ATTIQ-UR-REHMAN A

v.

MUNICIPAL CORPORATION OF DELHI AND ANR.

FEBRUARY 29, 1996

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[DR. A.S. ANAND AND S. SAGHIR AHMAD, JJ.]

Delhi Municipal Corporation Act, 1957 : Sections 332, 461, 466 (a), 467, 469 and 470.

Code of Criminal Procedure, 1973 : Sections 4, 5, 6, 8, 11, 13 and 14. C

Municipal Corporation Act—Offences under—Metropolitan Magistrate —Power to take congnisance and try offences under Delhi Municipal Corporation Act in the absence of appointment of a Municipal Magistrate—Complaint against appellant for unauthorised construction—Suit filed by appellant D *restraining respondent-Corporation from demolishing the unauthorised construction decreed by Trial Court—Thereafter criminal complaint lodged against the appellant under sections 332 and 461 of the Delhi Municipal Corporation Act—At the relevant time no Municipal Magistrate had been appointed in accordance with the provision of Section 469 of the Act—Therefore complaint filed in the Court of Metropolitan Magistrate—No notification* E *issued conferring on latter powers of Municipal Magistrate—Applications moved by appellant for stay of criminal proceedings during pendency of civil suit as well as that Metropolitan Magistrate had no jurisdiction to try him rejected—Criminal revision preferred by appellant—Summary rejection by High Court—Appeal—Held—In the absence of courts of special jurisdiction* F *i.e. Municipal Magistrates, to be apopointed under Section 469 of the Act, a Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, has the jurisdiction and powers to try the offences under the Act in accordance with the procedure envisaged by Section 467 of the Act and in accordance with the limitation the time prescribed for initiation of the criminal proceedings under Section 471 of the Act—Where, no court of a* G *Municipal Magistrate has been constituted under Section 469 of the Act and no Notification has also been issued conferring the powers of a Municipal Magistrate on a particular Judicial Magisrate of the First Class or a Metropolitan Magisrate, as the case may be, the jurisdiction of an ordinary criminal court to take cognisance of the offences committed under the Act,* H

A *rules, regulations or bye-laws made thereunder is exerciseable by the courts of general jurisdiction established to try offences under the Indian Penal Code as well as the offences under any other law—The Metropolitan Magistrate committed no error in taking cognizance of the complaint.*

Criminal Courts—Bar of jurisdiction to try offences under the Delhi
B *Municipal Corporation Act—The Government has an obligation under Section 469 of the Act to appoint Municipal Magistrate for trial of offences under the Act, rules, regulations or bye-laws made thereunder—Government has the discretion to appoint one or more Municipal Magistrates—But the Government is not relieved of its obligation to appoint Municipal Magistrates—Once*
C *such Municipal Magistrates are appointed, they alone have the jurisdiction to try offences under the Act—The bar under Section 470 of the Act becomes operative only when a Municipal Magistrate has been appointed for trial of offences under the Act.*

Exclusion of jurisdiction of a court of general jurisdiction can be
D *brought about only by setting up of a court of limited jurisdiction in respect of the limited field provided that the vesting and the exercise of that limited jurisdiction is clear and operative—Where there is no valid machinery for the exercise of jurisdiction in a specific case, the exercise of jurisdiction by the Judicial Magistrates or the Metropolitan Magistrates, as the case may, is not*
E *excluded.*

Criminal revision—Summary dismissal by High Court—Duty of High Court to give reasons.

Maxim "lex non cojit ad impossibillia"—Meaning and applicability of.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 281 of 1996.

From the Judgment and Order dated 27.5.91 of the Delhi High Court in Crl. R. No. 126 of 1991.

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Shri Narain, Sandeep Narain and Yeshwant Mathur for the Appellants.

R.K. Maheshwari for the Respondents.

H The Order of the Court was delivered :

Special leave granted. A

The only question involved in this case is whether in the absence of the appointment of a Municipal Magistrate, a Metropolitan Magisrate can take cognizance and try an accused for commission of an offence punishable under the Delhi Municipal Corporation Act, 1957 ? B

The circumstances in which this question has arisen need a brief notice at the thresh-hold.

