

(1968) 02 BOM CK 0010

In the Bombay High Court

Case No : Criminal Revision Application No. 824 of 1967

Sholapur Municipal Corporation and Another

APPELLANT

Vs

Ramkrishna V. Relekar and Another

RESPONDENT

Date of Decision : 15-02-1968

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 194, 319, 393, 393(1), 477

Bombay Provincial Municipal Corporations Rules, 1949 — Rule 29(1)

Criminal Procedure Code, 1898 (CrPC) — Section 1(2), 345, 345(2), 345(7), 5(1)

Penal Code, 1860 (IPC) — Section 177, 188, 277

Citation : AIR 1970 Bom 333 : (1969) 71 BOMLR 481 : (1970) CriLJ 1330 : (1970) ILR (Bom) 55 : (1969) MhLj 859

Hon'ble Judges : Gatne, J;Chandrachud, J

Bench : Division Bench

Advocate : Prakash S. Shah, for the Appellant; Raghvendra A. Jahagirdar, Hon. Asstt. to Govt. Pleader, for the Respondent

Judgement

Chandrachud, J.—This revision application raises a question of some interest and importance. Stated briefly the question is whether the Commissioner for the Municipal Corporation of Sholapur has power to compound an Offence committed by the 1st respondent under Rule 29 (1) (d) of Chapter VIII of the Schedule to the Bombay Provincial Municipal Corporations Act, 1949, (hereinafter called "the Act"). The 1st respondent brought a scooter within the limits of the Municipal Corporation on the 6th February 1967 without paying the octroi duty. On the 15th of March, 1967, the Municipal Corporation filed the present complaint against the 1st respondent, charging him of the offence of importing the scooter without the payment of duty. The Municipal Commissioner compounded the offence on the 29th of May 1967 presumably in the purported exercise of the power conferred upon him by the bye-laws of the Municipality. The 1st respondent then filed a pursis before the learned Magistrate that the offence was compounded and, therefore, the complaint should be disposed of after recording the composition. By his order dated 24th of July, 1967, the learned Magistrate

has held that the Commissioner has no power to compound the offence and, therefore, the composition cannot be recorded. The correctness of this order is challenged in this revision application. The matter had come up for hearing before Wagle J. who has referred it to the Division Bench.

2. For a proper decision of the question whether the Commissioner has the power to compound the offence, it would be necessary to consider the relevant provisions of the Criminal Procedure Code and of the Act, Section 1, Sub-section (2) of the Criminal Procedure Code provides, to the extent it is material, that in the absence of any specific provision to the contrary, nothing in the Code shall affect any special or local law for the time being in force. Section 5, Sub-section (1) of the Code provides that all offences under Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code. Sub-section (2) of Section 5 provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Criminal Procedure Code, 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. Section 345 of the Code which deals with composition of offences consists of seven Sub-sections. Sub-section (1) provides for the composition of certain offences under the Indian Penal Code by the persons mentioned in the table. Sub-section (2) provides for the composition of certain other offences under the Indian Penal Code with the permission of the Court, Sub-section (7) provides that no offence shall be compounded except as provided by Section 345. Subsections (3) to (6) are not relevant for our purpose.

3. Two schedules were originally appended to the Code of Criminal Procedure, but the first schedule was repealed by Act No. X of 1914. The second schedule contains a Tabular statement of Offences and one of the columns of the Table, viz., Column No. 6, prescribes whether the particular offence is compoundable or not. The schedule can be roughly divided into two parts, the first part dealing with the offences under the Indian Penal Code and the second part with offences against laws other than the Indian Penal Code. The second part which is headed "Offences against other laws" provides in effect that no offence against any law other than the Indian Penal Code can be compounded. The second part deals with offences of four different categories. The first category relates to offences punishable with death, imprisonment for life or with imprisonment for seven years or upwards. The second category deals with offences punishable with imprisonment for three years and upwards but less than seven years. The third category deals with offences punishable with imprisonment for one year and upwards but less than three years. The fourth category deals with offences punishable with imprisonment for less than one year or with fine only. The sixth column in respect of all the four categories says that the offence is "not compoundable." All offences from those punishable with the sentence of fine only to offences punishable with the sentence of death are exhausted by the four categories of the second part of the second schedule and since such offences are

made non-compoundable no offence against any other law, that is to say, a law other than the Indian Penal Code, is capable of being compounded. Now, turning to the provisions of the Act, Section 481 provides by Clause (b) of Sub-section (1) that the Commissioner may "compound any offence against this Act or any rule, regulation or by-law which under" the law for the time being in force may legally be compounded" Section 393 of the Act, which is the only other provision of the Act which requires to be noticed, provides briefly that contravention of certain provisions mentioned in the table contained in the section will amount to contravention of the corresponding sections of the Indian, Penal Code as specified in the table.

