

CR. Revi Appln. 69/1941

Brownfield, J.

C 1

In His Majesty's High Court of Judicature,
Appellate Side, Bombay

CRIMINAL JURISDICTION

Ready

~~Appeal~~
Application for Revision ~~Reference~~ No. 69 of 194 1.
~~Confirmation Case~~

~~IMPERATOR~~ vs.

The petitioner Alla Datta s/o Mahamad Siddik (Externee) applies for revision of the order passed by the Commissioner of Police, Bombay, W.R. G. Smith, Esquire, on 6th December 1940, directing the petitioner to remove himself from the City of Bombay under Sec. 27(1) of Act IV of 1902 as amended by Bombay Act XIV of 1938 and forbidding him from entering the City of Bombay without the permission in writing of the Police Commissioner of Bombay for a period of two years from the date of his removal, the Secretary to the Government of Bombay, Home Department, having dismissed his appeal on 19th December 1940.

~~Offence~~

~~Sentence~~

Date of Sentence

Court

Order in Appeal

Date of Order in Appeal

Passed by

Previous Order of the High Court (Coram: Beaumont, C.J. and Macklin, J.)

Rule.

D/- 25th February 1941.

1002

Judgment recorded by the High Court in Criminal Revision Application No.69 of 1941 in the case of Imperator Vs. Alla Datta S/O Mahomad Siddik.(Petitioner).

Counsel Dr.B.R.Ambedkar with Mr.G.J.Mane, Advocate
for the Petitioner.

Mr.M.C.Setalvad, the Advocate General with Mr.R. A.
Jahagirdar, Government Pleader for the
F Crown.

31st March 1941.

(Coram: Broomfield and Divatia, JJ.)

Oral Judgment (Per 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 Section 27(1)(a) of the Bombay City - Police Act IV of 1902 as amended by Bombay Act XIV 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 Police is Revision Application No.504 of 1934, which was disposed of by the Chief Justice and Mr.Justice N.J.Wadia 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 Emperor Vs. Anna Vithoba, (1931) 33 Bom.L.R.1164, 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, Emperor Vs. Yarmahomed Ahmedkhan (1938) 40 Bom. L.R.483. In the course of his judgment the learned Chief Justice said: "It may be conceded that an order made under section 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: "In all charges before a Magistrate under section 128 of the City of Bombay Police Act, (that is the section by which breaches of orders under section 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 Section 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 XIV 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 section 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 calculating^{ed} 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 sections 75 to 77 of the Code of Criminal Procedure. 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 the applicant mainly relies

relies, is in these terms:

" An order passed by the Commissioner of Police under sub-section (1), (2) or (2A) or by the Provincial ~~vineial~~ Government under sub-section (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 authorised by him under sub-section (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-section (1)."

Sub-section (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 section 439 of the Criminal Procedure Code 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 section 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

proceedings are subject to revision. In support of that argument he mainly relies, as I have said, on the provisions of sub-section (7). We are unable to agree, however, that this new sub-section has the effect for which he contends.

Before we come to sub-section (7) it may be pointed out ~~that~~ sub-section (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 Emperor Vs. Yarmahomed Ahmedkhan. Sub-section (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 provisions in sub-section (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

intended to be changed, there was no reason to enact sub-section (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 Emperor Vs. Anna Vitthoba and Emperor Vs. Yarmahomed Ahmedkhan. 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.

By the Court,

m. g. Rao

Deputy Registrar.

102

BVB.

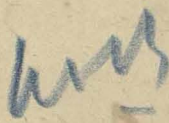
Criminal Revision Application No. 69 of 1941.

Appeal No. of 193 --- from ^{Original} ~~Appellate~~ Decree.

Date of decision 31st March 1941.

of a fair copy

For approval and signature

The Hon'ble Mr. Justice Broomfield. 

The Hon'ble Mr. Justice

Whether Reporters of Local Papers may be allowed to see the judgment?

To be referred to the Reporter or not?

Whether Their Lordships wish to see the fair copy of the judgment?

Cr. R. Appeal No. 69

of 19 41

~~ORIGINAL~~
~~Appellate~~
~~ORDER~~

Date of decision 31st March 1941.

For approval and signature

The Hon'ble

Mr. Justice

BROOMFIELD *WMB*

The Hon'ble Mr. Justice

DIVATIA *HVS*

1. Whether Reporters of Local Papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporter or not? *B.L.R.*
3. Whether Their Lordships wish to see the fair copy of the judgment? *Yes*
4. Whether this case involves a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder?

