

BOMBAY HIGH COURT

Madhav Ganpatprasad

Vs

Majidkhan Alifkhan Pathan

(Batchelor and Shah, JJ.)

15.06.1917

JUDGMENT

Batchelor, J.

1. This is a reference by the learned District Magistrate of Nasik and it arises in the following circumstances.

2. The complainant filed a complaint against the Sub-Inspector of Police charging him with vexatiously and unnecessarily seizing the complainant's property, this charge falling under Section 63, Sub-section (b), of the Bombay District Police Act of 1890; The First Class Magistrate, Nasik City, admitted the complaint and ordered process to issue for the trial of the Sub-Inspector. The learned District Magistrate has made this reference being of opinion that the admission of the complaint was erroneous, inasmuch as the complaint could not be entertained by virtue of the provisions of Sub-section 3 of Section 80 of the Police Act. This objection raises the question of limitation upon which the material dates are these. According to the complainant, his property was seized by the Sub-Inspector on the 2nd March 1916, but the complaint made in respect of that seizing was not preferred till the 12th December 1916. Sub-section 3 of Section 80 provides that in any case of such an alleged offence against a police officer as we have here the prosecution shall not be entertained, or shall be dismissed, if instituted more than six months after the date of the act complained of. As I have said, the prosecution here was instituted more than six months after the date of the actual seizing of the complainant's property, but the Trial Magistrate was of opinion that process should nevertheless issue, because though the property was seized so early as the 2nd of March 1916, it remained in the seizure and possession of the Police until a date within six months of the making of the complaint. We have to decide whether the view of the District Magistrate or the view of the First Class Magistrate is the correct construction of these provisions of the Police Act.

3. The words on which the District Magistrate relies and which no doubt lend colour to his

opinion, are those in Section 80, Sub-section 3, declaring that the prosecution must fail if it is instituted more than six months "after the date of the act complained of.' And here it may be argued with much force that the act complained of is the act of seizing the property and nothing else. It may be urged that the words I have cited refer only to the original act of seizing and not to any subsequent detention of the property. In my opinion, however, this construction unnecessarily narrows the meaning of the provision and I see no difficulty in holding that in such a case as this the act complained of is the whole act of seizure by the Police, which must be taken to have been a continuous act so long as the seizure by the police was maintained. It appears that, in the present case, for some time after the 2nd March 1916 a police investigation was in progress against the complainant and thereafter the complainant was put upon his trial upon a charge of dishonestly receiving stolen property. It was not until that trial resulted in his favour that the seized property was returned to him by the police. Now pending all these proceedings against the complainant he was busily occupied in defending himself from the charge brought against him by the police and it appears to me that it would be harsh to rule that unless during that period he brought his complaint against the police officer concerned he must be held to have lost the remedy which Section 63 of the Act conferred upon him.

4. I am of opinion, therefore, that the view of the First Class Magistrate is preferable to that adopted by the District Magistrate. I would therefore discharge the rule.

Shah, J.

5. I am of the same opinion.