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DHAVLE J.

Honorary Magistrate against all the five accused merely on the footing that they had conspired to forge the mortgage deed to support the false claim of Jageshwar and Jagdeo in the case under section 447. There never was any case of criminal conspiracy against these persons apart from the forgery and its user, and it is not suggested by the learned Advocate for the appellants that any evidence was given on the charge of criminal conspiracy apart from what was given in respect of the other offences. The conspiracy was only inferable from the forgery and user, if proved, but would in that case come within the provisions of the Indian Penal Code as regards abetment and would, therefore, not be punishable under section 120B at all. The charge under this section against the accused was, thus, also entirely unnecessary. The formal addition of such a charge has plainly not affected the decision of the case on the merits, and it will, therefore, be sufficient to set aside the convictions of the appellants under this charge.

Appeal dismissed.

REVISIONAL CRIMINAL.

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April 10, *May* 2.

Before Dhavle and Rowland, JJ.

DWARKA MAHTON

v.

PATNA CITY MUNICIPALITY.*

Bihar and Orissa Municipal Act, 1922 (*Act VII of* 2), *sections* 194 *and* 360—*proper authority to judge the* 'riety *of requisition—Court or municipal authorities—* dy *available to owner or occupier by way of objection* ' *section* 360—*owner whether precluded from question-* 'e *propriety of original notice before magistrate—*

'minal Revision no. 592 of 1934, from an order of P. Ghosh, 'ecial Magistrate, Patna, dated the 26th September, 1934, ; an application against the order of C. S. Jha, Esq., Assistant ', Patna, dated 9th August, 1934.

notice to demolish the building—absence of choice between alternatives implied in section 194(1)—notice, whether legal—objection filed a day late entertained and enquired into by municipality—prosecution for failure to comply with original requisition, whether maintainable—principles to be followed in the interpretation of statutes.

It is not necessary for the legality of a requisition under section 194(*1*) of the Bihar and Orissa Municipal Act, 1922, that the building should be found by the Courts to have been in a ruinous condition and dangerous to person or property. It is for the Municipal Commissioners to decide whether the issue of a requisition is necessary.

Gopee Kishen Gossain v. *H. W. Ryland*(1) followed.

The remedy available to the owner or occupier who desires to dispute the propriety of the requisition is by way of an objection under section 360 of the Act. It is not open to him to urge before the Court on a prosecution under section 194(*2*) that the requisition for demolition should be held to have been unnecessary in view of the condition of the building.

Neither the fact of repairs made by the owner or occupier nor the condition of the house as it appeared to the magistrate has any bearing on the question whether the owner or occupier is liable to be convicted and fined under sub-section (*2*) of section 194 for failing to comply with the requisition under clause (*ii*) of sub-section (*1*).

Where the Municipal authorities choose to entertain and enquire into the objection of the owner, which should have been filed a day earlier, it is not open to the prosecute him for failure to comply with the original sition taking advantage of the technical defect th objection was late by one day.

Observations on the general principles to be ap the interpretation of statutes.

The scheme of the Act is that it is for the Mu to decide not only whether a building is in a ruir tion or is dangerous to person or property, but a demolition is necessary or repairs would suffice.

(1) (1868) 9 W. R. 279.

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Where, therefore, in the original notice under section 194(1) of the Act the Commissioners called upon the owner to demolish the building instead of giving him the choice of one of the alternatives implied in the wording of the sub-section "to demolish, secure or repair such building............................".

Held, that the notice was not illegal.

The facts of the case material to this report are set out in the judgment of Dhavle and Rowland, JJ.

The case was in the first instance heard by Macpherson, J. who referred it to the Division Bench by the following judgment:—

MACPHERSON, J.—The petitioner has been fined Rs. 25 under section 194(2) of the Bihar and Orissa Municipal Act, 1922, for having failed to comply with a municipal notice issued on the 10th and received on the 14th February, 1934, directing the petitioner to demolish the front part of his house within a week of the notice or to file objection within five days. He failed to file objection within the period named and he did not comply with the terms of the notice within seven days.

Certain general and somewhat vague objections have been taken to the procedure of the Municipality; but it is quite clear that only one point is open to the petitioner. It relates to the notice issued under section 194(1)(ii) of the Act. As it stands at present the notice retains the words "*tore dijiye*" whereas the succeeding words "*marammat kardijiye*" have been penned through. This would appear from the papers on record to be in accordance with the intention, it being supposed that the building was too dangerous to be allowed to stand. The point, however, is whether section 194(1) (ii) warrants a [illegible] for demolition only. The provision uses the words 'within seven [illegible] to demolish, secure or repair such building, etc." This is a point [illegible]h general importance that it would be well to have it decided [illegible]ench. I accordingly direct that it be placed before a Bench.

[illegible]n this reference.

[illegible] *De*, for the petitioner.

[illegible] one for the opposite party.