WMB
1.4.1941.

Criminal Revision Application No. 69 of 1941.

Counsel Dr. Ambedkar with Mr. G.J. Mane for the petitioner.

The Advocate General with the Government Pleader for the Crown.

Coram: Broomfield & Divatia JJ.

Monday, 31st March 1941.

Oral Judgment (Per 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 section 27 (1) (a) of the Bombay City Police Act IV of 1902 as amended by Bombay Act XIV 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 Police is Revision Application No. 504 of 1934, which was disposed of by the Chief Justice and Mr. Justice N.J. Wadia 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 Emperor v. Anna Vithoba, (1931) 33 Bom.L.R. 1164, 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, Emperor v. Yarmahomed Ahmedkhan (1938) 40 Bom.L.R. 483. In the course of his judgment the learned Chief Justice said:

"It may be conceded that an order made under section 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: "In all charges before a Magistrate under section 128 of the City of Bombay Police Act, (that is the section by which breaches of orders under section 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

section 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 XIV 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 section 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. Provi-

sion 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 sections 75 to 77 of the Code of Criminal Procedure. 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 the applicant mainly relies, is in these terms:

"An order passed by the Commissioner of Police under sub-section (1), (2) or (2A) or by the Provincial Government under sub-section (i.e. in appeal) (6) shall not be called in question in any Court except on the ground that the Commissioner of Police or the officer authorised by him under sub-section (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 Commissione

"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-section (1)."

Sub-section (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 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 section 439 of the Criminal Procedure Code by which the High Court has power to revise the proceedings of Courts subordinate to it. Dr. Ambedkar's argument is that the amendments which I have drawn attention have the effect of constituting the Commissioner of Police a Court for the purposes of section 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

Sub-

have said, on the provisions of section 7. We are unable to agree, however, that this new sub-section has the effect for which he contends.

Before we come to sub-section (7) it may be pointed out that sub-section (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 Emperor v. Yarmahomed Ahmedkhan. Sub-section (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 the Court. The provision in sub-section (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.

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the Provincial Government in appeal shall not be called in question in any Court except on certain grounds, ^T and the grounds stated are practically *The same as those* the grounds 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* and ~~it is open to the Court to consider the validity~~ 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-section (7), the provisions of which might have been left to be deduced from the Full Bench judgment. This argument, we think, is ~~quite~~ unconvincing. It by no means follows that the legislature intended to ~~give~~ 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 Emperor v. Anna Vithoba and Emperor v. Yarmahomed Ahmedkhan. 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.

CRIMINAL DEPARTMENT

Alla Datta S/o Mahamad
Siddik (ex-ternee)

(by Advocate Mr. *G. G. Mane*)

dated the 20th January 1941.

Appeal against the *order passed*
Appⁿ for revision of the conviction recorded

against and the sentence passed upon

by the Commissioner of Police, Bombay,

on the 6th December 1940, directing

the petitioner to remove himself

from the city of Bombay, under §27(1)

of Act IV of 1902 as amended by

Bombay Act XIV of 1938 and forbidding

him from entering the city of Bombay

without the permission in writing of

the Police Commissioner of Bombay for

a period of two years from the date of

his removal, the Secretary to the Govt. of

Bombay, having dismissed his appeal on

the 19th December 1940.

Criminal Appeal... No. of 193

Application for Revision No. 69 of 1941.

ORDER BY THE COURT.

(Coram :—

Writ No. 662 } 63
Notice No. 663 } 41

No. of 1941
Expedite section
of Justice 15PP
Registra

Notice in Ver. also
Received on the 20-1-41
Registered on the 24-1-41
Brought on in Court on the 15-2-41

Dismissed
257741
ASR

In His Majesty's High Court of Judicature
Appellate Side, Bombay

C. I. D. (CRIME)
Regd. No. 4607/c
- 1 APR. 1941
BOMBAY
To

APPLICATION FOR REVISION No. 69 OF 1941

OF 1941

~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~

The 31st day of March 1941.

~~THE SESSIONS JUDGE~~ COMMISSIONER OF POLICE, BOMBAY.
~~XXX~~ ~~XXXXXXXXXX~~

Upon reading the WRIT issued by this COURT on the 6th day of
letter
March 1941, No. 662 and the ~~RETURN~~ No. 5034 ~~XXXXXXXXXX~~
c/431 P.C.B.