4. It is urged by Mr. Shah, who appears on behalf of the petitioners, that the Municipal Commissioner has got the power to compound all offences under the Act, in view of the provisions contained in Section 481 (1) (b) of the Act. We find it impossible to accept this submission. The provision on which Mr. Shah relies says that the Commissioner may compound any offence against the Act if the offence may be legally compounded under the law for the time being in force. The very language of the provision shows that it was never intended to confer an absolute power on the Commissioner to compound any and every offence against the Act or against the rules, regulations or bylaws under the Act. The power conferred by Clause (b) of Sub-section (1) of Section 481 is a qualified power and the nature of that power is that if an offence under the Act is capable of being compounded under any law, as for example, the Code of Criminal Procedure, the Commissioner may compound that offence. It is patent that if the offence cannot be legally compounded under any law for the time being in force, the Commissioner would have no power to compound the particular offence.

5. The real question, therefore, is not whether the Commissioner has got the power to compound the particular offence under Clause (b), but whether as contemplated by that clause there is any law for the time being in force under which the offence may be legally compounded. The only other law which in this behalf would be relevant is the Code of Criminal Procedure. Now, in order to determine whether an offence of the present nature, viz., importation of the goods without the payment of octroi duty, can be legally compounded under the Code of Criminal Procedure, it is necessary to bear in mind the scheme of Section 345 of the Code. The scheme is that offences specified in Sub-sections (1) and (2) can alone be compounded and that too by the persons who are specified in the Sub-sections as being entitled to compound the offences. The additional limitation on the power of composition is that the offences specified in Sub-section (2) of Section 345 can be compounded with the permission of the Court only. Under Sub-section (7) of Section 345, no offence can be compounded except as provided by the section and, therefore, it is clear that the scheme of Section 345 is that offences which are not specified in any of the Sub-sections of Section 345 cannot be compounded. The scheme of Section 345 is not that all offences can be compounded except those which are specified. This aspect is important for the reason that, in view of the provisions contained in Section 345

an offence can be legally compounded under the Code only if the Code specifically provides that the offence can be compounded.

6. That takes us to the second part of the second schedule of the Code, the provisions of which have been set out by us already. It is clear from those provisions that no offence against a law other than the Indian Penal Code can possibly be compounded, because in respect of offences of all categories under the other laws the express provision made in column 6 of the second schedule is that the offences are "not compoundable".

7. It is thus clear that an offence against the Act, being an offence under any other law, cannot be legally compounded under the Code. Apart from the Code, there is no enactment permitting the composition of such offences and, therefore, it must follow that the Commissioner has no power to compound the offence.

8. Mr. Shah says that this construction would render clause (b) of Section 481 (1) nugatory, for what is given by one hand shall have been taken away by the other. We do not agree with this submission. What Clause (b) gives is itself a qualified power. The qualification subject to which the Commissioner may exercise his power to compound an offence is that the offence must be capable of being legally compounded under any law for the time being in force. The intention of the Legislature, therefore, was not to confer a blanket power on the Commissioner to compound offences of all kinds and types, but to retain intact his power, if any, to compound offences under any other law for the time being in force. As the power conferred by Clause (b) is itself limited, it would, in our opinion, not be correct to say that to hold that the power is limited is to render nugatory the power itself. Mr. Shah has drawn our attention to Section 393 of the Act which provides that offences under certain sections of the Act, like Sections 194, 319 and 477, shall be deemed to be offences under Sections 277, 188 and 177 of the Indian Penal Code respectively. Now, the offences under these three sections of the Indian Penal Code are non-compoundable and the argument of Mr. Shah is that the Legislature has given in Section 393 a clue to its intention that all offences against the Act except offences against the sections mentioned in the table to Sub-section (1) of Section 393 should be deemed to be compoundable. This interpretation, in our opinion, is too far-fetched. In the first place, Section 393 has nothing to do with the composition of offences and if Mr. Shah is right that Sub-section (1) of that section furnishes any clue to the intention of the Legislature, such a clue could only be that offences under the sections mentioned in the table are clearly not compoundable. There is nothing in Section 393 from which to infer that for the reasons that offences under certain sections of the Act have been equated with offences under certain sections of the Indian Penal Code which are non-compoundable, offences against other sections of the Act would become compoundable. Whether an offence under any or the sections of the Act is compoundable or not is a question which must be decided by reference to the language of Section 481 (1) (b) and that provision leaves no

doubt that the power of the Commissioner to compound such an offence is subject to the qualification that the offence is capable of being legally compounded under any law for the time being in force. If this test is not satisfied and if this condition is not fulfilled, the Commissioner would have no power to compound the offence.