[illegible]AVLE AND ROWLAND, JJ.—This is an applica-[illegible]evision against a conviction under section [illegible] the Bihar and Orissa Municipal Act, 1922, [illegible]ntence of a fine of Rs. 25 or in default a [illegible]mple imprisonment. On the 14th of Febru-[illegible] a notice was served by the Patna City

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Municipality on the petitioner, as the owner of a holding, requiring him within 7 days to demolish the front portion of his house (*makan ke samne ka hissa*), and intimating as required by section 359(*2*) of the Act that if he had any objection to make to the requisition he should prefer it within five days, failing which the demolition will be carried out by the Municipality and the expenses recovered from him. The notice also added that the person addressed would, if he failed to comply or prefer an objection, be prosecuted. The petitioner did not comply with the notice, but filed an objection on the 20th February explaining, as he says in the fourth paragraph of his petition in revision, that demolition was unnecessary as the damage done to the building by the earthquake was in no way dangerous and repairs would be sufficient for which a month's time was prayed for, and further praying

> "that an expert might be called after a month to inspect the repair, and thereupon, if anything still remained to be done, the petitioner expressed his readiness to carry them out".

On the 10th of April, 1934, the Municipalit[y] issued another notice to the petitioner requiring him t[o] be in attendance on the spot on the 12th of April 1934, at 9.30 in the morning so that the dangerou[s] portion of the holding could be pointed out to him This was doubtless in response to the petitioner'[s] representation of the 20th February, and the Mu[nici]pal Engineer inspected the house in the presen[ce of] the petitioner on the 12th April and recorded a that the first floor was to be dismantled totally a two central pillars to be rebuilt after the disma[ntling] but that if the owner wanted to keep the first fl[oor he] should dismantle the main wall of the eastern v[erandah] from the very foundation, and rebuild it on foundation, etc. On this report the Munici[pal Engi]neer appears to have been asked whether the had complied with the requisition or no[t ...] Sectional Officer had reported on the 27th [...] the petitioner had not removed the danger[ous ...]

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The Municipal Engineer reported on the 21st April that the petitioner had not complied with the requisition, and he was thereupon prosecuted.

There was and is no dispute that the petitioner received the notice under section 194(*1*) (*ii*) on the 14th February and failed to comply with it either by demolition or by preferring an objection within five days. It was contended before the trying magistrate that no demolition was in fact necessary. This defence was rightly held to be no answer to the charge, for section 194 authorizes the municipality to make a requisition

> "when it appears to the Commissioners that any building, part of a building, wall,...............is in a ruinous condition and dangerous to persons or property".

It is not necessary for the legality of the requisition that the building should be found by the courts to have been in a ruinous condition and dangerous to persons or property. Should the house-owner be disposed to dispute the question whether the building is in such a condition, he is entitled under section 360 to prefer an objection within five days and the Chairman or Vice-Chairman or the Commissioners at a meeting, as the case may be, are to dispose of it under section 362, and record an order withdrawing, modifying or making absolute the requisition, and if such order does not withdraw the requisition, it has to specify the time ...hin which the requisition is to be carried out. ...t is the procedure provided by the Act, and it is ... open to the petitioner to urge before the courts ... the requisition for demolition should be held to ... been unnecessary in view of the condition of the ...ing. It is for the Municipal Commissioners to ... whether the issue of a requisition is necessary: ...as held on a construction of the similar provi... ...f section 64 of the Bengal District Municipal ...ment Act, (Bengal Council) Act III of 1864, ... *Kishen Gossain* v. *H. W. Ryland*(1).

...as been contended on behalf of the petitioner ...notice under section 194 was illegal because ...d him merely to demolish the building,

(1) (1868) 9 W. R. 279.

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whereas, it is said, he should have been given the choice of one of the alternatives implied in the wording of the sub-section "to demolish, secure or repair such building, wall, etc." The notice was on a printed form which spoke of demolishing or repairing—"*tor dijiye ya marammat kar-dijiye*", but the alternative of repairing was penned through. Macpherson, J. who first heard this case, sitting singly, considered that this was a point of such general importance that it would be well to have it decided by a Bench. The case has accordingly come before us, but neither the Crown nor the Municipality have entered appearance to oppose the petition. The point is apparently one of first impression. We must, therefore, construe the section in the light of the general principles which are to be applied in the interpretation of statutes. The first principle is that the intention of the legislature is to be ascertained by reference to the words used (Beal's Cardinal Principles of Legal Interpretation, 3rd Edition, p. 314); and the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with rest of the statute (*ibid*, page 343). Where the language of a statute is clear and unambiguous it must be interpreted in its ordinary sense. A reasonable interpretation is to be preferred to one that leads to unreasonable results (*ibid*, p. 37[illegible]). The state of the law at the time a statute was p[illegible] matter material to be considered to ar[illegible] intention of the legislature (*ibid*, p. 321).

