one place to another on his travels, is not such residence as is sufficient in law. That was pointed out in 32 ALL 203[6] at p. 205 and also by our appeal Court in 38 Bom 125.[7]

The question is whether bona fide residence must also be permanent. If that was so, no residence which is temporary, even though not casual and even though not for a passing purpose, can ever be bona fide, merely because it is not permanent. Some degree of continuity of residence is, however, necessary. There must be something more than a mere passing temporary occupation. If, however, it was the intention of the Legislature in the Act of 1936 to mean by the word "resides" a permanent residence, there was nothing to prevent it from having said so clearly. Plaintiff in her evidence stated that she intends to stay in Bombay permanently for the reasons given by her. Her intention in itself is immaterial, for she can change it at any time. But the evidence with regard to her intention is still relevant for the purpose of determining whether her residence is merely casual or for a temporary purpose. She stated that she left her husband's house at Upalwai sometime in November 1939, and never intended for some reason or the other to return to it. Her permanent residence during her married life would naturally be that of her husband. Having broken away from his home and having gone with the intention of not returning to it, the question is what was really her place of residence. The mere fact that her father has a permanent residence in Secunderabad and that she went and stayed with him for some time, especially for the purpose of her confinement, as she always used to do before, does not make her father's place her permanent residence. She denied that she was residing in Bombay merely for the purpose of this suit. I need not point out that there are various cases on either side of the line in which a short period of a few days has been in some Courts considered sufficient to establish residence and by some Courts considered insufficient. Many of the earlier ones are mentioned in 14 Bom 541.[8] In 38 I A 129,[9] the appellant who at the date of the suit had taken a house on hire in Madras and intended staying there with his family for some months was held by the Privy Council to be residing in Madras. But as I have said, there are cases on either side of the line, and the meaning of the term "residence" must depend upon the circumstances of each case. If a person resides permanently at a particular place, there can be no doubt that that is his or her residence. But the residence need not necessarily be permanent. It is enough if it is bona fide, with an element of continuity about it, so that even if it is not permanent, it cannot be said to be merely casual or for a temporary or passing purpose. I am satisfied, therefore, that the plaintiff is residing in Bombay for the purpose of S. 29 (3), and that the leave which was asked for was properly granted.

Under the circumstances the Chamber Summons must be dismissed with costs. I have heard both counsel on the question of costs. The hearing of this Summons has lasted for more than a day and has also involved the taking of evidence on both sides. The Court now has power under R. 785 (R) to give any special direction as it chooses in its discretion with regard to the payment of costs. I direct the defendant to pay the plaintiff's costs of this Summons as if the Summons was adjourned into Court and the costs were taxed as of a Summons adjourned into Court on the original side, refresher being allowed.

R.K. *Summons dismissed.*

6. ('10) 32 All 203 : 5 I C 871 : 7 A L J 193, Arthur Flowers v. Minnie Flowers.
7. ('14) 1 A I R 1914 Bom 211 : 20 I C 492 : 38 Bom 125 : 15 Bom L R 593, Nusserwanji Pestonji Wadia v. Eleonora Wadia.
8. ('90) 14 Bom 541, Shri Gosvami v. Shri Govardhanlalji.
9. ('11) 34 Mad 257 : 11 I C 447 ; 38 I A 129 : 21 M L J 669 (P C), Srinivasa Moorthy v. Venkatavarada Iyengar.

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(28) A. I. R. 1941 Bombay 334

BROOMFIELD AND DIVATIA JJ.

Alla Datta — Applicant

v.

Emperor.

Criminal Revn. Appln. No. 69 of 1941, Decided on 31st March 1941, from order of Commissioner of Police, Bombay.

Bombay City Police Act (4 of 1912, as amended by Act 14 of 1938), S. 27—Order under S. 27 by Commissioner is not revisable under S. 439, Criminal P. C.

Even the amendments to S. 27 by the Bombay Act, 14 of 1938 have not the effect of constituting the Commissioner of Police a Court for the purposes of S. 27. When he makes an order under that section he is merely an executive officer and not a Court subordinate to the High Court and hence his orders are not subject to revision. His order can be considered by a Court only when the validity of the executive order is called in question in a prosecu-

tion for breach of the order : ('31) 18 A I R 1931 Bom 514 and ('38) 25 A I R 1938 Bom 338 (F B), *Ref.* [P 336 C 1, 2]

B. R. Ambedkar and G. J. Mane—for Applicant.

M. C. Setalvad, (Advocate-General) and R. A. Jahagirdar (Government Pleader) — for the Crown.

Broomfield J. — This is an application for revision by one Alla Datta Mahamad Siddik against whom the Commissioner of Police, Bombay, has made an order under S. 27 (1) (a), City of Bombay Police Act (Bom., 4 of 1902), as amended by Bombay Act 14 of 1938, directing him to remove himself from the City of Bombay. 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 of Police is Cri. Appln. for Revn. No. 504 of 1934,[1] which was disposed of by the Chief Justice and N. J. Wadia J., 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.

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 33 Bom L R 1164[2] 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, 40 Bom L R 483.[3] In the course of his judgment the learned Chief Justice said (p. 492) :

> It may be conceded that an order made under S. 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.

Further on he said (p. 493) :

> In all charges before a Magistrate under s. 128, City of Bombay Police Act, (that is the section by which breaches of orders under s. 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 S. 27 had come into operation.

It is clear from these authorities and it is conceded that prior to the amendment of the Bombay City Police Act by Act 14 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 S. 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. Sub-section (5) provides that the Commissioner or other officer authorised in this behalf may exercise all or any of the powers of a Court under Ss. 75 to 77, Criminal P. C. 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 30 days from the date of the order. Sub-section (7), which is the one on which

1. Cri. Appln. for Revn. No. 504 of 1934, decided on 8th February 1935 by Beaumont, C. J. and N. J. Wadia J., Emperor v. Gulabdin Pathan.

2. ('31) 18 A I R 1931 Bom 514 : 135 I C 484 : 33 Cr L J 169 : 33 Bom L R 1164, Emperor v. Anna Vithoba.

3. ('38) 25 A I R 1938 Bom 338 : 176 I C 839 : 39 Cr L J 792 : I L R (1938) Bom 403 : 40 Bom L R 483 (F B), Emperor v. Yarmahomed Ahmedkhan.

the applicant mainly relies, is in these terms :

An order passed by the Commissioner of Police under sub-ss. (1), (2) or (2A) or by the Provincial Government under sub-s. (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-s. (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-s. (1).

Sub-s. (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. 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 S. 439, Criminal P. C., 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 S. 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-s. (7). We are unable to agree, however, that this new sub-section has the effect for which he contends. Before we come to sub-s. (7) it may be pointed out that sub-s. (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, 40 Bom L R 483.[3] Sub-s. (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-s. (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.

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-s. (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. 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 33 Bom L R 1164[2] and 40 Bom L R 483.[3] 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.

R.K. *Rule discharged.*

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(28) A. I. R. 1941 Bombay 336

BEAUMONT C. J. AND MACKLIN J.

Sorabji Rustomji Irani and others Applicants

v.

Emperor.

Criminal Appln. No. 471 of 1940, Decided on 22nd January 1941, for transfer of appeal pending before City Magistrate, Sholapur.

Criminal P. C. (1898), S. 526 — That Magistrate dealing with case is subordinate to Magistrate who has sanctioned prosecution is not by itself ground for transfer of case to Sessions Court — There should be reasons for thinking that former is likely to be influenced by opinion of latter.