

1930

MOTILAL
JADAV
v.
SAMAL
BECHAR

Broomfield J.

326. The actual point discussed by their Lordships of the Privy Council in their judgment was a different one, but it is quite clear that the decision of the High Court was approved as a whole, and the judgment of the Privy Council is, therefore, by implication at any rate, an approval of the decision of this Court that the acknowledgments in that case, though not relating to the whole property mortgaged, were nevertheless valid acknowledgments.

Appeal allowed.

B. G. R.

CRIMINAL REVISION.

Before Mr. Justice Madgarkar, Acting Chief Justice, and Mr. Justice Barlee.

1930
June 18.

EMPEROR v. USMAN HAJI MATMOHED OF BOMBAY (ORIGINAL COMPLAINT)*

Bombay City Police Act (Bom. Act IV of 1902), section 45.—Claim for compensation—Petition dismissed for default of appearance—Order refusing to restore claim to file—Chief Presidency Magistrate—Persona designata—Revision—High Court.

The Chief Presidency Magistrate, Bombay, in exercising the special powers conferred on him by section 45 of the City of Bombay Police Act, 1902, acts as a *persona designata* and not as a Criminal Court, and, therefore, no application for revision can lie to the High Court, against his order, not even from an order made refusing to take the petition back on the file for decision of the claim on the merits.

Vijaraghavalu Pillai v. Theagaraya Chetti⁽¹⁾; *Balaji Sakharam v. Merwanji Nowroji*⁽²⁾; *Chunilal Virchand v. Ahmedabad Municipality*⁽³⁾; *Bhaishankar v. The Municipal Corporation of Bombay*⁽⁴⁾; *Navalkar v. Sarojini Naidu*⁽⁵⁾ and *Ahmed Suleman v. Municipal Commissioner, Bombay*,⁽⁶⁾ referred to.

*Criminal Application for Revision No. 156 of 1930.

†Section 45 (1) (a) of the City of Bombay Police Act, IV of 1902, runs as follows :—

“The Chief Presidency Magistrate may, after such enquiry as he deems necessary,—

- (a) determine the amount of the compensation which, in his opinion, should be paid to any person or persons in respect of any loss or damage caused to any property, or in respect of death or grievous hurt caused to any person or persons, by anything done in the prosecution of the common object of an unlawful assembly.”

⁽¹⁾ (1914) 38 Mad. 581.

⁽²⁾ (1895) 21 Bom. 279.

⁽³⁾ (1911) 36 Bom. 47.

⁽⁴⁾ (1907) 31 Bom. 604.

⁽⁵⁾ (1923) 25 Bom. L. R. 463.

⁽⁶⁾ (1929) 54 Bom. 224.

CRIMINAL application for revision against the order passed by H. P. Dastur, Chief Presidency Magistrate, Bombay.

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EMPEROR
v.
USMAN
HAJI

Claim for compensation.

One Alimahomed alias Jan Mahomed Haji Mahomed was killed during the Hindu-Mahomedan riots which took place at Bombay in February 1929. The deceased left behind him his widow, a widowed stepmother and three minor sisters.

As the widow and the stepmother were Pardanashin ladies they authorised Usman Haji Mahomed, brother of the deceased Alimahomed, to apply for recovery of compensation on their behalf under the City of Bombay Police Act IV of 1902. Accordingly Usman Haji Mahomed filed a claim for compensation before the Chief Presidency Magistrate, Bombay, under section 45 of the City of Bombay Police Act. On the day of hearing neither Usman Haji Mahomed nor his advocate was present and so the claim was dismissed.

Thereupon an application was made to the Chief Presidency Magistrate for restoration of the claim. The learned Magistrate dismissed the application on the ground that there was nothing before him to show that the claimant was prevented from being present owing to unavoidable causes.

Usman Haji Mahomed applied in revision to the High Court against the order of the Magistrate refusing to restore the claim to the file.

Mahale, with *V. N. Chhatrapati*, for the applicant.

P. B. Shingne, Government Pleader, for the Crown.

MADGAVKAR, AG. C. J. :—The question in this appeal is whether this Court has jurisdiction to set aside an order of the Chief Presidency Magistrate dismissing the claim made by the petitioner on behalf of a widow

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 Madgulkar
 Ag. C. J.

for compensation under section 45 of the City of Bombay Police Act of 1902 for absence and refusing to take the matter back on his file.

