

## APPELLATE CRIMINAL

Before Mr. Justice Dixit and Mr. Justice Chainani.

1951  
Oct. 5

CHIMANLAL BECHARDAS v. THE SURAT BOROUGH MUNICIPALITY.\*

*Bombay Shops and Establishments Act (Bom. LXXIX of 1948), ss. 2 (15), 18 (1), 43, 52 (b), 60—Bombay Municipal Boroughs Act (Bom. XVIII of 1925), ss. 9, 30 (2), 34—Sanction for prosecution under Bom. LXXIX of 1948—Sanction granted by Chief Officer and not by Municipality—Validity of sanction.*

A Chief Officer of a Municipality is a different entity from the Municipality whose sanction is required under s. 60 of the Bombay Shops and Establishments Act, 1948, for instituting a prosecution under the Act.

The accused was convicted by the trying Magistrate under s. 52 of the Bombay Shops and Establishments Act, 1948, on the charge of keeping his shop in Surat open on Sunday in contravention of the provisions of s. 18 (1) of the Act. The sanction of the local authority for the prosecution required under s. 60 thereof was granted not by the Surat Municipality but by its Chief Officer. On a reference by the Sessions Judge to the High Court:

*Held*, that the Chief Officer having no power to grant the sanction there was no valid sanction for the prosecution, and, therefore, the conviction must be set aside.

CRIMINAL REFERENCE made by V. R. Shah, Additional Sessions Judge, Surat, recommending that the order of conviction and sentence passed by S. B. Patel, Stipendiary Magistrate, First Class, Surat, be set aside.

Chimanlal Bechardas (accused) who had a shop at Surat was doing the business of selling betelnuts and *pans*. He had notified every Sunday as the weekly holiday of the shop, but on October 15, 1950, which was a Sunday the shop was found open.

On November 1, 1951, the accused was prosecuted before the Stipendiary Magistrate, First Class, Surat, for having committed an offence under s. 52 inasmuch as he contravened the provisions of s. 18 (1) of the Act. The sanction for the prosecution was given by Mr. T. R. Desai who was the Chief Officer of the Surat Borough Municipality.

The learned Magistrate convicted the accused and sentenced him to pay a fine of Rs. 50.

\* Criminal Reference No. 87 of 1951 (with Cri. Ref. No. 104 of 1951).

In revision, the Additional Sessions Judge, Surat, made a reference to the High Court recommending that the conviction and the sentence be set aside as there was no valid sanction for the prosecution. He observed in his judgment as follows:—

“The question is whether the sanction given by the Chief Officer is equivalent to the sanction given by the Municipality. The Municipality is under s. 8 of the Bombay Municipal Boroughs Act, 1925, a body corporate with perpetual succession and common seal, under s. 9 such municipality shall consist of elected councillors. So the Surat Borough Municipality means the body corporate consisting of the elected councillors. A sanction of such Municipality would, therefore, be a sanction given by the elected councillors of the municipality; and the councillors can give such a sanction only when they meet in a body and resolve to give a sanction. In other words, a sanction by a municipality should be a sanction given by a resolution passed at the meeting of the councillors of the municipality. Nowhere in the Act it is stated that the Chief Officer is competent to grant sanction on behalf of the Municipality. It was not pleaded that the power to give a sanction vested in the Municipality was delegated to the Chief Officer; and, therefore, no question of any delegation of authority to the Chief Officer arises in this case. I am, therefore, of the opinion that the sanction given by the Chief Officer of the Municipality is not equivalent to a sanction given by the Municipality itself.”

The reference was heard.

Y. V. Chandrachud (*amicus curie*), for the accused.

C. K. Shah, for Government Pleader, for the State.

CHAINANI J. In this case the accused has been convicted under s. 52 of the Bombay Shops and Establishment Act, 1948, on the charge of keeping his shop in Surat open on Sunday in contravention of the provisions of s. 18 of the Act. The Additional Sessions Judge, Surat, has now made a reference recommending that the conviction of and the sentence passed upon the accused should be set aside, as there was no valid sanction for his prosecution.

Section 60 of the Act provides that no prosecution under this Act or the rules or orders made thereunder shall be instituted except with the previous sanction of the Government or the local authority, as the case may be. The expression “local authority” has been defined in s. 2 (15) of the Act as meaning a municipality constituted under the City of Bombay Municipal Act, the Bombay District Municipal Act or the Bombay Municipal Boroughs Act or a local board constituted under the Bombay Local Boards Act. As the accused’s shop is situated in Surat City, the local authority in this case would be the Surat Municipality, which is constituted under the Bombay Municipal Boroughs Act, 1925. The sanction for the prosecution of the

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accused has, however, not been granted by the Surat Municipality, but by its Chief Officer. A Chief Officer is an executive officer of the Municipality. He is appointed by the municipality. s. 9 of the Bombay Municipal Boroughs Act provides that every municipality shall consist of elected councillors. A Chief Officer is therefore, a different entity from the municipality or the local authority, whose sanction is required under s. 60. This section does not empower the Chief Officer to grant such sanction. S. 43 of the Act provides that it shall be the duty of every local authority to enforce, within the area subject to its jurisdiction, the provisions of the Act: provided that the local authority may by order direct that the said duty of enforcing the provisions of the Act shall be discharged, in such circumstances and subject to such conditions, if any, as may be specified in the order, by its Chief Executive Officer or any other officer subordinate to it. It is doubtful whether sanctioning a prosecution would fall within the expression "enforcing the provisions of the Act" in s. 43 of the Act. Even assuming that under this section the Municipality could delegate its power of granting sanction for instituting prosecutions to its Chief Officer, there is nothing on record to show that the Surat Municipality has delegated this power to its Chief Officer. There is also no provision in the Bombay Municipal Boroughs Act which would enable the Chief Officer to exercise this power. S. 30 (2) of this Act states that the executive power for the purpose of carrying out the provisions of "this Act" vests in the Chief Officer. This section therefore deals only with the powers of a Chief Officer for the purpose of carrying out the provisions of the Municipal Boroughs Act. S. 34 defines the powers and duties of a Chief Officer. This section also does not contain any provision which would enable a Chief Officer to exercise the power conferred on a Municipality under s. 60 of the Bombay Shops and Establishments Act.

The view taken by the learned Additional Sessions Judge that there was no valid sanction for the prosecution of the accused is, therefore, correct. We accordingly, set aside his conviction and the sentence passed upon him.

Fine, if paid, should be refunded.

Reference accepted.

M. W. P.