

“5. I called for the papers on a scrutiny of criminal return No. IV.

1896.

IN RE
RANGU.

“6. On going through the papers I am of opinion that the rent charged by the municipality comes under the word ‘rents’ in clause 4 of section 84, Bombay District Municipal Act (VI of 1873). No provision for penalty for non-payment of these rents is attached thereto. The penalty inflicted appears thus to me to be illegal.

“7. I recommend that the order of the Magistrate, so far as it relates to the levy of the penalty, be quashed and the amount ordered to be refunded.”

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

There was no appearance for the accused or for the municipality.

PER CURIAM:—Section 84 of the Bombay District Municipal Act allows penalties to be imposed in addition to the arrears of cesses or other taxes, but it does not provide for the imposition of a penalty in addition to the arrears of rent. We, therefore, reverse so much of the Magistrate’s order as imposes a penalty of annas four.

Order varied.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE JAGU SANTRAM.**

Municipality—Bombay District Municipal Act (Bom. Act VI of 1873), Sec. 84(1)—Contract to collect a tax levied by a municipality—Money due under such contract not recoverable under the section.

1896.

July 23.

A person who had obtained a contract to collect a certain tax imposed by a District Municipality having failed to pay over the money due under the contract at the stipulated time was convicted by a Magistrate under section 84 of the Bombay District Municipal Act (Bom. Act VI of 1873) and ordered to pay it to the municipality with interest, and also to pay a fine, and court-fee charges.

Held, reversing the order, that the section did not apply.

* Criminal Reference, No. 69 of 1896.

(1) See *ante* p. 708.

1896.

IN RE
JAGU
SANTRAM.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882) by H. T. Ommanney, District Magistrate, Poona.

The reference was in the following terms:—

“There is a bye-law of the Jejuri Municipality directing the levy of 6 pies on every sheep killed. Instead of collecting this tax directly through paid servants the municipality gave a contract of it to accused No. 1, Jagu, for Rs. 130 for the year 1895-96. The amount was to be paid, under the contract, in three instalments of Rs. 41, 43 and 43 on prescribed dates, and it was agreed also that Jagu should pay interest on overdue instalments. He failed to pay on the settled date (25th November, 1895) the second instalment of Rs. 43. The municipality, therefore, sent him to the Third Class Magistrate of táluka Purandhar for recovery of the amount of Rs. 43 together with interest due.

“The Third Class Magistrate convicted Jagu on the 20th March, 1896, and passed the following order:—

“I, therefore, order that the accused should pay the amount as follows:—

				Rs.	a.	p.
Principal (arrears)	...	...	...	43	0	0
Interest...	...	...	...	6	7	2
Court-fee expenses	...	...	...	1	0	0
Fine ...	...	...	...	0	12	0
				<hr/>		
			Total ...	51	3	2
				<hr/>		

under section 84 of the Municipal Act of 1873.

“The conviction and sentence appear to the District Magistrate to be illegal. The amount of the contract cannot be said to be either a ‘cess,’ or ‘tax,’ or ‘rents,’ or ‘fees’ mentioned in section 84 of the Act, and as such would not be recoverable under that section. Much less could interest be included within the terms quoted above.

“In these circumstances the District Magistrate recommends that the conviction and sentence be reversed, and the amounts paid by the accused ordered to be refunded.”

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

There was no appearance for either party.

PER CURIAM:—As pointed out by the District Magistrate, the sums that may be due under the contract in the present case do not come within any of the matters provided for by section 84 of the Bombay District Municipal Act. We, therefore, reverse the order of the Magistrate.

Order reversed.

1896.

IN RE
JAGU
SANTRAM.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE SAMSUDIN.**

1896.

Practice—Procedure—Complaint of offences under sections 182 and 500 of the Penal Code (Act XLV of 1860)—Necessary sanction not obtained—Withdrawal of complaint—Discharge of accused—Fresh complaint lodged on same charges—Effect of previous discharge of accused—Criminal Procedure Code (Act X of 1882), Secs. 248, 253 and 403.

August 6.

A complaint was lodged against the accused, charging him with offences under sections 182 and 500 of the Penal Code (Act XLV of 1860). The complainant's solicitor, finding that no sanction had been obtained as required by section 195 of the Criminal Procedure Code (Act X of 1882) for proceeding with the charge under section 182, applied to the Magistrate for leave to withdraw the complaint, which the Magistrate granted, adding to his order the words "accused is discharged."

The complainant having subsequently obtained the requisite sanction filed a fresh complaint on the same charges. It was objected on behalf of the accused that the accused had been acquitted under section 248 of the Criminal Procedure Code (Act X of 1882) and that further proceedings were now barred under section 403. The Magistrate allowed the objection and stopped the proceedings. On application to the High Court,

Held that the order of the Magistrate should be reversed and the complaint investigated. The order stopping the proceedings would be legal only if the accused had been acquitted by a Court of competent jurisdiction, which was not the case, as the Magistrate could not take cognizance of the charge under section

* Criminal Revision, No. 115 of 1896.