

**Emperor Vs. Anna Vithoba**

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**Court :** Mumbai

**Decided On :** Jun-17-1931

**Reported in :** (1931)33BOMLR1164

**Judge :** S.S. Patkar, C.J., ;Murphy, J.

**Appeal No. :** Criminal Appeal No. 189 of 1931

**Appellant :** Emperor

**Respondent :** Anna Vithoba

**Judgement :**

Patkar Ag. C.J.

1. The accused in this case was deported by the Commissioner of Police on December 15, 1926, The order expired in 1928. Again, on June 3, 1930, he was arrested and on June 4, another order for deportation was passed by the Commissioner, Ex. A. The accused disobeyed the order and came within the limits of Bombay, and was arrested on September 9, 1930. He was tried before the Third Presidency Magistrate, and was acquitted. The learned Magistrate sent for the papers and documents which formed the basis of the order by the Commissioner of Police, and on failure to produce them he drew an inference that the order was not justified. He was also not prepared to place any reliance on the evidence of Mr. Tawade, the Sub-Inspector and Mr. Lyon, Inspector of Police, and on the evidence came to the conclusion that the matter relating to the deportation

of the accused was rushed through, that the accused was working at a panshop and was not in the habit of extorting money from people, and he, therefore, acquitted the accused. The Government of Bombay has appealed against the order of acquittal.

2. It is urged on behalf of the Crown that once an order is passed by the Commissioner of Police under Section 27 of the Bombay City Police Act, IV of 1902, the order being an administrative order is final, and that it could not be questioned in a Court of law, and reliance is placed on the decision in *In re Pandurang Shidrao* : (1910)12BOMLR1029 , A similar contention was raised and was not accepted in the case of *Emperor v. Bhalchandra Ranadive* : (1929)31BOMLR1151 , where it was held that public authorities even acting within the defined limits of their powers must not conduct themselves arbitrarily or tyrannically, and that in the case of *Duke of Bedford v. Dawson* (1875) L.R. 20 Eq. 353 Sir George Jessel M.R. held that the public body are to be the judges subject to this that if they are manifestly abusing their powers the Court will say that it is not a fair and honest judgment and will not allow it. To the same effect is the decision of the case in *Nagar Valab Narsi v. The Municipality of Dhandhuka* I.L.R. (1887) Bom. 490 The power of the Magistrate to go into the question, whether the order of the Commissioner was valid, has been recognized by Tyabji J. in *In re Tarabai* (1905) 7 Bom. L.R. 161 The order of an executive officer, not being an order of an inferior criminal Court, cannot be set aside in revision according to the decision in *In re Pandurang Shidrao*, but 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. See *In the matter of the Petition of Surjanirain Dass* I.L.R. (1880) Cal. 88 The Magistrate was, therefore, right in considering the question whether the order of the Commissioner of Police was justified on the evidence on the record. If the papers and documents which formed the basis of the order of the Commissioner of Police had been produced, they might have strengthened the case of the Crown. In the absence of these papers and documents we have to consider whether the evidence on the record is sufficient to show that the order passed by the Commissioner under Section 27 of the City of Bombay Police Act

fell within the ambit of the section.

3. It appears that the accused was deported in the year 1925. There was an order of deportation against him which was in full force for two years. After the efflux of two years he was again suspected by the police, and Mr. Tawade in his examination says that in the course of investigation in connection with a riot case he got information that the accused and others were in the habit of extorting money from people and assaulting them, and that it was thought desirable to break up the gang and send them to their native places. After the investigation by Mr. Tawade, Mr. Lyon placed the accused before the Commissioner of Police, prepared the necessary papers, the Commissioner went through the evidence, and passed an order against the accused and one Narayan. From Exhibit A it appears that there was a report before the Commissioner of Police by Mr. Lyon, Inspector of Police, and the Commissioner of Police was satisfied that Babu Narayan and Anna Vithoba were members of a gang whose actions were calculated to cause danger and alarm, and that it was necessary to break up this, gang of bad characters as there was reasonable suspicion that they entertained unlawful designs.

