

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1896.

IN RE LIMBAJI TULSIRAM AND OTHERS.*

December 17.

Municipal Act, Bombay (Bombay Act III of 1888), Sec. 472—Continuing offences—Punishment for such offences after a fresh conviction—Separate prosecution for continuing the offence—Practice—Procedure.

A Presidency Magistrate, having convicted certain accused persons and fined them under section 471 of the City of Bombay Municipal Act (Bombay Act III of 1888), proceeded in the same order, purporting to act under the provisions of section 472, to fine them so much per day in case they continued the offence.

Held, that the latter order was illegal under section 472 of the Act. The section requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to his discretion to determine.

THIS was a reference under section 432 of the Code of Criminal Procedure (Act X of 1882) by W. R. Hamilton, Presidency Magistrate.

The reference was in the following terms:—

“In Municipal Case No. 883 of 1896, the Magistrate, Mr. Webb, who was acting for me, fined one Limbaji Tulsiram on the 8th September, 1896, for an offence under section 257 of the Municipal Act (III of 1888). The order is ‘Fined Rs. 5 and Re. 1 per diem until work completed.’

“The municipality has now made a demand for payment of the daily penalty which they say amounts to Rs. 2, the work being completed on the morning of the 11th September.

“I have the honour to refer the legal question for the favour of the opinion of the High Court, whether I can enforce the payment of this daily penalty.

* * * * *

“I have, therefore, the honour to refer the question, which I have put above, for the consideration of the High Court. I do so more particularly, as Mr. Webb has inflicted a daily penalty in a large number of municipal cases, and it is necessary to decide whether I can enforce the payment of such fines.”

The High Court sent for the record and proceedings in all the cases referred to by the Magistrate.

* Criminal Reference, No. 127 of 1896.

The reference came on for final hearing and disposal before a Divisional Bench (Parsons and Ranade, JJ.).

There was no appearance for either party.

PER CURIAM:—The Presidency Magistrate in these cases, having convicted the several accused persons and fined them under the provisions of section 471 of the City of Bombay Municipal Act, 1888, proceeded in the same order, purporting to act under the provisions of section 472, to fine them so much a day in case they continued the offence. We think the latter order illegal. The section (472) provides that “Whoever after having been convicted of contravening any provision of any of the sections * * * hereinbelow in this section mentioned * * * * continues to contravene the said provision * * * shall be punished for each day that he continues so to offend.” Clearly this necessitates a separate prosecution for a distinct offence,—a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to him in his discretion to determine. The orders in the present cases are bad as being convictions and punishments for offences which the accused persons had not committed, and with which they were not and could not have been charged, at the time the sentences were passed. The effect of such orders would be to deprive the accused persons of the opportunity to deny the commission of the offence or plead extenuating circumstances, and to take away from the Magistrate, who might have afterwards to levy the fine, the discretionary power vested in him by law to determine the amount that should be inflicted after investigation of the case.

We reverse the orders in all the cases under revision.

1896.

IN RE
LIMBAJI
TELSIRAM.