The question necessarily depends on whether the order in question was passed by the Chief Presidency Magistrate sitting as a Court, or whether it was passed by him as a *persona designata*. It is argued for the petitioner that under section 15 of the Charter this Court has jurisdiction and that it is not expressly excluded by virtue of any other enactment. Jurisdiction, however, by way of appeal or revision will not be inferred but must be expressly given by statute.

On the main question as to whether the order was passed by a Court or by the Chief Presidency Magistrate as a *persona designata*, reliance is sought to be placed by the petitioner on the corresponding provisions in England, e.g., Halsbury's Laws of England, Vol. XXII, Articles 1044 and 1047. Even there it is to be observed that if the claimant is aggrieved by a refusal on the part of the police authorities, the appeal lies to the Home Secretary and not to the Criminal Courts, without prejudice, it may be, to his right of action by way of a civil suit. With this last matter we are not now concerned.

Confining ourselves to the question above, the position, in our opinion, is analogous to that of a Presidency Magistrate under the Madras City Municipal Act: *Vijayaraghavalu Pillai v. Theagaroyu Chetti*⁽¹⁾; or of District Judges in the case of Municipal elections: *Balaji Sakharam v. Merwanji Nowroji*⁽²⁾ and *Chunilal Virchand v. Ahmedabad Municipality*⁽³⁾; or the Chief Judge of the Court of Small Causes under section 33 of the City of Bombay Municipal Act: *Bhaishankar v.*

⁽¹⁾ (1914) 38 Mad. 581.

⁽²⁾ (1895) 21 Bom. 279.

⁽³⁾ (1911) 35 Bom. 47.

The Municipal Corporation of Bombay⁽¹⁾ and *Navalkar v. Sarojini Naidu*⁽²⁾ and the recent decision regarding Municipal assessment in *Ahmed Suleman v. Municipal Commissioner, Bombay*.⁽³⁾ The City of Bombay Police Act IV of 1902 does not generally nor does section 45 in particular deal with criminal Courts or their powers. The conclusion, therefore, is that the special power under section 45 on the Chief Presidency Magistrate is not as a criminal Court but as a *persona designata*. If so, no application by way of revision lies to this Court, not even to an order made refusing to take the petition back on the file for decision of the claim on the merits.

The application fails and is dismissed.

Rule discharged.

B. G. R.

⁽¹⁾ (1907) 31 Bom. 604.

⁽²⁾ (1923) 25 Bom. L. R. 463.

⁽³⁾ (1929) 54 Bom. 224.

ORIGINAL CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Blackwell.

BAI RUKHIABAI (ORIGINAL PLAINTIFF No. 1), APPELLANT *v.* VADILAL PURSHOTTAMDAS & Co. (ORIGINAL APPLICANTS), RESPONDENTS.*

1929
December 2.

Practice and procedure—Charging order—Execution—Discretionary power of High Court in Original Civil Jurisdiction to make such order—Assets of partnership in hands of Receiver—Priority over unsecured creditors—Application to be made in suit in which receiver appointed—Civil Procedure Code (Act V of 1908), Order XXI, rules 11 (2), 50, 52.

The Original Side of the High Court of Bombay has jurisdiction to make charging orders on the assets of a partnership which are in the hands of a receiver appointed by the Court. The Court has got a discretion to grant a charging order in an appropriate case, and it must be left to the facts of each particular case as to whether the Court will grant it or not, or on the other hand give leave to a creditor to pursue his normal remedy in execution or to adopt some other course which may seem fair under the circumstances.

In the case of a partnership which is ordered to be wound up under the directions of the Court under a preliminary decree passed in a suit for the dissolution of that partnership, if a judgment-creditor of the partnership desires to secure his claim, the proper procedure is to present an application for execution in his own suit under Order XXI, rule 11, of the Civil Procedure Code, and then to make the attachment by obtaining a garnishee notice under Order XXI, rule 52.

*O. O. J. Appeal No. 37 of 1928 : Suit No. 5384 of 1922.