On 6.6.1989, a Junior Engineer of the complainant Municipal Corporation of Delhi (respondent No.1 herein) filed a report against the C appellant alleging unauthorised construction of roof and a stair-case on the ground floor of the appellant's property situate at 1535-1537, Church Road, Kashmere Gate, Delhi. The appellant apprehending demolition of his house, filed Civil suit No. 616 of 1989 in the Court of Sub-Judge, Delhi, contending *inter alia* – that the replacement of the roof and the alleged D repairs/alterations were permissible under the building bye-laws and required no formal order of sanction and, therefore, the appellant could not be said to have carried out any unauthorised construction and sought an injunction against Respondent No.1 restraining it from demolishing the alleged unauthorised construction. After contest, the suit was decreed. It was found that the notice for demolition had not been properly served. E Respondent No.1 was restrained from demolishing the property of the appellant except "in due process of law." The Junior Engineer of respondent No.1 filed three more reports on 21.8.1989, 4.9.1989 and 17.11.1989 alleging further unauthorised constructions in the said property by the appellant . On the basis of those reports, Municipal Corporation of Delhi, F respondent No.1, on 17th November, 1989 filed a criminal complaint (Case No. 533 of 1989) under section 332 read with Section 461 of the Delhi Municipal Corporation Act, 1957 (hereinafter 'the Act') against the appellant in the Court of Sh. R.S. Khanna, Metropolitan Magistrate, Delhi. The appellant moved two applications before the Metropolitan Magistrate, G Delhi one for the stay of criminal proceedings during the pendency of the civil suit and the second seeking return of the complaint on the ground that the Metropolitan Magistrate had no jurisdiction to try him for the offence under section 332 read with Section 461 of the Act in view of the provisions of Section 469 of the Act and in the absence of any Notification conferring powers of the Municipal Magistrates on the Metropolitan Magistrates. H

A Both the applications were rejected on 26th February, 1991. The learned Metropolitan Magistrate held that the plea of the appellant that the court had no jurisdiction to try the offence was not maintainable and there was no justification for staying the criminal proceedings during the pendency of the civil suit as the scope of the suit and the criminal complaint was B different. Aggrieved, the appellant filed a criminal revision petition in the High Court of Delhi which was summarily dismissed on 26th May, 1991. Hence this appeal by special leave.

Learned counsel for the appellant submitted that an offence under the Act can only be tried by a Municipal Magistrate appointed under the C Act and a Metropolitan Magistrate exercising general jurisdiction has no authority to take cognizance of an offence under the Act and try any person accused of an offence under the Act. It was argued that the learned Metropolitan Magistrate fell in error in rejecting the applications and the High court also failed to appreciate the importance of the question involved and erroneously dismissed the Criminal Revision Petition in limine D by a non-speaking order.

Learned counsel for the respondent argued with equal vehmence that in the absence of appointment of Municipal Magistrates under the Act, jurisdiction to try "offences under other laws" vested in the E Metropolitan Magistrates and the appellant was rightly put on trial before the Metropolitan Magistrate.

We do find some substance in the submission of learned counsel for the appellant that the High Court ought not to have dismissed the criminal revision petition by a non-speaking order in limine, in view of the impor- F tance of the question raised in the revision petition but we are of the opinion that instead of remanding the case back to the High Court, we need to decide the question of law ourselves since on facts there is no dispute and the appeal has remained pending in this Court for about five years.

G With a view to answer the question noted in the opening part of our judgment, it is necessary to notice some of the relevant provisions of the Act and the Code of Criminal Procedure 1973 (hereinafter Cr. P.C.)

Section 466(a) of the Act makes Cr. P.C. applicable to the proceedings under the Act and makes an offence under Section 313 of the Act H cognizable.

Section 467 deals with the prosecution of offences and reads as under:– A

"*467. Prosecutions*-—Save as otherwise provided in this Act, no court shall proceed to the trial of any offence,-

(a) under sub-section (5) of section 313 or section 332 or sub-section (1) of section 333 or sub-section (1) of section 334 or section 343 or section 344 or section 345 or section 347 except on the complaint of or upon information received from such officer of the Corporation, not being below the rank of a Deputy Commissioner, as may be appointed by the Administrator; B C

xxx xxx xxx"

Section 469 of the Act reads as follows :

"*469. Municipal Magistrate.* D

(1) The Central Government may appoint one or more magistrates of the first class for the trial of offences against this Act and against any rule, regulation or bye-law made thereunder and may prescribe the time and place at which such magistrate or magistrates shall sit for the despatch of business. E

(2) Such magistrates shall be called municipal magistrate and shall beside the trial of offences as aforesaid, exercise all other powers and discharge all other functions of a magistrate as provided in this Act or any rule, regulation or bye-law made thereunder. F

(3) Such magistrates and the members of their staff shall be paid such salary, pension, leave and other allowances as may, from time to time, be fixed by the Central Government.

(4) The Corporation shall, out of the Municipal Fund, pay to the Central Government the amounts of the salary, pension, leave and other allowances as fixed under sub-section (3) together with all other incidental charges in connection with the establishments of the said magistrates. G

(5) Each such magistrate shall have jurisdiction over the whole of H

A Delhi.

