

(1953) 11 BOM CK 0004

In the Bombay High Court

Case No : Criminal Revision Application No. 1033 of 1953

Bai Nirmalabai Revadas

APPELLANT

Vs

Revadas Bhikhabhai

RESPONDENT

Date of Decision : 19-11-1953

Acts Referred:

Bombay Prevention of Hindu Bigamous Marriages Act, 1946 — Section 5, 8
Criminal Procedure Code, 1898 (CrPC) — Section 10, 12, 18, 28, 29

Citation : AIR 1954 Bom 337 : (1954) 56 BOMLR 249 : (1954) ILR (Bom) 610

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : H.M. Choksi, Govt. Pleader, M.V. Paranjpe, for the Appellant; S.G. Patwardhan, for the Respondent

Judgement

Shah, J.—The complainant Nirmalabai filed a complaint --being Case No. 12/ S/53-- in the Court of the Presidency Magistrate, 17th Court, Mazagaon, Bombay, against Her husband Rewadas Bhikabhai for an offence u/s 5, Bombay Prevention of Hindu Bigamous Marriages Act, No. 25 of 1946. It was the case of the complainant that even though the respondent was married to her, he contracted a bigamous marriage on 19th January 1953, at Broach with one Champabai and thereby committed an offence u/s 5, Bombay Prevention of Hindu Bigamous Marriages Act, 25 of 1946.

The learned Magistrate was of the view that the offence having been committed within the territorial limits of the Magistrate, First Class, Broach, he had no jurisdiction to try the case. The learned Magistrate, therefore, dismissed the complaint. The complainant has come to this Court in revision.

2. On behalf of the complainant reliance was placed upon Section 8 of the Bombay Act 25 of 1946 in support of the contention that even though the offence alleged by the complainant to have been committed by the respondent was committed in the town of Broach, the Presidency Magistrate in the City of Bombay had territorial jurisdiction to try that offence. Section 8 of the Act

provides:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence u/s 5 may be tried by any Court of a Presidency Magistrate or a Magistrate of the First Class."

3. It was urged that Section 8 of the Act enabled every Presidency Magistrate and every Magistrate of the First Class in the State of Bombay to try any offence u/s 5 of the Act 25 of 1946, whether or not the offence is committed within the limits of his territorial jurisdiction. Power to try offences u/s 5 is undoubtedly conferred upon Presidency Magistrates and the Magistrates of the First Class by Section 8 and that power is conferred "notwithstanding anything contained in the Code of Criminal Procedure, 1898." But in my judgment, Section 8 does not confer jurisdiction upon all Magistrates of the First Class and the Presidency Magistrates irrespective of the extent of their territorial jurisdiction.

Section 28, Criminal P. C. provides for the trial of offences under the Indian Penal Code by the High Court or the Court of Session, or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable. Section 29, Criminal P. C. provides for the power of Courts to try offences other than those under the Code. That section prescribes that when an offence under any law other than the Indian Penal Code is made triable by any Court mentioned in that law, such Court shall try the offences, and when no Court is mentioned, such offence is triable by the High Court or the Court mentioned in the last four entries in the eighth column of Schedule II of the Code.

An offence u/s 5 of the Act 25 of 1946 is made punishable with imprisonment for 7 years, and in the absence of an express provision to the contrary, it would be triable by the High Court or the Court of Session, Section 8 of the Act, however, makes an express provision to the contrary and provides for trial of offences u/s 5 of the Act by the Courts of the Presidency Magistrate and the Magistrate of the First Class. It was urged that even if the Legislature had provided that offences u/s 5 of the Act shall be triable by Courts designated therein, those Courts would be competent by Section 29 (1), Criminal P.C. to try those offences; and therefore, it was contended that it could not have been the intention of the legislature by the use of the expression "notwithstanding anything contained in the Code of Criminal Procedure, 1898", merely to provide what was expressly provided by the Code.

