

1894
MARCH 20.
ORIGINAL
CIVIL.
18 B. 401.

a revised scheme for the future management of the affairs of the Juma Masjid and its appropriated properties be prepared by the Advocate-General and approved by the sitting Judge in Chambers and, when so approved, be laid before the jamat of the Juma Masjid for their approval and adoption. Direct that the defendants do bring in an account of the rents, profits and income of the Juma Masjid received by them respectively since the last adjusted and published accounts, and in taking such account let the defendants Nos. 1—4 account for the rents actually recovered and received by them, or which but for their wilful default or neglect they might have received, and let defendant No. 5 be similarly charged, and also with rent due by himself (if any) which he ought to have recovered, and pay such sum (if any) as upon the taking of such accounts may be found due from them respectively.

The Advocate-General and the defendants other than defendant No. 5 to have their costs taxed as between attorney and client out of the funds, including costs of rule. Two counsel allowed to defendants Nos. 1—4. Costs of defendant No. 5 reserved. Further directions and further costs reserved. Liberty to apply.

Attorneys for plaintiff: Messrs. *Ardesir, Hormasji and Dinsha*.

Attorneys for the defendants: Messrs. *Nanu and Hormasji*, and Mr. *K. D. Shroff*.

18 B. 428.

[428] CRIMINAL REFERENCE.

Before Mr. Justice Candy and Mr. Justice Fulton.

QUEEN-EMPRESS *v.* PIRIO KALIO * [17th July, 1893.]

Abkari Act (Bombay Act V of 1878), s. 3, cl. 11, and 43, cl. (f)—Drawing toddy is not manufacturing liquor.

Drawing toddy is not 'manufacturing liquor' as defined in cl. 11 (1) of s. 3 of the Bombay Abkari Act (V of 1878).

The mere possession of implements for the purpose of drawing toddy is not an offence punishable under cl. (f) of s. 43 (2) of the Act.

* Criminal Reference No. 54 of 1893.

(1) Bombay Act V of 1878, s. 3, cl. 11 :—

(1) "Manufacture" includes every process, whether natural or artificial, by which any spirituous, fermented or intoxicating liquor or intoxicating drug is prepared, and also every process for the rectification of liquor ; admixing is a process within the meaning of this definition.

(2) Section 43 :—

Whoever in contravention of this Act, or of any rule or order made under this Act, or of any license, permit or pass obtained under this Act,

- (a) imports or exports liquor or any intoxicating drug into or out of any part of the Presidency of Bombay, or
- (b) transports or removes liquor or any intoxicating drug from one place to another, or
- (c) manufactures liquor or any intoxicating drug, or
- (d) draws toddy from any tree, or
- (e) constructs or works any distillery or brewery, or
- (f) uses, keeps, or has in his possession any material, still, utensil, implement, or apparatus whatsoever for the purpose of manufacturing liquor or any intoxicating drug, or
- (g) sells liquor or any intoxicating drug,

shall be punished for each such offence with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

THIS was a reference under s. 438 of the Code of Criminal Procedure (Act X of 1882) by F. S. P. Lely, Esq., District Magistrate of Surat.

The accused was charged with the offence of keeping in his possession implements for the purpose of drawing toddy, and convicted by the Second Class Magistrate of Olpad under [429] s. 43, cl. (f) of the Bombay Abkari Act (V of 1878) and sentenced to a fine of Rs. 8.

The District Magistrate on examining the record of the case was of opinion that mere possession of implements for the purpose of drawing toddy was not an offence punishable under s. 43, cl. (f) of the Abkari Act. He, therefore, referred the case for the orders of the High Court under s. 438 of the Criminal Procedure Code (X of 1882).

This reference was heard by a Division Bench (CANDY and FULTON, JJ.).

Rao Saheb Vasudev J. Kirtikar, Government Pleader, for the Crown.
Manekshah Jehangirshah, for accused.

JUDGMENT.

PER CURIAM.—We do not think that drawing toddy is manufacturing liquor as defined in cl. 11 of s. 3 of Bombay Act V of 1878, for it will be observed that in s. 43 of the Act the drawing of toddy and the manufacture of liquor are treated separately. We concur, therefore, with the District Magistrate that the mere possession of implements for the purpose of drawing toddy is not an offence punishable under cl. (f) of s. 43 of Bombay Act V of 1878. We accordingly reverse the conviction and sentence, and direct the fine, if paid, to be refunded.

Conviction and sentence reversed.

18 B. 429.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

HAJRAT AKRAMNISSA BEGAM (*Original Defendant No. 14*), Applicant
v. VALIULNISSA BEGAM (*Original Defendant No. 2*), Opponent.*
[18th July, 1893.]

Civil Procedure Code (Act XIV of 1892), s. 647 as amended by Act VI of 1892, s. 4—Execution of decree—Application for execution dismissed for default—Power of the Court to restore such application to the file—Construction of Statutes.

[430] There is nothing in the Code of Civil Procedure (Act XIV of 1892) as amended by Act VI of 1892, which authorizes a Court to apply to execution proceedings any of the procedure enacted in chap. VII of the Code.

Accordingly a Court cannot under s. 103 restore to the file an application for execution which has been dismissed for default.

Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings.

[F., 18 M. 131 (1893); 7 Ind. Cas. 11 (15); 139 P. L. R. 1905; R., 13 C. L. J. 532=11 Ind. Cas. 385; 2 C. W. N. 606 (607); 153 P. L. R. 1901.]

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

* Application No. 113 of 1893 under Extraordinary Jurisdiction.