

## APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Wassoodew.

1940  
June 25

EMPEROR v. HASAN MAMAD IN THE 1ST CASE AND EMPEROR v. RAM-  
CHANDRA GANESH IN THE 2ND AND 3RD CASES.\*

*Bombay Municipal Boroughs Act (Bom. Act XVIII of 1925), s. 152, sub-s. (1),  
cls. (a), (b)—Hand-driven lorry containing fruit—Keeping lorry on public road—  
Setting up stall—"Or any other thing"—Construction.*

Section 152 (1) (a) of the Bombay Municipal Boroughs Act, 1925, is directed against a man who has a shop or house in the street, and who encroaches upon the street by making some sort of addition to his house or shop.

Introducing into a street a lorry on wheels with goods for sale upon it does not amount to setting up a stall within s. 152 (1) (a) of the Act.

The words "or any other thing" occurring in s. 152 (1) (b) of the Act must be read *ejusdem generis* as the words "box, bale, package, or merchandise".

A vehicle, such as a hand-driven lorry containing fruit, does not fall within the mischief of s. 152 (1) (b).

CRIMINAL REFERENCE made by D. C. Joshi, In-charge Sessions Judge, Ahmedabad.

Keeping fruit lorry on public road.

On September 27, 1939, an Encroachment Inspector filed before the Stipendiary Magistrate, First Class, Ahmedabad, two complaints against Ramchandra Ganesh (accused in the second and third cases) under s. 152 (1) of the Bombay Municipal Boroughs Act, 1925, alleging that the accused had kept on a public road a lorry containing fruit on September 8 and September 27, respectively.

The complainant and a witness deposed that the lorry was standing for more than half an hour on the public road and that the accused did not remove it even after warning.

The learned Magistrate held that the offence was proved, and, in convicting the accused, he sentenced him to pay a fine of Rs. 2.

\* Criminal Reference No. 48 of 1940.

In the case of Hasan Mamad (accused in the first case) the learned Magistrate made an interlocutory order, holding that the filing of the complaint against the accused under s. 152 (1) (b) was legal and that the case should proceed according to law.

1940  
 EMPEROR  
 ?  
 HASAN  
 MAMAD

The accused in the three cases separately applied to the Sessions Court in revision and the learned Sessions Judge (G. S. Rajadhyaksha) referred the three cases to the High Court, recommending that the orders complained of be set aside.

The reference was heard.

*J. C. Shah*, for the accused in the first Case.

No appearance for the accused in Cases Nos. 2 and 3.

*G. N. Thakor*, with *B. G. Thakor*, for the Ahmedabad Municipality.

No appearance for the Crown.

BEAUMONT C. J. This is a reference made by the Sessions Judge of Ahmedabad in three cases. The accused were convicted under s. 152 of the Bombay Municipal Boroughs Act, 1925, their offences consisting of having allowed hand-driven lorries containing fruit to remain for more than half an hour on a public street in Ahmedabad. The learned Sessions Judge was of opinion that the offences did not fall within s. 152. That section provides that—

“(1) Whoever in any area after it has become a municipal district, or borough  
 (a) shall have built or set up, or shall build or set up, any wall or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction, or

(b) shall deposit or cause to be placed or deposited any box, bale, package or merchandise or any other thing,

in any public place or street . . . shall be punished . . . ”

The question is whether the hand-cart, which the accused had kept in the street, fell within the prohibition contained in s. 152, sub-s. (1), of the Bombay Municipal Boroughs Act. It was conceded in the lower Court that the case did not fall within sub-s. (1) (a) of that section. But Mr. G. N. Thakor, who seldom concedes anything, did not

1940

EMPEROR

v.

HASAN

MAMAD

Beaumont C. J.

concede that proposition. He says that the act of the accused amounted to setting up a stall. No doubt you may have a stall on wheels, but I am clearly of opinion that introducing into a street a lorry on wheels with goods for sale upon it does not amount to setting up a stall within s. 152 (1) (a). In my opinion that sub-section deals with making some form of addition or annexe, more or less permanent, to a building in the street. It is directed against the man who has a shop or house in the street, and who encroaches upon the street by making some sort of addition to his house or shop.

I think the real question is whether the case can be brought within s. 152, sub-s. (1) (b). In my opinion the words "or any other thing" must be read *ejusdem generis* as the words "box, bale, package or merchandise". Those words seem to cover merchandise, and things in which merchandise can be packed, and any other thing must be of the same kind or genus and does not include a vehicle. In my view a motor car or a motor lorry or a horse drawn or hand-propelled vehicle, though containing merchandise and left standing in a street, cannot be said to come within the section. The hand lorry of the accused clearly falls within the definition of vehicle contained in s. 3, sub-s. (21), of the Bombay Municipal Boroughs Act. The control of vehicles in streets is dealt with by the Bombay District Police Act. Whatever the powers of the police may be under that Act, I am of opinion that the learned Sessions Judge was right in the view he took that a vehicle does not fall within the mischief of s. 152.

Therefore we accept the reference in all the three cases, and set aside the convictions in the first two cases (Nos. 13035 and 13036), and the interlocutory order in the third case (No. 10195). Fines (if paid) to be refunded.

*Convictions set aside.*

Y. V. D.