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point on which we decide this appeal is this that although the Prothonotary may be said to have actually exercised his discretion whether he should or should not sign on the 22nd of April, his decision owing to the circumstances of the case must be thrown back to the 12th, and the order ought to have been signed as of that day.

SHAH, J. :—I agree.

Solicitors for the appellants : Messrs. *Soonderdas & Co.*

Solicitors for the respondents : Messrs. *Motichand & Devidas.*

Appeal dismissed.

G. G. N.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Crump.

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September 22.

EMPEROR *v.* NARANDAS KARSANDAS*.

City of Bombay Municipal Act (Bombay Act III of 1888 as amended by Bom. Act II of 1911), section 394†—Schedule M ‡—Storing of oils without license—Vegetable oils are "oil (other sorts)".

*Criminal Application for Revision No. 222 of 1920.

†The material portion of the section runs as follows :—

Except under and in conformity with the terms and conditions of a license granted by the Commissioner no person shall—

(*a*) keep, in or upon any premises, for any purpose whatever,

* * * *

(*ii*) any article specified in Part II of Schedule M, in excess of the quantity therein prescribed as the maximum quantity of such article which may at any one time be kept in or upon the same premises without a license ;

* * * *

‡ The material portion of Schedule M, Part II, is as follows :—

* * * *

Petroleum as defined in the Indian Petroleum Act, 1899	... 40 gallons.
Dangerous Petroleum as defined in the same Act	... 20 gallons.
Oil (other sorts)	... 15 gallons.

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The expression "oil (other sorts)", as used in Schedule M of the City of Bombay Municipal Act, 1901, includes sweet and cocoanut oil.

It is no defence to a prosecution for storing oils without a license to say that the Commissioner wrongfully refused to grant a license.

THIS was an application to revise conviction and sentence passed by Chunilal H. Setalvad, Acting Chief Presidency Magistrate of Bombay.

The accused was a licensed vendor of vegetable oils in Bombay. At first, he was granted a license to store oils in his shop in any quantity. As his shop was underneath dwelling tenements, the Commissioner refused to renew his license unless he gave an undertaking not to store more than 300 gallons of oil in his shop. The undertaking was not given, and the license was withheld.

On the 18th April 1920, the accused was found to have stored 4,000 gallons of sweet and cocoanut oil in his shop without a license.

The accused was tried for an offence of storing oils without a license (section 394 of the City of Bombay Municipal Act, 1888). He was convicted of the offence and sentenced to pay a fine of Rs. 30.

The accused applied to the High Court.

Baptista, with *Kanga and Sayani*, for the petitioner:—The oils stored in this case are vegetable oils, cocoanut oils, castor oils, which cannot be considered as oil within the meaning of the expression "oil (other sorts)" used in Schedule M, Part II of the City of Bombay Municipal Act as amended by Bombay Act II of 1911. The expression "oil (other sorts)" is used after 'Petroleum' and 'Dangerous Petroleum' meaning thereby that license would be required only for those

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oils which are not less dangerous than 'Dangerous Petroleum' as defined in the Indian Petroleum Act (VIII of 1899). This argument is also supported by the fact that the quantity allowed to be stored by the license is less than the quantity of 'Dangerous Petroleum'.

So far as the vegetable oils are concerned, the flashing point of these oils is at or above 500 degrees Farheinheit and it is much higher than the flashing point of dangerous petroleum which is below 76 degrees Farheinheit. It is the flashing point which is concerned in the definition. Thus the flashing point of the vegetable oils is so high that they are the least inflammable and therefore not harmful. We, therefore, submit that the Legislature could never have intended to include those oils within the expression 'oil (other sorts)'.

Secondly, the storing of the oils in question without a license in this particular case cannot be said to be contrary to the provisions of section 394 of the City of Bombay Municipal Act, 1888, as the license was wrongly refused by the Commissioner. The authorities do go to show that when discretion is to be exercised in granting a license it must be exercised reasonably and it will not be a reasonable exercise of the discretion to deny the license generally or to demand guarantee from the licensee. Here the license is refused to us unless we give an undertaking that we shall not store more than 300 gallons. This is not reasonable exercise of the discretion and if the license is improperly refused it will be tantamount to a grant of the license and the petitioner cannot be punished for storing oils: see Halsbury's Laws of England, Vol. XVIII, page 62; *Board of Education* v. *Rice*[1].

(1) [1911] A. C. 179.

Coltman, with *Crawford, Bayley & Co.*, for the Municipality, was not called upon.

SHAH, J.:—Two points have been argued in support of this application. The first is that 'sweet and cocoanut oil' is not 'oil' within the meaning of the expression "oil (other sorts)" used in Schedule M, Part II, of the City of Bombay Municipal Act as now amended. Secondly, it is urged that the storing of the oil in question without a license cannot be said to be contrary to the provision of the Act, as the license was wrongly refused by the Commissioner.

