

sary for the ends of justice to submit the case to the High Court. There being no such complete dissent in this case, we think that the conviction and sentence must stand. This decision is not in conflict with our decision in *Imperatrix v. Hari Ghanu*, where we held that Government might appeal against an acquittal by a jury where the Judge differed from the jury, but did not consider it necessary for the ends of justice to refer the case to the High Court.

1878.

IMPERATRIX  
v.  
BHAWA'NI  
BIN PANDUJI  
AND SAKHA'  
RA'M BIN  
KHUNDOJI.

*Conviction and sentence upheld.*

[APPELLATE CRIMINAL.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Kembal.*

*In re* TUKARA'M VITHAL.\*

February 21.

*The Bombay District Municipal Act No. VI. of 1873.*

Non-compliance with notices issued by the Municipality under section 36 or cl. 1 of section 39 of the Bombay District Municipal Act No. VI. of 1873 is not an offence punishable under the Act, as clause 1 of section 74 of that Act does not apply to either of those provisions. The latter clause applies only to the 2nd clause of section 39.

THIS was a reference, under section 296 of the Code of Criminal Procedure, by William Ramsay, Magistrate of the District of Násik, submitting, for the orders of the High Court, the proceedings of Ráv Sáheb Shridhar Gundo, Subordinate Magistrate, Second Class, at Násik.

In submitting the proceedings the District Magistrate said: "The municipality of Násik, through their secretary, brought a complaint against one Tukárám walad Vithal Kásár and another for failing to comply with a notice issued under clause 1 of section 39 of the Municipal Act by the Second Class Magistrate of Násik. The latter threw out the complaint (apparently under section 147 of the Criminal Procedure Code) on the ground that section 74, clause 1 of the Act, sanctioning penalties, applies only to the second clause of section 39, above quoted. The municipality, through their chairman, have now appealed to me to use the power vested in me under section 298 of the Criminal Procedure Code, and direct the Subordinate Magistrate to take up the case again and try it.

1878.

*In re*  
TUKA'RAM  
VITHAL.

"There being no issue of fact, but only one of law, it seems to me useless to order a re-trial of the same. My own view is, that section 74 of the Municipal Act mentions a definite penalty for breach of the provisions of section 39. Without mentioning or excepting either of its clauses, it must be held to be applicable to the entire section, and as this is opposed to the view of the case taken by the Subordinate Magistrate, I venture to submit the case for the orders of the Honourable the Judges of Her Majesty's High Court."

The notices issued by the municipality ran as follows:—

"You own in the city of Násik a house, No. 470, the drain of the privy of which house is open, and the privy itself has no doors. Therefore, within 15 days of the receipt of this notice, you should build the drain of your privy and join it to Nánávívá and Kosár road under-ground drain, and take steps to put up doors to your privy. Herein fail not. Issued in accordance with the Committee's Resolution, dated 19th November 1877, to give notice under sections 36 and 39 of Bombay Act VI. of 1873."

The Second Class Magistrate made the following order:—

"The above notices were given by the municipality under sections 36 and 39 of the Municipal Act; but there are no penalties at all prescribed in section 36 and clause 1 of section 39.

"Section 75 of the Act prescribes that, if any work is not done in compliance with the notice issued by the municipality, the municipality should do the same work at the expense of the owner.

"In section 74 of the Act are shown the penal sections. Section 36 is not at all among them. Section 39 only is included therein, because a penalty is prescribed in clause 2 of that section. The same, however, applies to works constructed against the directions of a municipality after the Act comes into operation. It is my opinion that section 33 is to be understood as included among the penal sections to the extent of clause 3 of that section, and that section 38 to the extent of the first part of clause 1 of that section.

"For the above reasons I cannot come to the opinion that non-compliance with the orders of a municipality, contained in notices

issued by it in regard to the making of any new works or alterations, is an offence under the law. I have, therefore, refused to entertain the complaint in respect to the above two notices.”

1878.

*In re*  
TUKA'RAM  
VITHAL.

No one appeared either to support or oppose the reference.

PER CURIAM :—The Court concur in the ruling and the reasons given for it by the Second Class Magistrate of Násik, Ráv Sáheb Shridhar Gundo, viz., that clause 1 of section 74 of the Municipal Act, Bombay, No. VI. of 1873, applies only to the second clause of section 39 of the same Act.

*Proceedings returned.*

[APPELLATE CIVIL.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.*

VA'SUDEV ANANT (ORIGINAL DEFENDANT), APPELLANT, *v.* RA'MKRISHNA AND SHIVRAM NA'RAYAN (ORIGINAL PLAINTIFFS), RESPONDENTS.\* January 23.

RA'MKRISHNA AND SHIVRAM NA'RAYAN (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* THE GOVERNMENT OF BOMBAY (ORIGINAL DEFENDANT), RESPONDENT.†

*Bombay Act II. of 1863, Section 6, Clause 2—Non-recognition of adoption by Civil Court—Indm Commissioner's decision—Act XI. of 1852.*

The provision in Bombay Act II. of 1863, section 6, clause 2, as to non-recognition of adoption by any civil Court, relates only to the question of the assessability of lands when raised between Government and a claimant of exemption.

It is not open to a party to rely upon a provision, of which Government only is entitled to take advantage.

In an enquiry under Act XI. of 1852 the *Indm* Commissioner, on the 30th January 1863, decided that a certain *indm* village should be continued to the male descendants of the original grantee; *held* that the decision of the *Indm* Commissioner was only intended to regulate the duration of the exemption of the *indm* village from assessment, and not to regulate the enjoyment of it as between the heirs of the original grantee.

THESE were cross appeals from the decision of R. F. Mactier, District Judge of Satara.

The facts, so far as they are material to this report, are these:—Rámkrishna, Vásudev, and Shivrám, the parties to these appeals, were the sons of Náráyan Dáji. Náráyan had an elder brother,

\* Regular Appeal No. 15 of 1877.

† Regular Appeal No. 35 of 1876.