

Emperor Vs. Khuma Arjun

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Court : Mumbai

Decided On : Jul-12-1949

Reported in : AIR1950Bom75

Judge : Bavdekar and ;Chainani, JJ.

Acts : Bombay Municipal Boroughs Act, 1925 - Sections 37, 38 and 178; ;Bombay Municipal Boroughs Rules - Rule 76

Appeal No. : Criminal Appeal Nos. 689 to 692 of 1948

Appellant : Emperor

Respondent : Khuma Arjun

Advocate for Def. : C.K. Shah, Adv.

Advocate for Pet/Ap. : H.M. Choksi, Government Pleader

Disposition : Appeal allowed

Judgement :

Chainani, J.

1. These are four appeals by the Government of Bombay. The accused in these four cases were prosecuted under Section 178 (3), Bombay Municipal Boroughs Act. The charge against them was that, in contravention of Sub-section (1) of

Section 178, they had used certain lands for stabling cattle for the purpose of trading in milk without obtaining licenses from the Municipality. The sanction for the prosecution of these four accused was given by the standing committee of the Municipality. Under Section 68 (a), Bombay Municipal Boroughs Act, the Ahmedabad Municipality has made a rule No. 73 by which the sanitary committee has been declared to be the controlling and executive committee in all matters relating to the departments of public health, sanitation, conservancy and removal of nuisances. It was, therefore, contended before the learned Magistrate that sanction for the prosecution of the accused should have been given by the sanitary committee, and that the standing committee was not competent to accord such sanction. The conditions of licenses to be issued under Section 178 have been prescribed by the standing committee. It was also urged before the learned Magistrate that, in view of the above Rule 73, the standing committee had no power to prescribe the conditions of these licenses, and that consequently no prosecution could lie for failure to take out such licenses, as no valid conditions of such licenses have been prescribed. The learned Magistrate accepted both these contentions, and acquitted the accused. The Government of Bombay have appealed against the orders of acquittal.

2. Sub-section (2) of Section 87 of the Act provides that the standing committee shall exercise the functions allotted to it under the Act and, subject to any limitations prescribed by the Municipality and to the provisions of Sections 34, 37A and 38, shall exercise all the powers of the Municipality. The standing committee can, therefore, exercise two kinds of powers (1) the powers conferred upon it by the Act, and (2) the residuary powers of the Municipality. The residuary powers are to be exercised subject to the provisions of Section 38 (Sections 34 and 37A are not material for the purposes of this case) and subject to the limitations which the Municipality may prescribe in this behalf. Section 38 empowers the Municipality to appoint committees to exercise the powers and perform the duties of the Municipality in certain matters. This section further provides that the standing committee shall not exercise any powers or perform any duties which any other committee has been appointed to exercise or perform. The restriction on the standing committee imposed by this section can, therefore, only apply in respect of the residuary powers of the Municipality, and not in respect of the powers which

are conferred upon the standing committee by the Act, for under Sub-section (2) of Section 37, the exercise of these powers is not made subject to the provisions of Section 38. This view has also been taken previously by this Court in Emperor v. Jesingbhai 37 Bom. L. R. 184 : A.I.R. 1935 Bom. 201 : 36 Cri. L. J. 920. The power to sanction prosecution of persons for contravention of the provisions of the Act is given to the standing committee by Section 200 of the Act. This is not one of the residuary powers of the Municipality, and consequently the bar contained in Section 38 will not apply to it. The standing committee was, consequently, competent to accord sanction in these cases. It is true that according to the decision of this Court in Emperor v. Jesingbhai 37 Bom. L. R. 184 : A. I. R. 1935 Bom. 201 :36 Cri. L. J. 920, the sanitary committee could also have sanctioned the prosecution of the accused, having regard to the provisions of Rule 73 made by the Municipality. But the power of the standing committee to sanction prosecutions has not been taken away by Section 38 or Rule 73. The effect of the various provisions, therefore, is that both the standing committee and the sanitary committee are competent to sanction the prosecution of persons for contravening the provisions of Section 178. We are, therefore, of the opinion that there was valid sanction for the prosecution of the accused.

3. It has also been urged that the standing committee had no power to prescribe the conditions of the licenses, which the accused were required to take out under Section 178. Sub-section (2) of Section 178 states that the standing committee may grant these licenses subject to such conditions as it may deem fit. It would, therefore, appear that the standing committee was competent to prescribe these conditions. We do not, however, consider it necessary to decide this point in these appeals, because in these cases the accused have been prosecuted for using certain lands without obtaining licenses, as required by Section 178. It is admitted that the accused had not obtained licenses before they used the lands for stabling cattle. In fact, they had not even applied for the licenses. By using these lands without obtaining licenses, the accused have clearly contravened the provisions of Section 178.

4. The orders passed by the learned Magistrate acquitting these accused were, therefore, wrong. We accordingly set aside these orders, convict all the four

accused under Section 178 (8), Bombay Municipal Boroughs Act, and sentence each of them to pay a fine of Rs. 25, or, in default, to undergo 7 days' simple imprisonment.

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