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(1976) 04 BOM CK 0020

Bombay High Court

Case No: Criminal Revision Application No. 10 of 1976

V.K. Khadke		APPELLANT
	Vs	
Smt. Manjulabai Vanji Chaudhari		RESPONDENT

Date of Decision: April 26, 1976

Acts Referred:

- Maharashtra Municipalities Act, 1965 - Section 300

Citation: (1978) 80 BOMLR 446

Hon'ble Judges: Sapre, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sapre, J.

This criminal revision application raises a question about the scope and interpretation of Section 300 of the Maharashtra Municipalities Act, 1965, hereinafter referred to as "the Act".

2. The petitioner on behalf of Jalgaon Municipal Council filed a complaint in the Court of the Judicial Magistrate, First Class, First Court, Jalgaon, against respondent No. 1 Manjulabai, complaining that she had committed offences punishable under Sections 189(8), (9), (10) as also u/s 181(3) of the Act. Manjulabai pleaded guilty. That plea was accepted and she was convicted. She was sentenced to pay a fine of Rs. 25, in default, simple imprisonment for three days. She was also directed to remove the unauthorised construction within fifteen days. The punishment prescribed by Section 181(3) is of fine only which may be extended to Rs. 100. The punishment prescribed u/s 189(9) Sub-sections (8) and (10) of Section 189 are not relevant for our purpose) is also of fine only which may be extended to Rs. 5,000. The grievance made in this application is that Section 300 of the Act prescribes a minimum sentence of fine, which is not less than one-fourth of the maximum amount of fine prescribed for the offence and if the fine prescribed for that offence is unlimited, it

shall not be less than Rs. 250. But the learned trial Magistrate had not imposed the minimum fine prescribed. In the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, no fine less than the minimum could be imposed. The imposition of the fine of Rs. 25 is, therefore, illegal and it should be set aside.

3. Section 300 of the Act reads as under:

In every case in which a person is convicted for an offence punishable by or under this Act and the Court considers that he should be sentenced with fine only, then in the absence of special and adequate reasons to the contrary to be mentioned in, the judgment of the Court, the fine to be imposed on him shall not be less than one-fourth of the maximum amount of fine prescribed for that offence, and if the fine prescribed for that offence is unlimited, shall not be less than two hundred and fifty rupees.

According to Mr. Pradhan, the learned advocate for the petitioner, Section 300 applies to all offences punishable under the Act, including those under Sections 189(9) and 181(5). As the maximum amount of fine prescribed u/s 189(9) is Rs. 5,000, a minimum amount of fine of Rs. 1,250 ought to have been imposed. It is true that the Court had a discretion to impose a fine less than the minimum, but that could be done for special and adequate reasons to be mentioned in the judgment. In the present case, no such reasons have been mentioned in the judgment of the learned trial Magistrate. Hence, the order of fine of Rs. 25 is illegal.

3. It is difficult to agree with the view of Mr. Pradhan that Section 300 applies generally to all offences punishable under the Act. If one sees the scheme of the Act, one will find that there are two types of offences: (1) serious and (2) less serious or minor. The serious offences are visited with the penalty of a term of imprisonment or fine of both. The less serious or minor offences are visited with a punishment of fine only. The serious offences are to be found, amongst others, in Sections 26, 29(2), 285(3) and 291(1)(ii). The first two offences relate to election and secrecy of voting; the third deals with an offence relating to cattle impounding and the last relates to offences concerned with animals. In all these, the punishment prescribed is imprisonment for a term or fine or both. The instances of less serious offences are to be found, besides Sections 181(3) and 189(9), in Sections 187(2), 188(2), 196, 233 and others where the penalty prescribed is only fine. In the case of serious offences, the Legislature ordinarily expected the Court to impose a substantive sentence of imprisonment with or without fine. But if the Court were to impose only a sentence of fine in respect of these offences, the Legislature expected that the amount of fine should be substantial. It was to provide for this situation that Section 300, hi my view, was enacted. It was not enacted to apply to offences which were considered less serious or minor and where the Legislature itself thought it fit to prescribe a sentence of fine only. In the present case, both Section 181(3) and Section 189(9) provide a sentence of fine only and, therefore, Section 300 can have no application.

4. This interpretation is in consonance with the language of Section 300. Although Section 300 opens with the clause:

In every case in which a person is convicted for an offence punishable by or under this Act

which may give the impression that the section is to be applied to every offence under the Act where there is a conviction, yet that clause is followed by the word ''and'' and another clause which reads:

the Court considers that he should be sentenced with fine only.

The use of the word ''and'' shows that both the clauses are to be read together and the cases to which the section is to be applied are required to be determined by reading both the clauses together. The use of the word ''then'' at the end of the two clauses suggests that both the clauses must be satisfied before what follows after the word ''then'' can be made applicable. In other words, both the clauses, as mentioned above, have to be satisfied for the applicability of Section 300.

