

icipal Commissioner shall appoint another day for holding a fresh election. The period of 15 days has not yet elapsed, and it is therefore premature to give any direction to the Commissioner as to how he should act. It is to be presumed that the appellants will act according to law.

The only other question that remains is the question of costs. I entirely agree with the learned officiating Chief Justice that there was no reason why costs should not have been awarded in the Court below, and as far as the appeal in this Court is concerned, the Corporation seems to me to be filling quite a novel role. The Corporation is supposed to be guardian of the interests of the citizens. The right of the citizens to exercise franchise was conceded by the order of the learned Judge. The Corporation was here not to uphold any privilege due to the citizens but they are here to go counter to the right that was conceded to the citizens by the learned Judge. They have failed on the main question of injunction, and I do not see why they should not be ordered to pay costs throughout.

Per Curiam.—Appeal dismissed with costs. Order of the Court below varied by deleting therefrom the direction that a bye-election was to be held, and by ordering that the first respondents to the petition to pay to the petitioner the costs below.

S.R.

Appeal dismissed.

* A. I. R. 1935 Bombay 409

BEAUMONT, C. J. AND N. J. WADIA, J.

Gulabrao Laxmanrao Chandgude —
Accused.

v.

Emperor—Opposite Party.

Criminal Revn. No. 192 of 1935, Decided on 1st August 1935, against order of Sess. Judge, Poona.

* Jurisdiction — Mere definition of areas cannot exclude jurisdiction of Magistrate in rest of district—S. 12 (2), Criminal P. C., requires express or necessarily implied provisions to exclude jurisdiction.

The mere definition of areas of jurisdiction cannot be taken as a provision excluding jurisdiction of the Magistrate in the rest of the district. Sub-S. 2, S. 12, Criminal P. C., clearly requires some provision excluding jurisdiction in the rest of the district, which is either express or must be inferred by necessary implication: 1921 All 133, *Diss from*. [P 410 C 1]

B. R. Ambedkar and *V. D. Limaye*—
for Accused.

P. B. Shingne—for the Crown.

Beaumont, C. J.—This is a revision application asking us to review an order made against the applicant under S. 118, Criminal P. C., directing him to execute a bond in the sum of Rs. 2,000 with one surety for the like amount to be of good behaviour for one year.

The only point of law which arises in revision is as to the jurisdiction of the Magistrate who dealt with the matter. The case was originally on the file of the Sub-divisional Magistrate, First Class, Eastern Division, Poona, and it was transferred from his file by the Additional District Magistrate, Poona, to the file of the Special Magistrate, First Class, Poona Cantonment. Now having regard to the provisions of Ss. 107 and 110, Criminal P. C., in order to establish jurisdiction in the Magistrate to make an order, it must be shown that the village where the accused lives and where the act complained of has been committed (i. e., the village of Supe), is within the local jurisdiction of the Special Magistrate, First Class, Poona Cantonment. The village of Supe is admittedly not within the limits of the Poona Cantonment, but it is within the limits of the Poona District. The question whether the Magistrate of Poona Cantonment has jurisdiction or not in the whole of the Poona District depends on the construction of S. 12, Criminal P. C. Sub-S. (1) of that section provides that the Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency towns. And then it goes on:

The Local Government or the District Magistrate subject to the control of the Local Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

So that under that section the Local Government can appoint a Magistrate in a particular district, and then the Local Government or the District Magistrate may carve up the district and define particular areas within which particular Magistrates are to exercise their functions. If the matter stood there it might be suggested that where the District Magistrate has made an order

directing that a particular Magistrate is to exercise jurisdiction within a particular area, the jurisdiction of that Magistrate is confined to that area and does not in future extend to the rest of the district. But then comes sub-S. (2) which says :

Except as otherwise provided by such definitions the jurisdiction and powers of such persons shall extend throughout such district.

That seems to me to be a saving clause which prevents the mere carving up of the district into areas amongst Magistrates from having the effect of depriving Magistrates of jurisdiction in the whole district, unless the order defining the areas so provides. It is obvious to my mind that the mere definition of areas cannot be taken as a provision excluding jurisdiction in the rest of the district, for if it did, sub-S. (2) would be meaningless. I think the sub-section clearly requires some provision excluding jurisdiction in the rest of the district, which is either express or must be inferred by necessary implication.

Now in the present case, on 15th October 1934, the Local Government appointed the Magistrate whose jurisdiction is at present in question, Khan Bahadur M. N. Mehta, to be an Honorary Magistrate in the Poona District, and conferred on him the magisterial powers therein mentioned, those powers being first class powers and additional powers (inter alia) under S. 110, Criminal P. C. So that there is no doubt that under that notification Khan Bahadur Mehta would have jurisdiction to deal with this case in the Poona District. The District Magistrate, Poona, by an order dated 27th January 1935, defined the areas in which certain Magistrates were to exercise jurisdiction and directed that Khan Bahadur Mehta was to deal with certain cases in Poona Cantonment. But there is nothing in that order of the District Magistrate which either expressly or by necessary implication confines the jurisdiction of Khan Bahadur Mehta to the particular area in which he is directed to exercise jurisdiction. That being so, I think that, under sub-S. (2), S. 12, Khan Bahadur Mehta continued to have jurisdiction in the whole of the Poona District, and that, with the consent of the District Magistrate, or the Additional District

Magistrate, he was competent to try any case arising in the Poona District.

Dr. Ambedkar referred us to a case, 19 A L J 77 (1). That is not an authorized report. But if the view of the Court in the case was that the mere act of a District Magistrate in carving up a district and allotting a particular area to a particular Magistrate had the effect of restricting the jurisdiction of that Magistrate to that area and depriving him of jurisdiction over the rest of the district, I can only say, with great respect to the Court, that I do not agree with the decision. That, in my opinion, is not the proper construction of S. 12 of the Code. There is, in my opinion, no other ground on which we can interfere in revision, and therefore the application must be dismissed.

N. J. Wadia, J.—I agree.

S.R. *Application dismissed.*

1. Kunja Behari Lal v. Lanua, 1921 All 123=59
I C 554=22 Cr L J 122=19 A L J 77.

* A. I. R. 1935 Bombay 410

BEAUMONT, C. J. AND RANGNEKAR, J.
Commissioner of Income-tax, Bombay.

Gopal Vajinath Manohar.

Civil Ref. No. 2 of 1935, Decided on 1st April 1935, from Commissioner of Income-tax, Bombay.

* (a) *Income-tax Act (1922), S. 34—Burden of proof—Income alleged unassessed—Onus is on commissioner.*

The burden of showing that an income has escaped assessment or that it has been assessed at too low a rate, lies on the Commissioner.

[P 411 C 2]

* (b) *Income-tax Act (1922), S. 34—Meaning—Whole year's income not assessed—Authorities can revise assessment within prescribed time.*

Section 34 means that if in the taxing year the income assessed is not the whole of the income in the year of assessment, then within a time limit provided in the section it is open to the income-tax authorities to revise it, whether the assessment previously made was inadvertent or deliberate or was due to a wrong allowance or improper deduction or a low rate: 1933 Cal 777 *Foll*; 1933 Rang 350, *Diss from*. [P 412 C 2]

*K. McI. Kemp and G. Louis Walker—*for referor.

*N. P. Engineer, Ranchhodas and Hakim—*for Assessee.

Beaumont, C. J.—This is a case stated by the Commissioner of Income-tax under S. 66 (2), Indian Income-tax Act. The question arises in this way.