I would accordingly dismiss this application.

**Coyajee, J.**—I entirely agree with the opinion expressed by my learned brother as to the scope and applicability of S. 145 of the Code of Criminal Procedure.

*Application dismissed.*

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## A. I. R. 1926 Bombay 314

MACLEOD, C. J., AND CRUMP, J.

*Yeshvant Satva Chaugule*—Accused—Applicant.

v.

*Emperor*—Opposite party.

Criminal Application for Revision No. 74 of 1926, Decided on 3rd March 1926, against convictions and sentences passed by First Class Magistrate, Pandharpur.

**Criminal P. C., S. 225—Omission to state common object of unlawful assembly in a charge is not fatal.**

Where the common object of an unlawful assembly is specified in the complaint and found by the Court, its ommission in the charge does not vitiate trial: 21 *Cal* 827, *Appl.* and 22 *Cal.* 276 *Dist.* [P 314 C 2]

*Ambedkar* and *B. G. Modak*—for Applicant.

**Macleod, C. J.**—It is admitted by the Sessions Judge in his judgment that the common object of the unlawful assembly was not specified in the charge. The question then is whether the accused have been in any way prejudiced in their, defence by that omission, or whether they have been misled in any way, so that a failure of justice has been occasioned. The Judge said;

It is alleged in the complaint that all the accused formed an assembly with the intention of obstructing the procession, and attacked the complainant and other, with that intention. The Magistrate has recorded a finding that 'the evidence shows that the accused had premeditated an attack, and hence were collected in a body near the house of Accused No. 5 and on the road of the procession.' I have gone through the record, and agree that the evidence does justify that finding. That being so, the defect in the charge, which does not appear to have prejudiced the accused in any way, does not vitiate the proceedings: see *Basiraddi* v. *Queen-Empress* (1).

In that case certain persons were charged with rioting and it appeared that the charge did not specify any common object, and that neither the judgment of the original Court nor that of the Sessions Judge in appeal found even what was the common object which made the assembly, of which the prisoners were members, an unlawful one. It was held that those defects did not vitate the proceedings, there being ample evidence on the record to prove what the common object of the assembly was, and to justify the conviction for the offence of which the lower Courts had found the accused guilty.

Their Lordships said (p. 834):

We think that we ought not to grant a rule for such a purpose unless we should be prepared, on the materials on which we grant it, to make it absolute, or, in other words, to acquit the prisoners, if no cause were shown against it, and we certainly should not be prepared to acquit these persons, merely in consequence of the defects which I have pointed out in the charge and in both the judgments because it must be evident that notwithstanding them there may be ample material, in the evidence on this record, on which we should ourselves be prepared to convict the prisoners of the offence of rioting, and to inflict the same punishment, which has been inflicted upon them by the Deputy Magistrate. We accordingly invited Mr. Apcar to place the evidence before us with the object of showing us that upon it the prisoners ought not to be convicted of rioting. He has done so to some extent, and we have ourselves since examined it, and so far from thinking that we ought to acquit the prisoners, we think that there is ample evidence here, which we see no reason to disbelieve, that they were members of an assembly, the common object of which was to prevent, by force, traders from resorting to to the new *hat.*

It is clear then that that case was a far stronger one than the case before us. Here the complaint specified the common object, and both the Magistrate and the Sessions Judge in appeal have found that that was the common object of the accused.

We have been referred to the case of *Sabir* v. *Queen-Empress* (2). There was an appeal from a conviction upon the unanimous verdict of the jury that the accused were guilty under Ss. 148 and 149, Indian Penal Code. Their Lordships said (pp. 284, 285):

Before we can say that there ought to be a conviction under S. 147, we must be satisfied that the jury have found an unlawful common object. It is impossible for us to say, on the findings, whether they have given their verdict upon the unlawfulness of the common object to injure Nidu, or the unlawfulness of the common object to take the mangoes. It may well be and, in dealing with these matters one is bound to consider the matter most favourably to the accused, that they preferred to accept the view that the common object was to injure Nidu, inasmuch as it did away with the necessity of coming to any conclusion on the question of the possession of the

1. (1894) 21 Cal 827.