5. If the two clauses mentioned above are read together, it will mean that the section can have application only where there is a conviction for an offence and the Court considers that the accused should be sentenced with fine only. The important words are ''considers'' and ''with fine only''. The use of the words ''with fine only'' suggests that the section has not to apply where a particular offence prescribes a sentence of fine only and does not also prescribe the substantive sentence of imprisonment. The word ''considers'' shows that the Court has a discretion either to pass a sentence of imprisonment or a sentence of fine only. This situation cannot arise where the offence prescribes a sentence of fine only, because there is no question of the Court being required to consider whether the accused should be sentenced with fine only.

6. Mrs. Shenoy, the learned Public Prosecutor, has invited my attention to the decision of this Court in Jalgaon Municipal Council v. Krishna Suka (1969) Criminal Revision Application Nos. 1064, 1065 and 1066 of 1968, where Bal J. also took a view similar to the one I am inclined to take, namely, that Section 300 can have no application to the case of an offence punishable with fine only.

7. Mr, Pradhan, however, drew my attention to the marginal note to Section 300, which is "Minimum penalty for offences under this Act", which, according to him, means all offences irrespective of the fact whether the penalty prescribed is imprisonment for a term or a fine or both or is of fine only. He has also referred to Clause 29 of the Statement of Objects and Reasons made at the time of the introduction of the Bill in the Legislature which stated that Section 300 was being inserted in order that persons convicted of municipal offences should not escape with light punishment and it was, therefore, being provided that the minimum penalty for an offence under the Act shall be not less than 25 per cent. of the

maximum penalty or fine for that offence. According to Mr. Pradhan, this Statement of Objects and Reasons shows that the Legislature did not want to make any distinction between an offence which prescribed a term of imprisonment or fine or both and an offence which prescribed fine only. He also submitted that Section 300 consists of two parts. The portion "the Court considers that he should be sentenced with fine only" deals with offences which are punishable both with imprisonment and fine, whereas the rest of the portion in the section deals with offences which prescribe a sentence of fine only. Mr. Pradhan has relied upon two decisions of this Court in The Municipal Council, Jalgoan v. Murlidhar Kanhyalal Pande (1970) Criminal Revision Application No. 1095 of 1969, and Mr. M.P. Phadnis v. Mohamad Sharif H. Rahim Malik (1970) Criminal Revision Application No. 12 of 1970, both by Kotval C.J., in which he had applied Section 300 even to offences where the only penalty prescribed was of fine. Mr. Pradhan has submitted that having regard to the object of the Legislature in enacting Section 300, the language of the section, including the marginal note, and the judicial interpretation given to Section 300 by this Court, it will be proper to hold that Section 300 applies to all offences punishable under the Act and the section is not restricted to offences where the penalty prescribed is both of imprisonment for a term and fine.

8. In the criminal revision applications decided by Kotval C.J., the question of the scope and interpretation of Section 300 was not at all canvassed and the argument had proceeded on the basis that Section 300 applies even to offences where the penalty prescribed is of fine only. Those decisions cannot, therefore, be an authority on the scope and interpretation of Section 300. In regard to the marginal note and the Statement of Objects and Reasons, they must be restricted to what was present in the mind of the Legislature. The Act made a distinction between serious and minor offences. In the case of serious offences, both a sentence of imprisonment and a sentence of fine were prescribed. For minor offences, only fine was prescribed. The Legislature expected the Court to impose a sentence of imprisonment in the case of serious offences, but if the Court wanted to impose a sentence of fine only, the Legislature expected that the amount of fine should not be below certain minimum which they prescribed in Section 300, except for special and adequate reasons to the contrary to be mentioned in the judgment. That interpretation follows even from the language used in Section 300, as I have stated. Not only the words "in every case" but also the words "and", "considers", "fine only" and "then" have to be given their due and adequate meaning and if the proper meaning is given to all these words then the only harmonious construction that will follow is that Section 300 applies only to those offences where penalty prescribed is both of imprisonment for a term and fine and the Court imposes a sentence of fine only. It has no application where the offence is punishable with sentence of fine only.

9. Section 300 of the Act was thus not attracted and there was no obligation on the Court to pass the minimum sentence prescribed by that section. Mr. Pradhan

submitted, in the alternative, that even if Section 300 was not attracted, the fine imposed by the learned trial Magistrate is ridiculously low and it should be suitably enhanced. The revision, however, is restricted only to the question of the trial Magistrate having no jurisdiction to impose a sentence less than the prescribed minimum in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court. The inadequacy of the sentence was not otherwise taken up in the revision application. It will also not be proper in a revision application to interfere with the discretion exercised by the trial Magistrate in the matter of sentence when the sentence imposed cannot be said to be illegal.

10. In the result, the application fails and is dismissed. The Rule is discharged.