(6) For the purposes of the Code of Criminal Procedure, 1898, all municipal magistrates appointed under this Act shall be deemed to be magistrates appointed under Section 12 of the said Code.

B (7) Nothing in this shall be deemed to preclude any magistrate appointed hereunder from trying any offence under any other law."

Section 470 of the Act provides as follows :

"470. All offences against this Act or any rule, regulation or bye-law
C made thereunder, whether committed within or without the limits of Delhi, shall be cognizable by a municipal magistrate and such magistrate shall not be deemed to be incapable of taking cognizance of any such offence or of any offence under any enactment which is repealed by, or which ceases to have effect under this Act
D by reason only of his being liable to pay any municipal tax or rate or benefitted out of the Municipal Fund."

Chapter II of Cr. P.C. deals with the Constitution of Criminal Courts and offices.

E Section 4 Cr. P.C. reads as follows :

"*4. Trial of offences under the Indian Penal Code and other laws.*- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
F

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into,
G trying or otherwise dealing with such offences."

Section 5 Cr. P.C. Provides as follows :

"*5. Saving*– Nothing contained in this Code shall, in the absence of a specific provisions to the contrary, affect any special or local
H law for the time being in force, or any special jurisdiction or power

conferred, or any special form of procedure prescribed, by any other law for the time being in force." A

Section 6 Cr. P.C. reads as follows :-

"*Classes of Criminal Courts.* - Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State the following classes of Criminal Courts, namely- B

(i) Courts of Session ;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates; C

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates."

Sections 8 and 16 of Cr. P.C. deal with the courts of Metropolitan Magistrates and inter alia provide that in every metropolitan area, the State Government may, after consultation with the High Court establish courts of Metropolitan Magistrates at such places and in such number as it may specify. The presiding officers of such courts shall be appointed by the High Court and the jurisdiction and powers of every such Magistrate shall extend throughout the metropolitan area. The High Court shall appoint a Metropolitan Magistrate as Chief Metropolitan Magistrate in every metropolitan area and may also appoint Additional Chief Metropolitan Magistrates and such other Metropolitan Magistrates as it may deem necessary. D E F

Section 11 of Cr. P.C. deals with the establishment of the courts of the Judicial Magistrates while Section 13 deals with the appointments of Special Judicial Magistrates.

Section 14 Cr. P.C. deals with the local jurisdiction of Judicial Magistrates and *inter-alia* provides : G

"*14. Local jurisdiction of Judicial Magistrates* - (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under Section 11 or under Section 13 may H

A exercise all or any of the powers with which they may respectively be invested under this Code :

Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.

B

(2) .....

(3) .....

C It is in the light of the aforesaid provisions that we have to resolve the question formulated above.

Facts are not in dispute insofar as the question of jurisdiction is concerned. Admittedly at the relevant time no Municipal Magistrate had been appointed in accordance with the provisions of Section 469 of the Act D and the complaint was filed by respondent No. 1 in the Court of Metropolitan Magistrate, Delhi, for trial of an offence punishable under Section 332 of the Act. The learned Metropolitan Magistrate is a Judicial Magistrate of the First Class but there was no notification by which the powers of Municipal Magistrates were conferred on him.

E From a plain reading of Section 4 Cr. P.C. (supra) it emerges that the provisions of Criminal Procedure Code are applicable where an offence under the Indian Penal Code *or under any other law* is being investigated, inquired into, tried or otherwise dealt with.

F Section 469 of the Act empowers the Central Government to appoint one or more Magistrates of the First Class to try offences under the Act. All such Magistrates are called Municipal Magistrates and shall besides the trial of offences under the Act, rules, regulations or bye-laws framed thereunder, exercise all other functions of a Magistrate as provided in the Act and are not precluded from trying offences under any other law as G well. Every Municipal Magistrate appointed under Section 469 of the Act by the Central Government is a Judicial Magistrate of the First Class and shall be deemed to be a Magistrate appointed under Section 12 Cr. P.C. Thus, no person who is not a Judicial Magistrate of the First Class can be conferred powers of a Municipal Magistrate to try offences under the Act, H rules, regulations or bye-laws made under the Act.

The bar of jurisdiction of ordinary criminal courts to try offences under the Act is brought about by Section 470 of the Act which *inter alia* provides that all offences under the Act, whether committed within or without the limits of Delhi shall be cognizable by a Municipal Magistrate. Vide Section 467 of the Act *no court* shall proceed to the trial of any offence specified in the section, including an offence under Section 332 of the Act except on a complaint of or information received from an officer, not below the rank of Deputy Commissioner, appointed by the Administrator of the Corporation.

