

## REVISIONAL CRIMINAL.

1923

Before Mr. Justice Abdul Raouf.

JAN. 8.

*Mussammatt* GULZAR JAN AND ANOTHER  
Petitioners.

*versus*

THE CROWN—Respondents.

Criminal Revision No. 1137 of 1922.

*Punjab Municipal Act, III of 1911, sections 33, 152, 228—whether Municipal Committee can delegate its powers under section 152 to its President—Authority to prosecute—must be in writing and must give full particulars of the person to be prosecuted.*

*Held*, that the powers conferred upon a Municipal Committee by section 152 of the Punjab Municipal Act cannot be delegated by the Committee to its President, *vide* section 33 of the Punjab Municipal Act.

*Held further*, that only a duly authorised agent of the Municipality can prosecute any person for an offence under the Municipal Act. The authority must in all cases be in writing and must in special cases give full particulars of the person to be prosecuted, *vide* section 228, *Explanation*.

Hari Chand's Municipal Act, 1st Edition, page 230, referred to.

*Case reported by C. W. Jacob, Esquire, District Magistrate, Jullundur, with his No. 3205 of July 1922.*

*The order of the District Magistrate forwarding the case to the High Court runs as follows :—*

The accused on conviction by *Mian Muhammad Abdul Fateh*, exercising the powers of a Magistrate of 1st Class in the Jullundur District, were sentenced, by order, dated the 15th May 1922, under section 152 of the Municipal Act, III of 1911, to pay a fine of Rs. 15 each.

The facts of this case are as follows :—

Two prostitutes, *Gulzar Jan* and *Sardar Jan*, were prosecuted under section 152 of the Municipal Act for failing to obey an order issued by the Municipal

Committee, Jullundur, to remove themselves from a certain locality of the town. An exactly similar case was instituted against other prostitutes in the Court of *Khan Muhammad Zaman Khan*, Magistrate, 3rd class, Jullundur, and resulted in a conviction, which was however upset on appeal by *Rai Sahib Lala Shankar Das* on the 13th of June 1922. The grounds on which the appeal was accepted were based on points of law, and I give below the relevant portion of the appellate Magistrate's decision in the case.

The proceedings are forwarded for revision on the following grounds:—

"The counsel for the appellant has, however, raised an objection to the effect that the notice in question was bad in law as it was not issued by the Committee itself as required under section 152 (1) of the Municipal Act, III of 1911. Counsel for the Municipality urges that the Committee had delegated its powers to the President in its resolution No. 63 of 20th June of 1921, and that consequently as the notice in dispute was issued by the President it was quite legal and valid. But on reading section 33 of the Act it appears that the Committee could not delegate its powers under section 152 of the Municipal Act. Over and above this it further appears on reading section 33 that the 2nd class Committee cannot delegate any of its powers to the President or so without the previous sanction of the Commissioner, and similarly the 1st class Committee without the sanction of the Local Government. In this case no such sanction was ever obtained for delegating such powers to the President, hence notice issued by the latter cannot be held as legal. Another objection in this case is that the authority given to *Pir Bakhsh* for prosecuting people on behalf of the Committee is also not within the purview of law."

"In explanation under section 228 of the Municipal Act it is provided that the authority in all cases must be in writing. This written authority is explained at page 230 of the Act, edited by *Hari Chand, M.A., LL.B.*, in his first edition of 1913. According to this explanation complete and full particulars of the person to be prosecuted should be given with the authority so given to the prosecutor. As this procedure was not adopted in this case hence the prosecutor who appeared in Court was not properly and legally authorised to conduct this case. Under these circumstances there remains no doubt that the prosecution of the appellant was not legal and under the strict sense of law."

I agree with this interpretation of the law, it has also been accepted by the Municipal Committee,

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Jullundur, which has consequently issued revised notices in accordance with a resolution passed at their last meeting. For these reasons this case is forwarded to the High Court with a recommendation that the sentences and fines passed on the appellants Gulzar Jan and Sardar Jan should be remitted.

NOTE :—The fines have been paid.

ABDUL RAOOF J.—For the reasons stated by the District Magistrate I accept his recommendation and set aside the convictions and sentences.

A. R.

*Revision accepted.*

### APPELLATE CIVIL.

*Before Mr. Justice Scott-Smith and Mr. Justice Moti Sagar.*

MUHAMMAD HASSAN-UD-DIN (DEFENDANT)

Appellant

*versus*

SAIF ALI SHAH (PLAINTIFF) } —Respondents.  
AND OTHERS (DEFENDANTS)

Civil Appeal No. 2516 of 1919.

*Custom—Alienation—Sayad agriculturist—Necessity—money borrowed for trade—Second appeal—must be accompanied by copy of first Court's judgment—Extension of time—when allowable—Indian Limitation Act, IX of 1908, section 5.*

One C. A., a *Sayad* agriculturist, mortgaged, on 25th October 1911, a *serai* to one S. S. for Rs. 700 and promised to pay interest at Rs. 1-8-0 *per cent. per mensem.* On 9th January 1914, he sold the *serai* to M. H. D. for Rs. 1,250 which included Rs. 750 payable to S. S., the mortgagee. The plaintiff, a son of C. A., brought two suits praying for declarations that the mortgage and sale should not affect his reversionary rights. Consideration for the mortgage was said to be the amount due on a prior mortgage of Rs. 140, and money taken for purposes of trade.

*Held*, that the alienor in the present case was justified in alienating the *serai* for the purposes stated by him, he having no other means of subsistence.

*Santa Singh v. Waryam Singh* (1), distinguished.

*Held also*, that as the rule requiring the appellant in a second appeal to file a copy of the judgment of the first Court had only been published in the Gazette a few days prior to the presentation of the present appeal, this was a case in which the Court should