

APPELLATE CRIMINAL.

Before Mr. Justice Addison and Mr. Justice Skemp.

THE CROWN—Appellant

versus

MUHAMMAD SHAFI—Respondent.

1927

March 24.

Criminal Appeal No. 811 of 1926.

Punjab Municipal Act, III of 1911, section 228—General delegation of power to institute complaints—whether the authority must contain particulars or names of the persons to be prosecuted.

Held [over-ruling the decision to the contrary contained in *Mussammatt Gulzar Jan v. Crown* (1)] that under section 228 of the Punjab Municipal Act it is *not* necessary for the purpose of making of complaints on behalf of a Municipal Committee that complete and full particulars of the persons to be prosecuted should be given in the written authority granted by the Committee.

And, that it is clear from the Explanation to section 228, that a general authority may be given without naming each accused.

Powell v. The Municipal Board of Mussoorie (2), relied upon.

Hari Chand's Municipal Act, 3rd Edition, page 230, referred to.

Appeal from the order of Lala Wazir Chand, Magistrate, 1st class, Lahore, dated the 14th May 1926, acquitting the respondent.

CARDEN-NOAD, Government Advocate, for Appellant.

GULLU RAM, for Respondent.

JUDGMENT.

SKEMP J.—This is an appeal by the Crown against the order of a Magistrate acquitting the respondent of an offence under section 78 of the Punjab

SKEMP J.

(1) (1923) I. L. R. 4 Lah. 120. (2) (1899) I. L. R. 22 All. 123 (F. B.).

1927

THE CROWN
v.
MUHAMMAD
SHAFI.

SKEMP J.

Municipal Act. The Magistrate did not go into the merits, but followed *Mussammatt Gulzar Jan v. The Crown* (1), "wherein" he said "it is laid down that authority to prosecute must contain the full particulars of the person to be prosecuted". These particulars were not given in this case. It is contended on behalf of the Crown that they are not necessary.

Mussammatt Gulzar Jan v. The Crown (1) is a single Bench judgment decided, not after hearing arguments, but on revision in accordance with the recommendations of a District Magistrate which were accepted by the learned Judge without discussion. The District Magistrate had recommended that the conviction should be set aside on two grounds. It is the second of these which is attacked in this appeal. What the District Magistrate said in this connection was as follows :—

" 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."

The reference to page 230 of *Lala Hari Chand's* first edition of the Municipal Act is entirely erroneous; there is no such statement in his book.

The explanation to section 228 does *not* state that complete and full particulars of the person to be prosecuted should be given. It runs as follows:—

“The Committee may authorize persons to make complaints or give information, without previous reference to the committee, either generally in regard to all offences against this Act and the rules or bye-laws thereunder, or particularly in regard only to specified offences of a specified class. The person authorized may be authorized by office, if he is President, Vice-President, Medical Officer of Health or Secretary of the Committee, or officer-in-charge of a police station; in other cases the authority must be personal. The authority must in all cases be in writing, and may at any time be cancelled by the Committee.”

It is clear from the words used that a general authority can be given without naming each accused.

In *Powell v. The Municipal Board of Mussoorie* (1), the Allahabad High Court considered the effect of section 69 of the North-Western Provinces and Oudh Municipalities Act (XV of 1883) which is in the following terms:—

“A Court shall not take cognisance of an offence punishable under this Act, or the rules made under this Act, except on the complaint of the Municipal Board or of some person authorized by the Board in this behalf”;

i.e., it is, as far as the present purpose is concerned, substantially the same as section 228 of the Punjab Municipal Act, but there is no explanation such as is quoted above. A Full Bench of six Judges unaniously held that this section conferred upon Muni-

1927

THE CROWN

v.

MUHAMMAD

SHAFI.

SKEMP J.

1927

THE CROWN
v.
MUHAMMAD
SHAFI.

SKEMP J.

pal Boards "the power to delegate generally their authority to make complaints in respect of municipal offences," and the learned Chief Justice said at page 129 :

"I can see no *a priori* improbability, no considerations of public policy which would make it unlikely that the Legislature should entrust to a Municipal Board power to confer on other persons not only a specific authority to file a particular complaint, but a general authority to prosecute for municipal offences, including authority to determine whether a prosecution is desirable. * * * *. That the Legislature itself regards such a power as one which may properly be given to a Municipal Board may be inferred from section 186 of the Punjab Municipal Act, 1891, which is in terms practically identical with section 69 of Act XV of 1883, but to which an explanation is appended providing that the committee may authorize persons to prosecute either generally in regard to all offences under this Act and the rules thereunder, or particularly in regard only to specified offences or offences of a specified class".

The explanation to section 186 of the Punjab Municipal Act of 1891 has been amplified in the explanation to section 228 of the present Punjab Municipal Act.

I would therefore hold that the reasoning in the second paragraph from Gulzar Jan's case quoted above is erroneous and hence that the reason for acquittal given by the Magistrate is wrong. This point alone can be considered in the present appeal as no other was taken by the Magistrate. It is still open to the respondent to raise any other defence, technical or on the merits.

I would therefore accept the appeal, set aside the order of acquittal and direct the Magistrate to proceed with the trial in accordance with law.

ADDISON J.—I concur.

ADDISON J.

N. F. E.

Appeal accepted.

Case remanded.

REVISIONAL CIVIL.

Before Mr. Justice Tek Chand.

SIKANDAR KHAN AND OTHERS (PLAINTIFFS)

Petitioners

versus

BALAND KHAN AND OTHERS (DEFENDANTS)

Respondents.

1927

Feb. 18.

Civil Revision No. 119 of 1927.

Civil Procedure Code, Act V of 1908, Order XLIII, Rule 1 (w), and Order XLVII, Rule 7—Appeal—from order granting application for Review—grounds for—Effect of Rules—whether inconsistent—Statutes—construction of—whether decree passed in favour of a number of plaintiffs, one of whom had died during the trial, is a nullity—Revision.

Held that Order XLVII, Rule 7, Civil Procedure Code, is not inconsistent with Order XLIII, Rule 1 (w), nor has it been rendered superfluous by the enactment of the latter rule in the Code of 1908. The right of appeal against an order granting an application for Review given by Order XLIII, rule 1 (w), is qualified and controlled by Order XLVII, rule 7, and an appeal against such an order can lie only on one or other of the three grounds specified therein

Dasu v. Karbasappa (1), dissented from.

Yusaf v. Naza (2), followed.