

*Before Mr. Justice West and Mr. Justice Nánábhái Haríds.*

QUEEN EMPRESS *v.* HONKERA'PA' AND OTHERS.\*

1884  
June 19.

*Criminal Procedure Code (Act X of 1882), Sec. 495—Bombay Act VII of 1867,  
Sec. 23—Police officer below the rank of inspector, power of, to prosecute.*

The provisions of section 23<sup>(1)</sup> of Bombay Act VII of 1867 have not been superseded by section 495 of the Criminal Procedure Code (Act X of 1882), but are still in force.

THIS was a reference, under section 438 of the Criminal Procedure Code (Act X of 1882), by G. F. M. Grant, District Magistrate of Kaládgi.

The District Magistrate stated the reference as follows:—

“In the month of February, 1884, the accused were tried by the Second Class Magistrate of Bágevádi, and convicted of the offence of rioting. Under section 495 of the Criminal Procedure Code (Act X of 1882) a police officer below the rank of inspector is not allowed to prosecute, notwithstanding which a chief constable was allowed in this case to prosecute the accused, and a conviction resulted. I think the course pursued was illegal and prejudicial to the accused on their trial. [Refers to Government Resolution approving the report of the Legal Remembrancer given below.] The police assume that, under section 23 of Bombay Act VII of 1867, any police officer may prosecute in any case, cognizable or non-cognizable, but the wording of that section shows that it was only intended to apply to petty cases under the Act itself in which a summons or warrant might issue. If the contrary be held, there are two laws opposed to each other, *viz.*, the local law passed by the Local Government and the Imperial law passed by the Viceroy in Council. Government hold it unnecessary

\* Criminal Reference, No. 56 of 1884.

<sup>(1)</sup> Section 23.—It shall be lawful for any police officer to lay any information before a Magistrate, and to apply for a summons, warrant, search warrant, or such other legal process as may by law issue against any person committing an offence, and to prosecute such person up to final judgment.

to repeal the words in the local Act, which are on the above hypothesis opposed to the section quoted of the Criminal Procedure Code. The uncertainty of procedure resulting from the Government resolution referred to render it desirable to submit the reference to the High Court with a hope that the point may be decided."

There was no appearance on behalf of the accused or the Crown.

WEST, J.—The special local law has been preserved by the Code of Criminal Procedure (Act X of 1882) whether intentionally or through oversight. The view taken by the Legal Remembrancer is correct, and the District Magistrate of Kaládgi should be so informed.

Report of the Legal Remembrancer referred to :—"I am of opinion that the last nine words of section 23 of the Bombay District Police Act, VII of 1867, are still in force, notwithstanding the provisions of section 495 of the Criminal Procedure Code (Act X of 1882).

"2. Section 2 of the Code directs that, in the absence of any specific provision to the contrary, no local laws shall be affected by anything in that Code. As, therefore, it is not expressly stated that section 495 is to be in force in this Presidency notwithstanding section 23 of the above local Act (the last nine words of which are not, like the corresponding words in section 24 of Act V of 1861, repealed by the Code), section 495 must, I think, be read so as not to affect the provision of the Bombay District Police Act, VII of 1867.

"3. The omission to repeal the last nine words of the last-named Act was probably not intentional, and it might be brought to the notice of the Government of India, or a Bill might be introduced into the Legislative Council of this Presidency for repealing those words."

## APPELLATE CIVIL.

21 R 15 Cl. 123.

*Before Mr. Justice West and Mr. Justice Nánábhái Haridás.*

DATTU (ORIGINAL DEFENDANT), APPELLANT, v. KASA'I (ORIGINAL PLAINTIFF), RESPONDENT.\*

June 24.

*Limitation—Practice—Point of limitation taken for the first time in second appeal—Omission of Court of first instance to reject a plaint for limitation, effect of.*

The plaintiff's suit to recover certain lands was dismissed by the Court of first instance and by the lower Appellate Court, but on second appeal was remanded for

\* Appeal No. 133 of 1883.