~~XXXX~~ The petitioner Alla Datta s/o Mahomed
Siddick (externee) applied for revision of
the order ~~XXXX~~ passed by the Commissioner
of Police, Bombay, -- W.R.G. Smith, Esquire,
~~XXXXXXXX~~ -- on the 6th December 1940 direct-
ing the petitioner to remove himself from
the City of Bombay under Sec. 27(1) of Act
XIV of 1902 as amended by Bombay Act XIV
of 1938 and forbidding him from entering
the City of Bombay without the permission
~~Sentence~~ in writing of the Commissioner of
Police, Bombay for a period of two years
from the date of his removal, the Secretary
to the Government of Bombay, H.D., having
~~XXXXXXXXXX~~ 1940.

Sessions Judge
District Magistrate
of the Commissioner of
Police making return
thereunto
on the
10th day of March 1941,
in the case marginally noted and
upon reading the RECORD and
PROCEEDINGS in the case,
Counsel Dr. Ambedkar with
and hearing / Mr. G. J. Mane

for the ~~XXXXXX~~ petitioner
and the Advocate General
with the Government Pleader

for the Crown, the High Court
passed the following Order on
st
the 31 day of March 1941:

Original Court

Order in Appeal, if any

Passed by

Date of order in appeal

will follow) For the reasons stated in the accompanying judgment, the
Court upholds the preliminary objection taken by the Advocate
General that the Revision does not lie and discharges the Rule.

By the Court,

m.g. Re
Deputy Registrar.

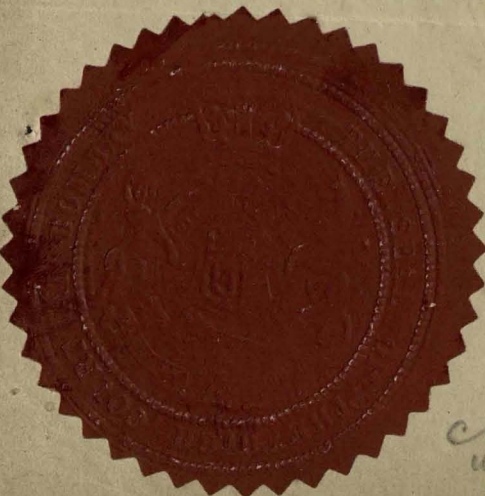
m.g. Re
Sealer.

The 1st day of April 1941

Through the District Magistrate of

Despd. 1/4/1941.

[P.T.O.]



CB
1/4

1 P 23

m.g. Re
2/4

NOTE I.—The within-mentioned order (and the judgment accompanying it, if any) should be communicated to the Court which originally tried the case after proper execution of the order (*vide* Circular No. 1667 of 15th July 1910).

NOTE II.—When the Writ is addressed to a First Class Magistrate who disposed of the accused's appeal, he should communicate the order noted within (and the judgment accompanying it, if any) after proper execution thereof to the Magistrate who originally tried the case (*vide* Circular No. 1667 of 15th July 1910).

NOTE III.—Returns should be made to all Writs issuing from the High Court, if possible within a fortnight, in the form of an endorsement on the Writ certifying its execution, or the reasons which may have prevented its execution (*vide* Circular No. 100 of the High Court Criminal Circular Order Book).

21
No 92053 - JUL 1941
of 13/12/41

JUL 4 1941

Returned and copies
to the Dy. Registrar, High Court, Bombay,
duly noted.

2 copies of the High Court
judgment ~~received~~^{sent} under his letter
No 1011 of 4.4.41, have been received
in this office.

W. Ramani Supt
for Dy. Comm. of Police
Bombay



one typed copy

CRIMINAL JURISDICTION

Confirmation Case No. ~~of 193~~
Appeal No. of 193
Reference No. of 193
Review No. of 193
Application for Revision No. *69* of 19*41*

IMPERATOR vs. *Ala Datta S/o Mahamed Siddik.*

Decided on *31st March 1941*

1. Sent to the Record Room

[Signature]
Court Sheristedar.
[Signature]

2. Received and entered in the Catalogue
of Criminal Cases, Class

[Signature]
Record Keeper.

Bombay, *24-9-1941*