4. Under Section 27 of the City of Bombay Police Act a reasonable suspicion that unlawful designs are entertained by a gang is a sufficient basis for an order to be passed by the Commissioner of Police. The learned Magistrate came to the conclusion that no regular complaint was filed before the Court against the accused and that therefore it was reasonable to infer that there was no proper foundation to press the charges. There were no convictions against the accused, but under Section 27 a reasonable suspicion that unlawful designs are intended by a gang is a sufficient basis for an order under Section 27. Apart from the fact that there was a previous order of deportation against the accused, the evidence on the record of Mr. Tawade and Mr. Lyon shows that the order of the Commissioner of Police fell within the ambit of Section. 27, and we are not satisfied that the order passed by the Commissioner under Section 27 was wanton, arbitrary or unjust, We think, therefore, that the learned Magistrate's order of acquittal is wrong. We must set aside the order of acquittal and convict the accused. We, therefore, convict the accused under Section 128 of the City of Bombay Police Act, IV of

1902, and sentence him to pay a fine of Rs. 100, in default three months' rigorous imprisonment. The accused is given fifteen days' time to pay the fine after which he must obey the order of the Commissioner.

5. Murphy J. In certain cases-instances being Section 144 of the Criminal Procedure Code, and the one we are now dealing with, Section 27 of the City of Bombay Police Act, and various provisions of a like nature in Municipal and other Acts-a discretion is conferred on certain officers or corporations to issue notices, or orders, and if these are disregarded, to enforce them by a prosecution for the act of disregarding or disobeying them. Here the Commissioner of Police ordered the accused to quit the city of Bombay on the grounds mentioned in Section 27, and not to return within two years. Accused has disregarded this order, and has returned after an absence of a few months elsewhere. There is no provision in the Act for an appeal against the Commissioner of Police's order. The general principle applicable to cases where a discretion is given, is that it must be exercised within the scope of the powers conferred, bona fide, and not capriciously, wantonly or oppressively and after a reasonable enquiry, in which the opponent has had a hearing. Such a discretion is not, however, excepted from criticism altogether, as has been contended by the learned Government Pleader, but when challenged has to be considered from this point of view. Here the basis is 'the movements of a body of persons forming a criminal gang in the City of Bombay which are calculated to cause danger or alarm, or a reasonable suspicion that unlawful designs are entertained.' The expressions 'it shall appear...are calculated' and 'a reasonable suspicion that unlawful designs are entertained' obviously lay down a standard for the basis of such an order, far short of proof, though more than bare suspicion and it must lie on anyone who challenges such an order to show, either that the order complained of was beyond the scope of the section, or that the standard laid down by the section has not been reached.

6. Now, the prosecution in the Court below examined the police-officer who was deputed to investigate the doings of the criminal gang the accused was alleged to belong to, and another police-officer, who says that the accused had been known to him, in the sense in which that expression is used by the police, for five years and that he earns a living by terrorism and extortion. This evidence, which is

largely of repute, is the basis of the Commissioner of Police's reasonable suspicion, and it also appears that the accused was produced before the Commissioner of Police, who heard him, as well as the police officers.

7. The proceedings are, no doubt, short of the procedure of a trial, the requirements of which seem to have been confused by the learned Magistrate with those of the section. He also seems to have mistaken his own powers for those of an appellate Court, calling for the record and proceedings of an inferior one, on the second point, for the Commissioner of Police's proceedings were not evidence any more than the report of the Sub Inspector to his superiors.

8. I think the learned Magistrate was wrong. The Commissioner of Police's order is within the section, and it cannot be said that he based it on no evidence, or that he made it arbitrarily, and without any reasonable grounds for suspecting what is alleged against the accused. I agree, therefore, with the order made by the learned Chief Justice.

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