

(1951) 10 BOM CK 0005

In the Bombay High Court

Case No : Criminal Application for Revision No. 614 of 1951

Mulchand Khushiram

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-10-1951

Acts Referred:

City of Bombay Police Act, 1902 — Section 111
Penal Code, 1860 (IPC) — Section 441

Citation : AIR 1952 Bom 302 : (1952) 54 BOMLR 158 : (1952) ILR (Bom) 762

Hon'ble Judges : Chainani, J;Bavdekar, J

Bench : Division Bench

Advocate : Gopaldas N. Lala, K.J. Khandalavala, Bhaishankar Kanga and Girdharlal, for the Appellant; C.K. Shah, for H.M. Choksi, Government Pleader, for the Respondent

Judgement

Chainani, J.

(1) This is an application in revision by the accused against his conviction u/s 111 of the City of Bombay Police Act and the fine of Rs. 20 imposed upon him.

(2) The accused has been found guilty of trespassing upon an open plot of land belonging to Sonavala & Co., Ltd., of which company the complainant is the manager. The accused challenges his conviction on the ground that Section 111 of the City of Bombay Police Act does not apply in cases of trespass on open plots of land. Section 111 of the City of Bombay Police Act is in the following terms:

"Whoever without satisfactory excuse wilfully enters or remains in or upon any dwelling house or premises or any land or ground attached thereto, or on any ground, building, monument or structure belonging to Government or appropriated to public purposes, or on any boat or vessel, shall, whether he causes any actual damage or not, be punished with fine which may extend to twenty rupees."

Leaving out of consideration boats and vessels, the section deals with trespass on two kinds of properties, private properties and secondly properties belonging to Government or appropriated to public purposes. The plot, on which the accused is said to have committed trespass, does not belong to Government, nor is it appropriated to public purposes. The accused can, therefore, be held liable only under the first part of the section. He would be so liable, if the word "premises" can be said to include open land. It is true that according to its dictionary meaning the word "premises" includes land. But as pointed out in the case of "Beacon Life and Fire Assurance Co. v. GIBB", (1862) 1 Moo PC (NS) 73, the word "premises" in popular language frequently means buildings. The question to be determined, therefore, is whether the word "premises" is used in this restricted sense in Section 111 of the City of Bombay Police Act. The reply to this question is provided by the words used in the section itself. The words "or any land or ground attached thereto" clearly show that the word "premises" was not intended to include any land or ground. For otherwise the words "or any land or ground attached thereto" would be superfluous.

If the intention of the Legislature had been to provide for cases of trespass not only upon buildings but also on lands, the words in the section would have been somewhat as follows, "in or upon any building or land" and not "in or upon any dwelling house or premises or any land or ground attached thereto". This intention of the Legislature is also made clear by the different language used in the second part of the section, the words used being "or on any ground, building, monument or structure belonging to the State or appropriated to public purposes". In the case of properties belonging to the State or appropriated to public purposes, the Legislature has, therefore, made the section applicable to cases of trespass on open plots of land by specifically using the words "or on any ground".

(3) It has been urged before us that the object of Section 111 is to deal with acts of trespass in circumstances in which they would not constitute offences under the Indian Penal Code. u/s 441, Indian Penal Code, a material ingredient of the offence of criminal trespass is entering into or remaining upon someone else's property "with intent" to commit an offence or to intimidate, insult or annoy any person in possession of such property. No such intention is required for an offence u/s 111 of the City of Bombay Police Act. A person would be guilty of this offence, if he enters or remains in or upon any property without any satisfactory excuse even if he does so without the intention mentioned in Section 441, Indian Penal Code.

It has been urged that the Legislature could not have intended to differentiate between trespass into buildings and trespass upon lands, that the object of the Legislature in enacting Section 111 of the City of Bombay Police Act must have been to provide for all acts of trespass to cases in which they would not constitute offences under the Indian Penal Code, and that we must, therefore, give a wider meaning to the word "premises" so as to make the section

applicable even in cases of trespass upon lands. The intention of the Legislature is, however, to be gathered from the provisions enacted by it. As I have pointed out, the words "or any land or ground attached thereto" in the first part of the section clearly show that the Legislature did not intend to provide for cases of trespass on private lands. This intention is further made clear by the use of different language in the case of private properties and properties belonging to the State or appropriated to public purposes.

(4) During the course of arguments some stress had been laid on the words "any land or ground", and as they both refer to open or unbuilt plots of land, it has been urged that the words "or ground attached thereto" go not only with the words "any dwelling house or premises", but also with the words "or any land". It has further been contended that the first part of the section deals with trespass not only in or upon "any dwelling house or premises" but also upon "any land". We do not think that we can accept this argument, having regard to the words used in the section. If the object had been, as is now suggested, the words would have been, "in or upon any dwelling house, premises or land or any ground attached thereto".

(5) We are, therefore, of the opinion that the word "premises" used in Section 111 of the City of Bombay Police Act does not include open plots of land and that this section does not apply in cases of trespass upon open lands, which do not belong to Government or which are not appropriated to public purposes.

(6) The conviction of the accused and the sentence passed upon him are, therefore, set aside and he is acquitted. Fine, if paid, should be refunded.

(7) Conviction and sentence set aside.