

(1988) 12 KL CK 0030
In the High Court Of Kerala
Case No : Criminal A. No 215 of 1988

Health Inspector, Tellicherry Municipality	APPELLANT
Vs	
K. Jayarajan and another	RESPONDENT

Date of Decision : 01-12-1988

Acts Referred:

Kerala Municipalities Act, 1960 — Section 27(3), 389, 393

Citation : (1988) 2 KLJ 889

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : K.J. Joseph, for the Appellant; P.V. Madhavan Nambiar and T.V. Prabhakaran, for the Respondent

Final Decision : Allowed

Judgement

S. Padmanabhan, J.—Health Inspector, Tellicherry Municipality, complainant in S.T. 458 of 1986 on the file of the judicial first class magistrate, Tellicherry is the appellant. Complaint is for erecting and running a sugar cane crushing machine without licence inspite of notice and warning. Acquittal was solely on basis of the decision in Abraham Sunny v. Sreemathy Amma (1974 KLT 755) on the ground that the appellant was not entitled to prosecute because the Municipal Commissioner was not competent to delegate his function and authorise somebody else to prosecute the offender. The decision in Abraham Sunny's case (1974 KLT 755) was rendered interpreting the provisions of Ss. 15, 419 and 425 of the Kerala Municipal Corporations Act, 1961 which are not identical to the corresponding provisions contained in Ss. 27(3), 389 and 393 of the Kerala Municipalities Act of which alone we are concerned in, this case.

2. It is true that the words used in S. 425 of the Municipal Corporations Act and S. 393 of the Municipalities Act are identical and they read "The Commissioner may take, or withdraw from, proceeding against any persons" Disagreeing with a contra view taken by the Bombay High Court in The State Vs. Manilal Jethalal, the Supreme Court held in Mangulal Chunilal Vs. Manilal Maganlal and Another,

interpreting an identical provision in S. 481 of the Bombay Provincial Municipal Corporation Act that:

But we are not free to interpret the words "take proceedings" to mean "order proceedings to be taken because the word "take" is an English word and we can only ascribe to it a meaning which it bears in the English language.

3. It was in view of this interpretation given by the Supreme Court to an almost identical provision coupled with the prohibition contained in S. 15 of the Municipal Corporations Act that the Division Bench in Abraham Sumy's case (1974 KLT 755) held that the Commissioner cannot delegate his power of instituting prosecution. S. 15 is the provision which authorises the Commissioner to delegate his ordinary powers, duties or functions. That provision contains an express prohibition from delegating certain powers, duties or functions conferred or imposed upon or vested in him by certain provisions including S. 425. S. 419 thereof fixing a period of limitation for making complaints said "unless complaint is made within six months from the commission of the offence, by the police or the commissioner or by a person authorised in this behalf by the council or the standing committee or the commissioner". The Division Bench said that the commissioner's power of delegation are provided for in S. 15 and circumscribed by the provisions therein. The delegation of the powers under S. 425 was prohibited by the express provisions in S. 15. Considering the provisions of S. 419 it was held that it deals with only the period of limitation and it is impossible to read into that provision an enabling power of delegation in derogation of S. 15. These are the provisions under which that decision was rendered.

4. In the Kerala Municipalities Act the power of delegation is provided in S. 27 (3). It says that subject to any directions given or restrictions imposed by the Government or the municipal council, the commissioner may, by order in writing, delegate any of his functions to any officer or servant of the council or to any officer of the Government. So also it is provided that the exercise or discharge of any functions so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the commissioner and shall also be subject to his control and revision. This provision has drastic difference from S. 15 of the Municipal Corporations Act. The exemptions contained in that provision are not there in S. 27 (3) of the Kerala Municipalities Act in the matter of delegation. There is no prohibition against delegating the power of prosecution.

5. S. 389 of the Kerala Municipalities Act dealing with persons empowered to prosecute says that the complaint could be by the police, or the commissioner or by a person expressly authorised in that behalf by the council or the commissioner within three months of the commission of the offence.

6. It may be true as observed by the Supreme Court in Mangalal Chunal Vs. Manilal Maganlal and Another, the words "take proceedings" in S. 393 (a) of the Kerala Municipalities Act also may not be capable of an interpretation to mean "order proceedings to be taken". But the untrammelled power of delegating that

function is there in S. 27 (3) unlike S. 15 of the Municipal Corporations Act. Unlike S. 419 of the Municipal Corporations Act S. 389 of the Municipalities Act is not an isolated provision. It stands along with S 27(3) and both will have to be read together. The prohibition or exemption contained in S. 15 of the Municipal Corporations Act against delegation of power of prosecution under S. 425 cannot be read into S. 27(3) of the Kerala Municipalities Act which is an independent statute. When Sections 27(3), 389 and 393 of the Kerala Municipalities Act are read together it is clear that the power given to the commissioner under S. 393 to "take proceedings" is allowed to be delegated under S. 27 (3) and such power of delegation is confirmed and reiterated in S. 389 which is not only the provision providing for limitation but also one empowering prosecution as the heading of the Section "persons empowered to prosecute" indicates. In the corresponding provision contained in S. 419 of the Municipal Corporations Act the heading is "period of limitation for making complaints". That change in heading must be read along with the restrictions or prohibitions contained in S. 15 thereof which are absent in S. 27 (3) of the Municipalities Act. The distinction is thus crystal clear. Divergent provisions contained in different Statutes cannot be given identical interpretation simply because there is similarity as one or more aspects. All the relevant provisions will have to be read together to understand the legislative intent. Otherwise interpretation will be running the risk of going against what the legislature intended. So also the law laid down by the interpretations of the provisions of a particular Statute cannot be applied to the provisions of another Statute having provisions at variance. Acquittal was only on the ground that the appellant was not competent to prosecute. That was merely following the decision in Abraham Sunny's case (1974 KLT 755) which is evidently not applicable to the present case. The learned Magistrate did not understand the distinction. The counsel for the respondent was therefore not able to support the acquittal. He only wanted a remand for a decision on the merits.

The criminal appeal is allowed and the order of acquittal is set aside. The case is remanded for further trial and disposal of the merits according to law after allowing both sides to adduce evidence. If they want.