2. (1894) 22 Cal 276.

orchard. If they found that the common object of the assembly was to injure Nidu, that would be enough, and they need not find the other. But there is no charge whatever on this head; an entirely different common object has been charged.

Our attention has been called to S. 225 of the Code of Criminal Procedure which provided that 'no error in stating the particulars required to be stated in the charge, and no omission to state those particulars, shall be regarded at any stage of the case as material unless the accused was misled by such error or omission.' In a case of this kind there may be evidence of a variety of common objects, but here, so far as we can see, it is impossible for us on the evidence as it stands and having the charge there is at present, to say that the jury accepted either one or the other of these common objects. They accepted one, it is true, but which one they accepted it is impossible for us to say. It may make a difference in the case if, as a matter of fact, they accepted the case that the common object was to injure Nidu. But that was a common object that was never charged at all and the accused person had no opportunity of meeting it.

That seems to me to be a very different case and it was decided on its own facts. I think that the decision in *Basiraddi v. Queen-Empress* (1) is directly in point. Here there can be no doubt that the accused have been in no way prejudiced by the omission in the charge of the common object of the unlawful assembly and there is ample justification for applying the provisions of S. 225. We therefore dismiss the application.

*Application dismissed.*

## A. I. R. 1926 Bombay 315

MACLEOD, C. J., AND COYAJEE, J.

*Lala Punjushet* — Defendant—Applicant.

v.

*Motiram Budhu*—Plaintiff—Opposite Party.

Civil Revision Application No. 118 of 1925, Decided on 24th September 1925, from an order Sub-J., Nandurbar, in Suit No. 132 of 1923.

**Civil P. C., O. 23, R. 1 (2) (b)—"Other sufficient grounds" must be read with restrictive meaning.**

The words "other sufficient grounds" must be read with a restrictive meaning, so that any other ground set forward by a plaintiff must be analogous to a formal defect, before the Court can give the plaintiff leave to withdraw : 44 *Cal* 367, *Appr.* and 33 *Bom* 722, *Disappr.* [P. 316 C 2]

*P. V. Kane*—for Applicant.

**Macleod, C. J.**—This is an application under S. 115 of the Code, asking the Court to revise an order passed by the Second Class Subordinate Judge of Nandurbar in Suit No. 132 of 1923.

After several adjournments, the hearing was fixed for December 15, 1924, on which date the plaintiff-opponent presented an application to withdraw the suit with liberty to bring a fresh suit on the grounds that the plaint was not explicit; that the averments about fraud were not clear, and that there was no explict assertion that the sale deed was in the nature of a mortgage; that though there was a prayer for accounts and instalments, proper stamp had not been paid and there was no issue about mortgage; and that therefore the suit was likely to be dismissed because the pleadings were vague and insufficient.

The applicants-defendants raised several objections to the withdrawal of the suit being allowed, viz., the plaintiff had already once amended the plaint but never claimed redemption; that though the plaintiff had alleged before the Mamlatdar that the sale was a mortgage, he had in the suit averred only fraud; that several adjournments had already been granted to the plaintiff: that the hearing had actually commenced, documents had been produced by the defendants and one witness had already been examined for the defendants; that the plaintiff's suit was not going to fail on a technical point; that the suit had been filed on April 7, 1923, more than a year before the application, but in spite of defendants' objection the Court allowed plaintiff to withdraw the suit with liberty to bring a fresh suit.

Under O. 23, R. 1 (2), where the Court is satisfied (a) that a suit must fail by reason of some formal defect, or (b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grants the plaintiff permission to withdraw from such suit or abandon such part of a claim, with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

The question is whether the words "other sufficient grounds" give the Court a wide discretion to decide whether it should give permission to a plaintiff to withdraw from his suit, or whether those words must be read with a restrictive meaning, so that any other ground