

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1896.

July 2.

IN RE RANGU.*

Municipality—Bombay District Municipal Act (Bom. Act VI of 1873), Sec. 84, as amended by Bombay Act II of 1884—Arrears of rent—Penalty in addition to arrears of rent cannot be imposed.

Section 84(1) of the Bombay District Municipal Act (Bom. Act VI of 1873) allows penalties to be imposed in addition to arrears of cesses or taxes, but it does not provide for the imposition of a penalty in addition to the arrears of rents.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882) by J. F. Muir, District Magistrate of Dhárwār.

The reference was in the following terms:—

“ I have the honour to enclose proceedings in case No. 4 of 1896 of the Court of Azám Ramrao Vyasrao Desai, Special Magistrate, Third Class, Dhárwār Town.

“ 2. In this case the Magistrate proceeded against the accused for default in paying within the specified time Rs. 1-12-0 charged as rent by the Dhárwār Municipality for a shop in the market.

“ 3. The Magistrate ordered the rent (Rs. 1-12-0) and a penalty of annas 4 to be recovered from the accused.

“ 4. The rent and the penalty have been paid.

* Criminal Reference, No. 45 of 1896.

(1) Section 84 of Bombay Act VI of 1873, as amended by Bombay Act II of 1884, provides as follows:—

“ Every prosecution under this Act or under the bye-laws made in accordance with the provisions of this Act may be instituted before any Magistrate whether the said Magistrate may be a Municipal Commissioner or not,

and every fine or penalty imposed under or by virtue of this Act or any bye-law made in pursuance thereof,

as also, upon information laid by order of the Municipality, all arrears of cesses or other taxes and such penalties, in addition to the said arrears, not exceeding in any case one-fourth of the amount of the said arrears, as shall be adjudged by the said Magistrate,

and all arrears of stallage and other rents and fees and all expenses,

may be recovered by a summary proceeding before such Magistrate in the manner provided by the Code of Criminal Procedure.

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

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“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.