

**(1932) 09 BOM CK 0017**

**Bombay High Court**

**Case No:** Criminal Appeal No. 352 of 1932

Emperor

APPELLANT

Vs

Alli Hassan Limbuvala

RESPONDENT

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**Date of Decision:** Sept. 28, 1932

**Acts Referred:**

- Bombay Public Conveyances Act, 1920 - Section 26
- Police Act, 1888 - Section 2

**Citation:** AIR 1933 Bom 63 : (1932) 34 BOMLR 1662

**Hon'ble Judges:** Patkar, J; Barlee, J

**Bench:** Division Bench

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### **Judgement**

Patkar, J.

In this case the accused was charged u/s 26 of the Bombay Public Conveyances Act (Bom. Act VII of 1920) A and Section 123 of the Indian Railways Act, IX of 1890. The learned Honorary Presidency Magistrate acquitted the accused presumably on the ground that the place, where the accused was found, being included within the limits of the railway district, was not included within the limits of the city of Bombay for the purpose of the Bombay Public Conveyances Act, and that the railway police had no power to arrest the accused for an offence under an enactment which was confined only to the city of Bombay.

2. Under s. 50 of the Bombay Public Conveyances Act VII of 1920 any police-officer may arrest without warrant any person who has committed any offence under this Act, and may seize and detain any conveyance or horse in relation to which such offence has been committed. Similarly, Section 123 of the Indian Railways Act refers to the disobedience of the reasonable directions of any police-officer. The question is whether the place where the accused committed the offence is included within the city of Bombay for the purpose of the Bombay Public Conveyances Act.

3. u/s 20 of Act V of 1861 police-officers enrolled under the Act shall not exercise any authority, except the authority provided for a police-officer under the Act and any Act which shall thereafter be passed for regulating criminal procedure. u/s 23 it shall be the duty of every police-officer to detect and bring offenders to justice. u/s 24 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 parson committing an offence.

4. Section 2 of Act III of 1888 which is an Act to amend the law relating to the regulation of police lays down that notwithstanding anything in Act XXIV of 1859, Act V of 1861 or any Act relating to the police in any presidency town, the Governor General in Council may, by notification in the Gazette of India, create a general police district embracing parts of two or more presidencies, provinces, or places, and direct the enrolment under Act V of 1861 of a police force for service therein. Sub-section (3) lays down that members of a police force enrolled for service in a general police district created under Sub-section (1) shall have within every part of any presidency, province or place of which any part is included in the district the powers, duties, privileges and liabilities which, as police-officers appointed under Act V of 1861, they have within the district. Sub-section (5) provides that a part of a presidency, province or place included in a general police district under subs, (1) shall not by reason of being included therein cease for the purposes of any enactment relating to police to be part of the presidency, province or place of which it forms part.

5. It is, therefore, clear under this section that the power is vested in the Governor General in Council to create a general police district, and the part of a presidency, province or place included in a general police district shall not by reason of being included therein cease to be part of the presidency, province or place of which it forms part, Therefore, the precincts of the G.I.P. Railway would not by reason of being included in the police district cease to be part of the city of Bombay of which it forms part. Under Sub-section (4) any member of such a force in any part of the local area in which he has the powers of a police-officer under Sub-section (3) shall exercise any of the powers which an officer in charge of a police station has in that part, and, when so exercising any such power, shall, subject as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. The railway district has been formed by Government of India Notification 943 dated October 19, 1917, published at page 2430, Part I, of the Bombay Government Gazette, dated October 25, 1917, and the railway district so formed does not cease to be a part of the presidency, province or place of which it forms part according to sub Section (6) of s 2 of Act III of 1888.

7. The definition of the city of Bombay as given by the General Clauses Act Bombay Act I of 1904 is as follows: "City of Bombay" shall mean the area within the local

limits for the time being of the ordinary original civil jurisdiction of the Bombay High Court of Judicature. According to Rule 386 of the Rules and Forms of the Bombay High Court, page 88, the Sheriff shall ordinarily execute the process of High Court in the Island of Bombay, Cross alias Gibbet and Butcher's Island and the coasts and harbours thereof respectively and shall not be compellable to execute process beyond the said limits. The limits of the city of Bombay have been discussed in the case of Trimbak Gangadhar Ranade v. Bhagwandas Mulchand ILR (1898) Bom. 348 It is not denied that the railway premises are included in the city of Bombay.

8. The only ground on which the judgment of the learned Honorary Magistrate proceeds is that the formation of the railway district removes those premises from the city of Bombay, That view is entirely opposed to Sub-section (6) of Section 2 of Act III of 1888. We think, therefore, that the offence was committed within the limits of the city of Bombay and therefore the Bombay Public Conveyances Act applied.

The next question is whether the police-officer of the railway district has power to set the law in motion. According to Section 2, Sub-sections (8) and (4), of Act III of 1888, the police-officer has ample power to set the law in motion, According to the decision in *In re Ganesh Narayan Sathe* ILR (1889) Bom. 600 any one who is not even a police-officer can set the criminal law in motion. The precise point was raised in a recent case in the case of *Emperor v. Baloo Babaji* (1931) 34 Bom. L.R. 275 where the question whether the Bombay Public Conveyances Act applied to the premises of the Bombay Central Station, was considered. It was held by the learned Chief Justice that under Act III of 1888 and the Government Notification No. 943, dated October 19, 1917, the railway police had all the powers of the general police within their special district, the railway station, and that whether the railway police had the power of the ordinary police or not, the Magistrate was bound to decide the case on the evidence.

9. Mr. Desai appearing on behalf of the accused has acceded to the correctness of the contention on behalf of the Crown, and has not attempted to support the judgment of the learned Honorary Magistrate. We think, therefore, that the view of the learned Honorary Magistrate is erroneous.

Mr. Desai on behalf of his client has invited us to dispose of the case here instead of sending it back to the learned Honorary Magistrate in order to avoid trouble and annoyance to his client. We think that the offence is clearly proved on the evidence of Sakharam, Police Constable No. 274, and the admission of the accused. As the appeal is filed only on a question of principle we convict the accused of the offences u/s 26 of the Bombay Public Conveyances Act and Section 123 of the Indian Railways Act and fine him rupee one for each of the offences in default one week's simple imprisonment under each of the sections.

10. One week's time is allowed to pay the fine.

Barlee, J.

11. I agree and have nothing to add.