
(1946) 09 AHC CK 0011

In the Allahabad High Court

Case No : Criminal Reference No. 1424 of 1945

Municipal Board, Jhansi

APPELLANT

Vs

Mst. Hans Mukhi Devi

RESPONDENT

Date of Decision : 27-09-1946

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438

Citation : (1946) 09 AHC CK 0011

Hon'ble Judges : Mulla, J

Bench : Single Bench

Advocate : S.N. Verma, for the Appellant; P.C. Chaturvedi, for the Respondent

Judgement

Mulla, J.—This is a reference by the learned District Magistrate of Jhansi. It arises out of a case in which the opposite-party, Mst. Hans Mukhi Devi, was prosecuted by the Municipal Board, Jhansi, for an offence u/s 307 of the Municipalities Act. The case was tried by a Bench of Honorary Special Magistrate who acquitted her. There reference was directed against that finding of acquittal. The recommendation is that the finding of acquittal(sic) should be set aside and the case should be sent back for retrial.

2. I must say at the very outset that I cannot accept this reference because the object which is now sought to be achieved by invoking the revisional powers of this Court could and ought to have been sought by means of an appeal against the finding of acquittal which was always open to the Crown. It is necessary to mention here that the subordinate Courts in making refer rences u/s 438, Criminal Percedure Code, asking this Court to exercise its revisional jurisdiction often seem to ignore the limitation put upon that power by Sub-section (4) of Section 439 of the Code of Criminal Procedure which runs as follows:

Nothing in this section applies to an enrty made u/s 273, or shall be deemed to authorise a High Court to converts finding of acquittal(sic) into one of conviction.

3. In the present case it appears that a notice was issued to Mst. Hans Mukh

Devi by the Medical Officer of Health Jhansi, asking her to demolish a postion(sic) of her building constructed by her. She did not comply with that notice and was consequently prosecuted for having committed an offence u/s 307 of the Nunicipalities Act (II of 1916). Her defence was that she had made the constructions in accordance with a plan which she had submitted to the Municipal Board and which had been approved by the Board. She further contended that the notice issued by the Medical Officer of Health purporting to be u/s 186(sic) of the Municipalities Act was an illegal and invalid notice. The learned Magistrates of the Bench who tried the case decided it in her favour upon the legal plea raised by Mst. Hans Mukhi Devi holding that the notice issued by the Medical Officer of Health purporting to be u/s 186 of the U. P. Municipalities Act (II of 1916) was not a valid notice. It is against this finding of acquittal that the reference made by the learned District Magistrate of Jhansi is directed.

4. From the order of reference recorded by the learned District Magistrate it would appear that in his opinion it was not within the power of the learned Magistrates of the Bench who tried the case to enter into the question of the legality or validity of the notice purporting to have been issued u/s 186 by the Medical Officer of Health. On that point, however, there is the Full Bench ruling of this Court in the case of Dr. Brij Behari Lal v. Emperor through Municipal Board, Saharanpur 1943 A W R (HC)76, in which it has been definitely held that

the Criminal Court trying a case u/s 307 of the Municipalities Act is not debarred from going into the question of the legality of the notice u/s 186 on account of the bar laid down by Section 321 of the Act.

5. It follows, therefore, that the learned Magistrates who tried the case did have the power to consider the question of the validity or otherwise of the notice which was issued in this case to Mst. Hans Mukhi Devi and the view expressed by the learned District Magistrate of Jhansi to the contrary in his order of reference is not correct. The learned District Magistrate has, however, made the reference on another ground also and that is that the decision of the learned Magistrate of the bench on the legal question of the validity or otherwise of the notice is wrong and must, therefore, be set aside and this, Court should order a retrial. I am afraid that even on this point the learned District Magistrate does not stand on entirely safe ground. It appears to me prima facie that there was a grave legal defect in the notice inasmuch as it was issued by the Medical Officer of Health and the question immediately arises for consideration as to whether the Medical Officer of Health had any power to issue a notice u/s 186 of the U. P. Municipalities Act. It is admitted that there is an Executive Officer functioning in the Municipality of Jhansi and u/s 60 (I) (d) of the U. P. Municipalities Act the power to issue a notice u/s 186 can be exercised only by the Executive Officer and not otherwise. It has been suggested in the order of reference that the Medical Officer of Health exercised that power in the present case because it was delegated to him by the Executive Officer presumably u/s 62 of the Municipalities Act which runs as follows:

With the sanction, of the Chairman, an Executive Officer or Medical Officer of Health may empower, by general or special order, any servant of the Board to exercise, under his control, any power conferred on him by or under this Act.

6. To this, however, an objection was taken on behalf of Mst. Hans Mukhi Devi before the learned District Magistrate that the Medical Officer of Health was not a servant of the Board as contemplated by Section 62 to whom the power to issue a notice u/s 186 of the Act could be legally delegated by the Executive Officer. "Servant of the Board", as defined by Section 2 (22), means any person in the pay and service of the Board. It is contended, and prima facie the contention seems to be perfectly sound, that the Medical Officer of Health is not a person in the pay and service of the Board and hence no power to issue a notice u/s 186 of the Municipalities Act could be delegated to him u/s 62 of the Act. I do not propose to decide this matter finally upon this reference. My object is only to show that it cannot be contended that the finding of acquittal recorded by the Magistrate of the bench in the present case was on the face of it wholly wrong. If the finding was wrong, it could be set aside in appeal by this Court when the matter could be fully discussed. The Crown had a right to prefer an appeal, but it did not choose to exercise that right. The reference invokes the revisional powers of this Court merely on the ground that the District Magistrate is of the opinion that the finding of acquittal recorded by the Magistrates of the Bench is a wrong finding. It is not suggested that there has been any irregularity or illegality in the trial itself. If the Crown had filed an appeal from acquittal, as it could have done, this Court would have considered the question of the correctness or otherwise of the finding of acquittal and could have set aside that finding and could have also recorded a finding of conviction instead. I do not see any sufficient reason, in these circumstances, for ordering a retrial. It may also be pointed out in this connection that the notice purporting to be u/s 186 of the U.P. Municipalities Act was issued in this case by the Medical Officer of Health as long ago as the 17th of June, 1944. Having regard to the long period which has elapsed since then, it would have been inadvisable, in my opinion, to order a retrial even upon that ground alone.

7. The result, therefore, is that I reject this reference.