

## CRIMINAL REFERENCE.

Before Mr. Justice Batchelor and Mr. Justice Shah.

MADHAV GANPATPRASAD, APPLICANT v. MAJIDKHAN  
ARIFKHAN PATHAN.\*

1917.

June 13.

*Bombay District Police Act (Bombay Act IV of 1890), sections 63(b), 80(3)†*  
—Complaint against Police officer for vexatiously seizing property—Limitation for the application.

On the 2nd March 1916, certain property was seized from the applicant by a Police officer. The applicant was tried by a Magistrate and acquitted; and the property was returned to him on the 30th October 1916. The applicant applied, under section 63 (b) of the Bombay District Police Act (Bombay Act IV of 1890), charging the Police officer with vexatiously seizing the property. It was objected that the application not having been made within six months from the date of the seizure was time-barred under section 80 (3) of the Act.

*Held*, that the application was not barred by section 80 (3), for the act complained of was 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.

\*Criminal Reference No. 14 of 1917.

† The material portions of these sections run as follows :—

63. Any Police officer who,—

(a) without lawful authority or reasonable cause, enters or searches or causes to be entered or searched any building, vessel, tent or place; or

(b) vexatiously and unnecessarily seizes the property of any person; or

(c) vexatiously and unnecessarily detains, searches or arrests any person; or

(d) offers any unwarrantable personal violence to any person in his custody;

(e) holds out any threat or promise not warranted by law to a person accused; shall for every such offence be punished with imprisonment for a term not exceeding two months, or with fine which may extend to five hundred rupees, or both.

80. (3) In any case of an alleged offence by a Magistrate, Police officer or other person, or of a wrong alleged to have been done by such Magistrate, Police officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted more than six months after the date of the act complained of.

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THIS was a reference made by H. L. Painter, District Magistrate of Nasik.

Certain property was seized from the applicant by Majidkhan (a Sub-Inspector of Police) on the 2nd March 1916. The applicant was next tried by a Magistrate for an offence of receiving stolen property and was acquitted. The property seized was returned to him on the 30th October 1916.

On the 12th December 1916, the applicant applied to the Magistrate, charging the Police officer under section 63 (b) of the Bombay District Police Act (Bombay Act IV of 1890) with vexatiously seizing his property. The Magistrate ordered a process to issue for trial.

The District Magistrate being of opinion that the application was time-barred under section 80 (3) of the Act, referred the case to the High Court.

The reference was heard.

*Setalvad* and *Pandit*, with *G. N. Thakor*, for the applicant.

*S. S. Parkar*, Government Pleader, for the Crown.

BACHELOR, J. :—This is a reference by the learned District Magistrate of Nasik, and it arises in the following circumstances.

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.

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,

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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.

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.:—I am of the same opinion.

*Rule discharged.*

R. R.

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