 1934, decided by Beaumont C.J. and N.J.

Wadia J., on February 8, 1935 (Unrep.) which was disposed of by the Chief Justice and Mr. Justice N.J. Wadia in February, 1935. This Court was of opinion that the Police Commissioner's order, which of course was made under the Act as it stood before the amendment, was not justified by the provisions of the Act. Nevertheless it was held that, as the Commissioner was not a Court subordinate to this Court, there was no jurisdiction to interfere with the order.

3. The position is of course different where a person is prosecuted and a Court is asked to impose a penalty for breach of the order. It was held in *Emperor v. Anna Vithoba* : (1931)33BOMLR1164 that, though the order of an executive officer, not being an order of an inferior criminal Court, cannot be set aside in revision, nevertheless when an executive officer makes an order or issues a notification, and an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification, it becomes the duty of the judicial authority to consider whether the order is properly made or not. This case was followed and the principles laid down in it were explained by a full bench decision, *Emperor v. Yarmahomed Ahmedkhan* : AIR1938 Bom338 , F.B.. In the course of his judgment the learned Chief Justice said (p. 492):

It may be conceded that an order made under Section 27 is an order made by an executive officer, and is not subject to appeal or revision in any Court. But it is a very different matter to affirm that when an attempt is made to impose a penalty for breach of an order made under the section, the validity of the order cannot be impeached.

4. Further on he said (p. 493):

In all charges before a Magistrate under Section 128 of the City of Bombay Police Act, (that is the section by which breaches of orders under Section 27 are made punishable), it is, in our judgment, incumbent upon the Magistrate to be satisfied, first, that the accused was informed by the Commissioner of the charge, against him with sufficient particularity to enable him to answer the charge, and that he was given an opportunity of so answering; and, secondly, that there was material before the Commissioner of Police on which he could properly hold that the conditions of Section 27 had come into operation.

5. It is clear from these authorities and it is conceded that prior to the amendment of the Bombay City Police Act by Act XIV of 1938 the order of the Police Commissioner was not subject to revision by the High Court. It is contended, however, on behalf of the applicant Here that the changes made by that amending Act have altered this position. It is necessary, therefore, to notice what these changes are. There is first of all an alteration in the language of Section 27(1)(a). Whereas the original provision dealt with the movements and designs of gangs or bodies of persons, the clause as amended provides that the movements or acts of any person may be regulated as provided in case it shall appear to the Commissioner that they are causing or calculated to cause alarm, danger or harm. Then there are a number of sub-sections which are newly enacted. Sub-section (4) provides that before an order is made under the preceding part of the section the Commissioner shall inform the person concerned in writing of the general nature of the allegations against him and give him a reasonable opportunity of explaining those allegations. Provision is also made for the examination of witnesses offered by the person concerned and for his appearance before the Commissioner of Police. Subsection (5). provides that the Commissioner or other officer authorised in this behalf may exercise all or any of the powers of a Court under Sections 75 to 77 of the Code of Criminal Procedure. Those are the sections of the Code dealing with warrants of arrest. Sub-section (6) provides that any person aggrieved by an order made by the Commissioner of Police under the preceding part of the section may appeal to the Provincial Government within thirty days from the date of the order. Sub-section (7), which is the one on which the applicant mainly relies, is in these terms:

An order passed by the Commissioner of Police under Sub-section (1), (2) or (2A) or by the Provincial Government under Sub-section (6)(i.e. in appeal) shall not be called in question in any Court except on the ground that the Commissioner of Police or the officer authorized by him under Sub-section (4) had not followed the procedure laid down in the said Sub-section or that there was no material before the Commissioner of Police upon which he could have based his order or on the ground that the Commissioner of Police was not of opinion that witnesses were unwilling to come forward to give evidence in the public against the person in respect of whom an order was made under Sub-section (1).

6. Sub-section (8) provides that notwithstanding the preceding provisions no police-officer shall be required to disclose either to the person against whom an order is made or to the Court the sources of his information.

7. It is conceded by the learned counsel on behalf of the applicant that if the High Court is competent to entertain this application it must be on the footing that a revision application lies under Section 439 of the Criminal Procedure Code by which the High Court has power to revise the proceedings of Courts subordinate to it. Dr. Ambedkar's argument is that the amendments to which I have drawn attention have the effect of constituting the Commissioner of Police a Court for the purposes of Section 27, so that when he makes an order under that section he is no longer merely an executive officer but a Court subordinate to the High Court whose proceedings are subject to revision. In support of that argument he mainly relies, as I have said, on the provisions of Sub-section (7). We are unable to agree, however, that this new Sub-section has the effect for which he contends.

8. Before we come to Sub-section (7) it may be pointed out that Sub-section (4) in requiring that due notice of the nature of the allegations should be given to the person concerned and in providing that he should have a reasonable hearing is merely giving effect to the findings of the full bench case, *Emperor v. Yarmahomed Ahmedkhan*. Sub-section (5), in our opinion, is opposed to the argument that it was intended to make the Commissioner of Police a Judicial Officer or Court. If it was intended that he was to be a Court, it would have been superfluous to provide that he was to exercise all or any of the powers of a Court. The provision in Sub-section (6) for an appeal to Government is also we think difficult to reconcile with the view that the Commissioner's order was intended to be regarded as a judicial order of a Court.

9. Sub-section (7) is in a negative form. It does not on the face of it empower the High Court or any other Court to do anything but merely provides that the Commissioner's order or an order by the Provincial Government in appeal shall not be called in question in any Court except on certain grounds. The grounds stated are practically the same as those mentioned in the full bench judgment as matters to be considered by a Court when the validity of an executive order is called in

question in a prosecution for breach of the order. Dr. Ambedkar says that if the position of the Commissioner and the nature of the orders made by him were not intended to be changed, there was no reason to enact Sub-section (7), the provisions of which might have been left to be deduced from the full bench judgment. This argument, we think, is unconvincing. It by no means follows that the legislature intended to go beyond the provisions of the full bench judgment because the effect of that judgment is included in the Act as amended.

10. In our opinion, so far as the point now before us is concerned, viz., the question whether an order of the Commissioner of Police under this section can be revised by the High Court, the position is precisely the same as it was before the amendment. We cannot accept the contention that the effect of these provisions is that the Commissioner is now a Court subordinate to the High Court. We think he remains as before an executive officer. His orders may be called in question as before in the circumstances referred to in *Emperor v. Anna Vithoba* and *Emperor v. Yarmahomed Ahmedkhan*. But no application for revision of his orders lies direct to the High Court. That being so, we have no jurisdiction to deal with the application on the merits and the rule must be discharged.

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