Keeping in view the scheme of the Act and the relevant provisions of the Code of Criminal Procedure, it emerges that the Government has an *obligation* under Section 469 of the Act to appoint Municipal Magistrates for trial of offences under the Act, rules, regulations or bye-laws made thereunder. The use of the word "may" in Section 469 of the Act only indicates that the Government has the discretion to appoint one or more Municipal Magistrates but it certainly does not relieve the Government of its obligation to appoint Municipal Magistrates and once such Municipal Magistrates are appointed, they alone would have the jurisdiction to try offences under the Act as per the mandate of Section 470 of the Act. The bar under Section 470 of the Act becomes operative only when a Municipal Magistrate has been appointed for trial of offences under the Act. The jurisdiction of the criminal courts under Section 4 Cr. P.C. is comprehensive and exhaustive. To the extent that no valid machinery is set up under any other law for trial of any particular case, the jurisdiction of the ordinary criminal court cannot be said to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction can be brought about only by setting up of a court of limited jurisdiction in respect of the limited field provided that the vesting and the exercise of that limited jurisdiction is clear and operative. Thus, where there is no valid machinery for the exercise of jurisdiction in a specific case, the exercise of jurisdiction by the Judicial Magistrates or the Metropolitan Magistrates, as the case may, is not excluded. The law and procedure for trial of cases under the Indian Penal Code and those under other statutes, according to Section 4 Cr. P.C., is not different except that in the cases of offences under other laws, the procedure laid down by the Cr. P.C. is subject to the provisions of the relevant enactment for the time being in force for regulating the manner of trial of offences under that enactment.

A A conjoint reading of the provisions of Cr. P.C. and the Act, therefore, unambiguously suggests that in the absence of courts of special jurisdiction i.e. Municipal Magistrates to be appointed under Section 469 of the Act, a Judicial Magisrate of the First Class or a Metropolitan Magistrate, as the case may be, shall have the jurisdiction and powers to try the offences under the Act in accordance with the procedure envisaged by Section 467 of the Act and in accordance with the limitation the time prescribed for initiation of the criminal proceedings under Section 471 of the Act. This interpretation is in accord with the position that every offence committed under the Indian Penal Code or under any other law for the time being in force must be tried and an accused cannot be permitted to raise any objection with regard to the forum for trial of the offence, where the specific forum has not been constituted under the Act because the law does not contemplate an offence, to go untried. Where, no court of a Municipal Magistrate has been constituted under Section 469 of the Act and no Notification has also been issued conferring the powers of a Municipal Magistrate on a particular Judicial Magistrate of the First class or a Metropolitan Magistrate, as the case may be, the jurisdiction of an ordinary criminal court to take cognizance of the offences committed under the Act, rules, regulations or bye-laws made thereunder is exerciseable by the courts of general jurisdiction established to try offences under the Indian Penal Code as well as the offences under any other law.

We, therefore, unhesitatingly come to the conclusion that in the absence of establishment of the courts of a Municipal Magistrate under Section 469 of the Act, the Magistrates of the First Class including Metropolitan Magistrates are competent to try offences punishable under the Act, rules, regulations or bye-laws made thereunder. Our answer to the question posed in the opening part of the judgment, therefore, is in the affirmative.

In view of the aforesaid discussion, we do not find any error to have been committed by the learned Metropolitan Magistrate in taking cognizance of the complaint filed by respondent No. 1 under Section 332 read with Section 461 of the Act against the appellant since it is not disputed that the complaint had been filed in the manner prescribed by the Act. Respondent No. 1 could not have filed the complaint before a Municipal Magistrate, since no such Municipal Magistrate had been appointed. The legal maxim *'lex non cojit ad impossibillia'* which means "the law does not

compel a man to do that which he cannot possibly do" is squarely attracted to the fact situation in this case. This appeal, therefore, must fail and is hereby dismissed. The trial court is directed to expeditiously conduct the trial of the criminal complaint No. 533 of 1989 for the offence under Sections 332/461 of the Delhi Municipal Corporation Act, 1957. We need not emphasise that if in the meanwhile a court of Municipal Magistrate has been established under Section 469 of the Act, the trial of the complaint shall be conducted by that court and the complaint shall be deemed to have been transferred to that court for its trial in accordance with law from the court of the Metropolitan Magistrate. Nothing said hereinabove shall, however, be construed as any expression of opinion on the merits of the case.

A B C

T.N.A. Appeal dismissed.