It is unnecessary in the view I take to enter into a detailed examination of the diverse provisions of the Criminal procedure Code to ascertain what other provisions besides the provisions of Schedule II of the Criminal P. C., were not to apply to the trial of offences under s. 5 of the Act. section 5 (2), Criminal P. C. provides that:

"All offences under any other law (other than Indian Penal Code) shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating

the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

4. It is evident from that section that the provisions of the Criminal P.C. apply to the investigation, inquiry, into and trial of all offences under the special laws, except where a provision to the contrary is made therefore in the special law. There is no express provision made in the Bombay Prevention of Hindu Bigamous Marriages Act, 25 of 1946, for the venue of enquiry and trial of offences committed under that Act. The provisions of Chapter 15 of the Code relating to the "place of inquiry or trial" would, by the operation of Section 5 (2), apply to the trial of offences under that Act.

The Bombay Prevention of Hindu Bigamous Marriages Act, 25 of 1946, does not lay down any procedure for the "manner" of investigation, inquiry and trial of offences thereunder, and the manner of investigation, enquiry and trial must, it is not disputed, be as provided by the Code of Criminal Procedure. It would then be difficult to accept the view that the Legislature intended that the provisions of Section 5 (2) read with Chapter 15 of the Code relating to the place of enquiry and trial were not to apply to the proceeding u/s 5 of the Act.

Therefore, by the use of the expression "notwithstanding anything contained in the Code of Criminal Procedure, 1898," in Section 8 of the Bombay Prevention of Hindu Bigamous Marriages Act, 25 of 1946, it was only intended by the Legislature that the Court of a Presidency Magistrate or of a Magistrate of the First Class which may not under Schedule II of the Criminal P. C. be competent to try offences u/s 5 of the Bombay Act 25 of 1946, shall be regarded as competent to try those offences.

As stated hereinbefore, Section 5 of the Bombay Act 25 of 1946 lays down the maximum punishment of seven years for the offence of bigamous marriage, & such an offence by reason of Schedule II to the Criminal P. C., 1893, may normally be tried, not by a Magistrate of the First Class or a Presidency Magistrate, but by the Court of Session, and it was with a view to provide that such offences shall be triable by a Presidency Magistrate or by a Magistrate of the First Class competent in that behalf, that Section 8 was enacted.

The fact that a Magistrate of the First Class or a Presidency Magistrate has power to try an offence u/s 5 of the Bombay Act 25 of 1946, does not dispense with the necessity of the Magistrate of the First Class or the Presidency Magistrate having territorial jurisdiction to try the offence. In my judgment, there is nothing in Section 8 of the Bombay Act 25 of 1946 which excludes the application of Section 5 (2) and Chapter 15 of the Criminal P. C., 1898, to offences under that Act. The view taken by the learned Presidency Magistrate, therefore, appears to be correct.

5. It was then urged by Mr. Paranjpe on behalf of the complainant that this Court should in the special circumstances of the case invest the Presidency Magistrate with jurisdiction to try the case filed by the complainant Nirmalabai. In my view,

the High Court is not a competent authority to invest any Magistrate with jurisdiction, territorial and extra-territorial. It is the State Government which is authorised by the Code to appoint sessions Judges, Presidency Magistrates and the Magistrates of the First, Second and Third Class; see Sections 9, 10, 12 and 18 of the Code.

The territorial jurisdiction of the Courts under the Code depends upon the appointment to a particular Court, and not upon any investiture by the High Court. It is true that when a complaint or a proceeding is filed in a Court which is otherwise competent to try it under the Criminal P. C. by reason of Section 526 of the Code this Court may be entitled to transfer the complaint or proceeding to any competent Court which may not have territorial jurisdiction over the complaint or the proceeding.

But this Court has no jurisdiction to invest a Court Incompetent to try a case before which a case is pending with authority to try that case. This Court has jurisdiction to transfer cases pending in subordinate Courts competent to entertain and try them to other Courts subordinate thereto, but has no jurisdiction to confer authority upon Courts to enquire and try cases which they had initially no jurisdiction to entertain. This Court has, therefore, no jurisdiction to invest the Presidency Magistrate in the City of Bombay before whom the complaint filed by the complainant is pending with jurisdiction to enquire into and try her case.

6. The rule is, therefore, discharged.

7. Rule discharged.