9. It is really not necessary, in view of the specific provision of Section 481 (1) (b) of the Act, to consider the implication of Section 1 (2) or Section 5 (2) of the Code of Criminal Procedure, but Mr. Shah has relied on those provisions also and we might, therefore, briefly discuss those provisions. Under Sub-section (2) of Section 1, the provisions of the Code cannot affect the provisions of any special or local law unless there is any specific provision to the contrary. Under Sub-section (2) of Section 5 offences under laws other than the Indian Penal Code are required to be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the Criminal Procedure Code, subject to any enactment regulating these matters. Now, the conjoint effect of these provisions is:--

(1) That all offences, whether under the Penal Code or under any other law, have to be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Criminal Procedure Code.

(2) This rule is subject to the qualification that in respect of offences under other laws, that is to say, under laws other than the Indian Penal Code, if there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, such an enactment will prevail over the Code of Criminal Procedure, and

(3) The provisions of special or local law will prevail over the provisions contained in the Code of Criminal Procedure unless there is a specific provision to the contrary.

10. Now, applying these principles, there can be no doubt that the Municipal Commissioner has no power to compound offences under the Act because by reason of the specific provision contained in the second part of the second schedule to the Criminal Procedure Code, such offences cannot be compounded at all. If there were a provision in the Act itself to the effect that the offences under the Act could be compounded, it would have been possible to uphold Mr. Shah's argument that such a provision in the special law would prevail over the provision contained in the Code of Criminal Procedure. As we have, however, indicated earlier, the provision contained in Section 481 (1) (b) of the Act itself gives a place of precedence to the provisions contained in other laws, for what it says is that the Commissioner may compound offences under the Act if such offences can be legally compounded under any law for the time being in force. Thus, even if the provisions contained in Sections 1 (2) and 5 (2) of the Code of Criminal Procedure were taken into consideration, the same result would follow.

11. Before concluding, we might refer to a decision of Chief Justice Chagla in the

case of *Trikamdas Udeshi v. Bombay Municipal Corpn.*, 56 Bom LR 264, to which the learned Assistant Government Pleader has drawn our attention. A person who was found travelling by a tram-car in Bombay without a ticket was called upon by a Traffic Supervisor to pay a sum of Rs. 5/- by way of penalty, which was truly in the nature of composition. He paid the penalty and then filed a suit against the Bombay Municipal Corporation to recover the amount as having been paid under coercion. His contention was that the Municipality had no power to compound the offence, for the offences against the Bombay Municipal Corporation Act, 1888 were non-compoundable. The learned Chief Justice held that the offence which was committed by the plaintiff in travelling by the tram-car without purchasing a ticket was non-compoundable and that, therefore, the Traffic Supervisor had no power to compound the offence, with the result that the petitioner was entitled to recover the amount paid by him under the threat of prosecution. Now, the Bombay Municipal Corporation Act contains in Section 517 (1) (b) a provision analogous to that contained in Section 481 (1) (b) of the Act, and though the language of the two provisions is slightly different, the difference is without a distinction. It is true that the various provisions of the Criminal Procedure Code have not been referred to by the learned Chief Justice, but it is clear from the judgment that the power to compound offences under the relevant provision was not even canvassed.

12. The result may perhaps be unfortunate, for if the petitioner who had evaded the octroi duty is willing to pay the duty and a small penalty in addition, it would be possible to avoid subjecting him to the harassment of a criminal trial. It would, however, appear that under Clause (a) or Sub-section (1) of Section 481 of the Act, it is competent to the Commissioner to withdraw from the proceedings taken by him. If such an application is made by the Commissioner, we have no doubt that it would be dealt with on the merits by the learned Magistrate. We might also draw attention to the observations made by Chief Justice Chagla in the case referred to above that practical difficulties which the Corporation may face by reason of the absence of powers to compound offences under the Act should be got over not by resorting to powers which the Municipality does not possess, but by the necessary amendment of the law."

13. In the result, we confirm the order passed by the learned Magistrate and discharge the rule in this petition.

14. Rule discharged.