As regards the first point it may be mentioned that the oils stored in this case are vegetable oils: and it may be assumed that the 'flashing point' of these oils is much higher than that mentioned in the definition of 'petroleum' in the Indian Petroleum Act. The argument is that the expression "oil (other sorts)" means only those oils which are not less dangerous than 'dangerous petroleum' as defined in the Indian Petroleum Act. The argument is based upon the fact that the expression is used after 'petroleum' and 'dangerous petroleum' and that the quantity allowed to be kept without a license is less than the quantity of dangerous petroleum. I do not think that the argument is supported either by the words used or by the scheme of the Schedule as indicated by the various Articles mentioned in Part II. We must take the words "oil (other sorts)" to mean oils other than petroleum as defined in the Indian Petroleum Act and 'dangerous petroleum' as defined in the same Act. Without reading words of limitation, which are not there, it would not be possible to exclude sweet and vegetable oils from the scope of the expression 'oil (other sorts)'.

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Neither the relative position of the expression in the schedule nor the lower limit of the quantity allowed to be kept would be a sufficient ground for importing such a limitation as is suggested on behalf of the applicant, viz., that the expression must mean only those oils whose 'flashing point' is not higher than the 'flashing point' of 'dangerous petroleum' as defined in the Indian Petroleum Act. It seems to me that the learned Magistrate is right in his view that the expression "oil (other sorts)" would include sweet oil, which was stored in this particular case.

As regards the second point, section 394 provides that except under and in conformity with the terms and conditions of the license granted by the Commissioner, no person shall keep in or upon any premises for any purpose whatever any Articles specified in Part II, Schedule M, in excess of the quantity therein prescribed. In the present case it is an admitted fact that at the time, when the oil in excess of the quantity allowed by law was kept, the petitioner had no license. It is urged, however, that the discretion, which the Commissioner has under sub-section (3) of section 394 for granting a license, must be exercised reasonably and that as it has not been exercised reasonably in this case no offence is committed. Assuming, without deciding, that the Commissioner did not exercise his discretion reasonably in refusing to grant the license applied for, I do not see how it could afford any answer to the present charge which is based upon the terms of section 394 under which the petitioner is prohibited from keeping any articles mentioned in Part II, Schedule M, in excess of the quantity allowed, except under and in conformity with the terms and conditions of the license. The argument urged on behalf of the applicant really amounts to this that if a license has been improperly

refused it is tantamount to the grant of a license for the purpose of section 394, and that the oil must be treated as having been kept under the terms of this supposed license to be inferred from the wrongful refusal to grant the license. It may be that the petitioner has a remedy against the Commissioner if he is in a position to establish that the refusal to grant the license is wrongful. We are not concerned with that question in these proceedings. We cannot consider in this case whether the Commissioner ought to grant a license to the petitioner for keeping oil on his premises. I am quite clear that even if the refusal on the part of the Commissioner to grant the license be wrongful, it affords no answer to the present charge which is based upon the simple fact that the petitioner has kept certain oils on his premises without a license contrary to the provisions of section 394 which is an act punishable under section 471 of the City of Bombay Municipal Act.

I would discharge the Rule.

CRUMP, J :—I agree. In my opinion the words "oil (other sorts)" used by the Legislature in Part II, Schedule M, of the City of Bombay Municipal Act indicate oil of a description different from that defined by the two preceding entries. Excepting so far as the word 'oil' is limited by these two preceding entries, it is perfectly general in its scope and must necessarily include oil of any other kind. As it is conceded here that the applicant has stored oil in excess of the quantity of 15 gallons permitted by section 394 read with Schedule M, he has, in my opinion, been rightly convicted of an offence under that section.

As regards the second argument advanced by Mr. Baptista on behalf of the applicant I have only to say this much that though I might be perfectly willing,

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if the matter were properly before me, to accede to the general principle for which he contends, that is to say, that every public officer on whom the Legislature has imposed the duty of granting a license must exercise the discretion given to him in a reasonable manner, still I entirely fail to see how that question arises for our decision here. We are sitting here as a criminal Court and I am entirely at one with my learned brother in holding that a wrongful refusal of a license cannot be pleaded as a defence for doing an act for the doing of which such license is necessary. In other words, it cannot be said that a license which is wrongfully refused is tantamount to the license which ought to have been given but for such wrongful refusal. I agree, therefore, in discharging the Rule.

Rule discharged.

R. R.

CRIMINAL REFERENCE.

Before Mr. Justice Shah and Mr. Justice Crump.

1920.

October 20.

EMPEROR *v.* TUKA NANA RAMOSHI*.

Criminal Tribes Act (III of 1911), section 23†—Member of a criminal tribe —Second conviction for scheduled offence—Enhanced punishment.

The "second conviction" contemplated by clause (*a*) of section 23 of the Criminal Tribes Act 1911 need not be the second conviction after the Act, nor

* Criminal Reference No. 68 of 1920.

† The material portion of the section runs thus :

"Whoever, being a member of any criminal tribe, and, having been convicted of any of the offences under the Indian Penal Code specified in the schedule, is hereafter convicted of the same or any other offence specified in the said schedule, shall, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, be punished,—

(*a*) on a second conviction, with imprisonment for a term of not less than seven years, and