

# **BOMBAY HIGH COURT**

V.B. D'monte

Vs.

Bandra Borough Municipality

Cri. Revn. Applns. Nos. 1163 and 1217 to 1220 of 1949

(Chagla, C.J., Bavdekar and Shah, JJ.)

14.02.1950. 11.04.1950

## **JUDGMENT**

### **Chagla, C.J.**

1. The question that arises for the determination of this Full Bench is whether an application in revision made against an order of a Magistrate under Section 110, Bombay Municipal Boroughs Act, XVIII [18] of 1925, lies on the civil or criminal side of this Court ?

2. The Bombay Municipal Boroughs Act constitutes a special appellate Court in respect of the decisions given under Section 104 of that Act; and these appellate Courts, as far as Greater Bombay is concerned, are Magistrates or Benches of Magistrates to be designated by the Chief Presidency Magistrate, and the decisions of the appellate authority under Section 110 of the Act are made subject to revision by the Courts to which appeals against their decisions ordinarily lie. Now the contention put forward is that inasmuch as the decision is given by a Magistrate under Section 110 and an appeal from the Magistrate's decision lies to the High Court on its criminal side, the order of the Magistrate should be revised by the High Court on its criminal side and not on its civil side. It is further urged that a Magistrate's Court is a subordinate criminal Court within the meaning of Section 435, Criminal Procedure Code, and therefore, a revision application against his decision would lie under that section.

3. In our opinion, it is unnecessary to consider whether a revisional application would lie under Section 435 from a decision of a Magistrate under Section 110, Bombay Municipal Boroughs Act, (Bom Act XVIII [18] of 1925). In exercising our revisional power, we are not exercising the jurisdiction conferred upon us under Section 435, Criminal Procedure Code. We are exercising a special jurisdiction which is conferred upon us under Section 110, Bombay Municipal Boroughs Act of 1925. Therefore, the only question that we have to consider is whether in exercising that special jurisdiction under Section 111 we should exercise it on the civil side or the criminal side.

Now it cannot be disputed that the subject-matter of the decision of the Magistrate is a purely civil matter. He is dealing with rates and taxes. He is not exercising any criminal jurisdiction nor is he dealing with any criminal matter. Therefore, when the matter comes before us in revision, it is a matter which is civil in its nature; and we see no reason why such a matter should be entertained on the criminal side of the High Court and not on the civil side.

4. Various decisions were cited at the bar, and I shall briefly consider them. But as I shall point out these decisions were more concerned with deciding whether a matter lay in revision under Section 435, Criminal Procedure Code or under Section 115, Civil Procedure Code. In all these cases no special jurisdiction was conferred upon the High Court, and, therefore, the High Court had to determine the nature and extent of its revisional jurisdiction; and in order to determine that the learned Judges who decided those cases had to consider whether the applications lay under Section 435, Criminal Procedure Code, or under Section 115 Civil Procedure Code. The decision which has been now accepted as laying down the correct principle and which had been followed in several decisions of this Court is to be found in *Lokmanya Mills Ltd. v. Municipal Borough, Barsi*<sup>1</sup>, In that case the decision under Section 110 was given by the First Class Magistrate Barsi, and a revision under Section 111 lay to the Sessions Court. The question then arose as to whether any revisional application lay from the decision of the Sessions Court, and Sir John Beaumont, sitting with N. J. Wadia, J., held that a revisional application lay under Section 115, Civil Procedure Code; and in coming to that conclusion the learned Chief Justice observed that "the question of liability to tax is a purely civil matter, and the Magistrate hearing an appeal against a demand notice is a criminal Court, so that an appeal lies from him to the Sessions Court, and not to the District Court, and revision lies from the Sessions Court to the High Court as a civil revisional application." The learned Chief Justice approved of the earlier decision in *Ahmedabad Municipality v. Vadilal*<sup>2</sup>, which lays down that the Sessions Judge in a case of that sort was exercising powers of a civil Court and not of a criminal Court and, therefore, no revision lay under the Criminal Procedure Code. Therefore, the clear view taken by the learned Judges who decided that case was that even a criminal Court may exercise civil jurisdiction and may dispose of civil matters if so authorised by a statute. The earliest decision in which a similar view has been taken is a decision in *In re Dalsukhram*<sup>3</sup>, There the Court was considering Section 86, Bombay District Municipal Act, 1901, which is analogous to the provisions in the Bombay Municipal Boroughs Act of 1925; and Chandavarkar, and Knight, JJ., held that a Magistrate hearing an appeal of the kind mentioned in Section 86, Bombay District Municipal Act of 1901 is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability and, therefore, he is not an inferior criminal Court; and the Court held that no revision lay against his decision under Section 435, Criminal Procedure Code. The same view has been taken in *Ahmedabad Municipality v. Vadilal*<sup>4</sup>, to which I have already referred, by Patkar, and Murphy, JJ., that under Section 86 matter related to a civil liability, and they held that no revisional application lay under Section 435, Criminal Procedure Code.

5. The only decision to which our attention has been drawn, which seems to take a contrary view,

is one reported in *Emperor v. Devappa Ramappa*<sup>5</sup>, In that case a Magistrate was dealing with a matter under the Workmen's Breach of Contract Act, 1859; and a Division Bench consisting of Heaton, and Pratt, JJ., took the view that a revisional application against his decision lay

<sup>1</sup>41 Bom LR 937 : ( AIR 1939 Bom 477)

<sup>3</sup>9 Bom LR 1347 (6 Cr LJ 425).

<sup>2</sup>30 Bom LR 1084 : ( AIR 1928 Bom 376 : 29 Cr LJ 1081)

<sup>4</sup>30 Bom LR 1084 : ( AIR 1928 Bom 376 : 29 Cr LJ 1081) <sup>5</sup>43 Bom 607 : ( AIR 1919 Bom 158 : 20 Cr LJ 316)

under Sections 435 and 439, Criminal Procedure Code, and the test that the Bench applied was not the nature of the proceedings held by the Court but the nature of the Court in which the proceedings were held; and according to these learned Judges as the Court in which the proceedings were held was a criminal Court and an inferior criminal Court, the High Court had power of revision under Section 435, Criminal Procedure Code. Now, with great respect to the learned Judges who decided this case, this view seems to be contrary to the view taken in the earlier decision, to which I have just drawn attention, *In Re Dalsukhram*<sup>6</sup>, and this decision was not referred to or considered. This case viz., *Emperor v. Devappa Ramappa*<sup>7</sup>, seems to stand by itself and it has taken a view which has not found favour with the other learned Judges who have considered this question. The better view seems to be that a criminal Court may be constituted as a Court designata and civil jurisdiction may be conferred upon that Court. If a criminal Court exercises that jurisdiction, then it is not necessarily an inferior criminal Court within the meaning of the Criminal Procedure Code; and if a right of revision is given from a decision of such a Court then that revisional application is civil in its character and not criminal. That is the only limited question that we have to consider in this case. As I stated before, we are not considering whether a revisional application lies under Section 435, Criminal Procedure Code, or under Section 115, Civil Procedure Code. All that we are considering is whether a special jurisdiction conferred upon us is of a civil or of a criminal character; and on that question there can be no dispute that it is of a civil nature.

6. We would, therefore, direct that as a matter of practice all revisional applications filed against orders of Magistrates in Greater Bombay in such cases should lie on the civil side and not on the criminal side of the High Court.

Order accordingly.

<sup>6</sup>9 Bom LR 1347 : (6 Cr LJ 425)

<sup>7</sup>43 Bom 607 : ( AIR 1919 Bom 158 : 20 Cr LJ 316)