Section 194 of the Bihar and Orissa Act takes the place of section 210 of Municipal Act, 1884, which (as amend[illegible] empowered the Commissioners, in a[illegible] present, to require the owner or occupie[illegible]

> "within seven days to take down, secure or r[illegible] wall or other structure *as the case may require*".

We feel no doubt on the language [illegible] enactment, that it was intended th[illegible] sioners should come to a decision bot[illegible]

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building, wall or structure was in a ruinous state and dangerous and as to what action the case might require by way of remedy: and should issue a requisition accordingly. In the Bihar and Orissa Municipal Act, section 194, the words "as the case may require" are omitted; but they may have been dropped merely as being unnecessary; it would not be safe to draw from that fact an inference that a substantial alteration in the law was intended; an alteration that might make the power entrusted to the Municipality for the public benefit largely ineffective. Such a construction is to be avoided if the language used will bear a meaning more in harmony with the general purpose of the statute, *E. C. K. Ollivant* v. *Rahimtullah Nur Mohamed*(1).

As we have already seen, if the owner or occupier disputes the necessity of doing the thing he is called on to do, he has his remedy by objection under section 360, and the orders which are to be passed on such objection may withdraw, modify or make absolute the previous requisition. The procedure seems nugatory unless at least the final order specifies some definite thing which is to be done; and consistency seems to demand that in issuing the original notice the Commissioners should have the power to call on the owner or occupier to do some definite thing and not merely to choose between several things. It seems to us that the [illegible] the Act is that it is for the Municipality to [illegible] only whether a building is in a ruinous [illegible] or is dangerous to person or property, but [illegible] demolition is necessary or repairs would [illegible] decision of the Municipality is not one [illegible]oned in the courts, but the rate-payer is [illegible] helpless, for he has the alternative of [illegible] objection under section 360 of the Act. [illegible]refore, overrule the contention of the [illegible] the notice was contrary to law in that [illegible] him the choice between demolition

(1) (1888) I. L. R. 12 Bom. 474.

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It was also urged that the Municipality had virtually condoned the delay of the petitioner by issuing its notice of the 10th of April, and in this connection stress is laid on the fact that the trying magistrate, after inspecting the house in the presence of both parties, recorded the opinion that the house was probably not so dangerous as to warrant its being demolished. Some repairs were apparently carried out by the petitioner, but neither this nor the condition of the house as it appeared to the magistrate has any bearing on the question whether the petitioner is liable to be convicted and fined under sub-section (*2*) of section 194 for failing to comply with the requisition under clause (*ii*) of sub-section (*1*). It is clear that if the petitioner had made his objection one day earlier, he would not have been liable to prosecution except for failure to comply with the final order passed under section 362 disposing of the objection and would have been entitled to a further period of grace as provided in that section for compliance with the final order—*see Ram Pratap Lal* v. *Barh Municipality*(1). The objection of the petitioner was in fact inquired into, and the report of the Municipal Engineer is to the effect that instead of demolishing the entire front part of the house, it would suffice if the upper story only were dismantled and the two central pillars rebuilt; it also indicates a possible alternative method of repair by which the first floor also need appear for ever. It seems inconsistent t Municipal authorities should entertain an and have before them a report from t responsible expert showing that specified re than demolition would suffice to render th safe, that they should leave the petitione impression that the carrying out of tho repairs was all that was demanded of h they should still prosecute him for n with the original requisition, taking

(1) (1922) 3 Pat. L. T. 301.

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the technical defect that the objection was a day late—a matter which appears to have escaped notice at the time.

Though the Municipality has prosecuted the petitioner, it has not chosen to oppose the petition in revision. It seems to us that in the circumstances we should not be straining the law unduly in favour of the petitioner if we were to hold that the procedure followed was not in accordance with law and that such a prosecution was not maintainable.

The rule is accordingly made absolute, the conviction set aside and the petitioner acquitted. The fine if paid is to be refunded.

Conviction set aside.

1935.

July 15.

CRIMINAL REFERENCE.

Before Agarwala and Luby, JJ.

KING-EMPEROR

v.

ETWARU DOME.*

Whipping Act, 1909 (Act IV of 1909), section 3—sentence of whipping passed under section 3—sentence of imprisonment in respect of the same offence, whether legal—Criminal Procedure, 1898 (Act V of 1898), section [illegible] under that section, in the absence of a sentence of [illegible]ent, whether legal.

[illegible] a sentence of whipping is passed under section 3 [illegible]ping Act, 1909, a sentence of imprisonment in [illegible]e same offence is illegal.

[illegible] under section 565 of the Code of Criminal [illegible]98, in the absence of sentence of imprisonment,

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*[illegible]erence no. 19 of 1935 made by N. Baksi, Esq., I.C.S., [illegible]ner of Palamau, in his letter no. 3899, dated the