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to murder even although this completed act would not, unless followed by the other acts, result in killing. It might be the beginning of the attempt, but would nonetheless be an attempt".

This supports our view.

We therefore hold that the conviction of the appellant under s. 307, Indian Penal Code, is correct and accordingly dismiss this appeal.

Appeal dismissed.

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THE DARGAH COMMITTEE, AJMER

v.

STATE OF RAJASTHAN

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and T. L. VENKATARAMA AIYAR, JJ.)

Municipality—Costs incurred for repairs realisable by Committee as tax—Magistrate entertaining application—If an inferior criminal court—Ajmer—Merwara Municipalities Regulation, 1925 (Regulation VI of 1925), ss. 222(4), 234.

On the failure of the appellant to carry out the requisition by the Municipality to execute certain repairs to its property the Municipality carried out the said repairs after giving due notice, the cost of which became recoverable from the appellant as tax under s. 222(4) of the Ajmer Merwara Municipalities Regulation. The Municipality applied under s. 234 of the Regulation to the Additional Tehsildar and Magistrate, II Class, Ajmer for the recovery of the amount of cost incurred by them, and the magistrate passed an order calling upon the appellant to pay the dues. Against this order the appellant preferred a criminal revision application in the court of Sessions Judge which was rejected as there was no ground to interfere in revision. The appellant then moved the High Court in its revisional jurisdiction wherein the respondents raised preliminary objection that the criminal revision application filed by the appellant was incompetent since the Magistrate who entertained respondent No. 2 Municipal Committee's application under s. 234 was not an inferior criminal court under s. 439 of the Criminal Procedure

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Code, the said objection was upheld and the criminal revision application dismissed on that ground.

The question was whether the Magistrate who entertained the application made before him by the Municipality under s. 234 of the Regulation was an inferior criminal court under s. 439 of the Code of Criminal Procedure, and also whether an application under s. 234 could be made unless the rules were framed and the forms of the notice for making a demand under s. 222 were prescribed.

Held, that the Proceedings initiated before a Magistrate under s. 234 of the Ajmer Merwara Municipalities Regulation were merely in the nature of recovery proceedings and no other questions could be raised in the said proceedings. The nature of the enquiry contemplated by s. 234 was very limited; it *prima facie* partook of the character of a ministerial enquiry rather than judicial enquiry and at the best could be treated as a proceeding of a civil nature but not a criminal proceeding and the Magistrate who entertained the application was not an inferior criminal court.

Whatever may be the character of the proceedings, whether it was purely ministerial or judicial or quasi-judicial, the Magistrate who entertained the application and held the enquiry did so because he was designated in that behalf and so he must be treated as a *persona designata* and not as a Magistrate functioning and exercising his authority under the Code of Criminal Procedure. He could not therefore be regarded as an inferior criminal court.

Held, further, that if the rules were not prescribed as required by s. 234 of the Regulation then all that could be said was that there was no form prescribed for issuing a demand notice, that did not mean that the statutory power conferred on the committee by s. 222(1) to make a demand was unenforceable and an amount which was claimable by virtue of s. 222(1) did not cease to be claimable just because rules had not been framed prescribing the form for making the said demand.

Crown through Municipal Committee, Ajmer v. *Amba Lal*, Ajmer-Merwara Law Journal, Vol. V, 92, *Re Dinbai Jijibhai Khambatta*, (1919) I.L.R. 43 Bom. 864, *V. B. D'Monte* v. *Bandra Borough Municipality*, I.L.R. 1950 Bom. 522, *Emperor* v. *Devappa Ramappa*, (1918) 43 Bom. 607, *Re Dalsukhram Hurgovandas*, (1907) 6 Cr. L. J. 425 and *Municipal Committee, Lashkar* v. *Shahbuddin*, A.I.R. 1952 M. B. 48, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 162 of 1959.

Appeal by special leave from the judgment and order dated January 13, 1959, of the Rajasthan High Court in D. B. Criminal Revision No. 47 of 1957.

N. C. Chatterjee, J. L. Datta and *C. P. Lal*, for the appellant.

Mukat Behari Lal Bhargava and *Naunit Lal*, for respondent No. 2.

1961. April 24. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—On June 13, 1950, the Municipal Committee, Ajmer, respondent 2, issued a notice against the appellant, the Durgah Committee, Ajmer, under s. 153 of the Ajmer-Merwara Municipalities Regulation, 1925 (VI of 1925) (hereafter called the Regulation) calling upon it to carry out certain repairs in the Jhalra Wall which was in a dilapidated condition. The appellant did not comply with the said requisition and so respondent 2 served another notice on the appellant under s. 220 of the Regulation intimating to it that the required repairs would be carried out at the expense of respondent 2 and that the cost incurred by it would be recovered from the appellant. This notice was served on July 3, 1950. Even so the appellant took no steps to make the repairs and so respondent 2 proceeded to get the repair work done at its expense which amounted to Rs. 17,414. Under s. 222(4) of the Regulation this sum became recoverable from the appellant as a tax. A notice of demand in that behalf was issued on the appellant on April 1, 1952, and in pursuance of the said notice respondent 2 applied to the Additional Tehsildar and Magistrate II Class, Ajmer, for the recovery of the said amount under s. 234 of the Regulation.

In the proceedings before the learned Magistrate the appellant raised certain pleas. These pleas were rejected and an order was passed calling upon the appellant to pay the dues in question by August 30, 1956. Against this order the appellant preferred a criminal revision application in the Court of the Sessions Judge, Ajmer. The learned Sessions Judge considered the contentions raised by the appellant and held that the view taken by the Magistrate cannot be said to be incorrect and so there was no ground to interfere in revision. Feeling aggrieved by the dismissal of its

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revision application the appellant moved the High Court of Judicature for Rajasthan in its revisional jurisdiction. Before the High Court, on behalf of respondent 1, the State of Rajasthan, as well as respondent 2, a preliminary objection was raised that the criminal revision application filed by the appellant was incompetent since the Magistrate who entertained respondent 2's application made under s. 234 was not an inferior criminal court under s. 439 of the Code of Criminal Procedure. This preliminary objection was upheld by the High Court and the criminal revision application dismissed on that ground. It is against this order that the appellant has come to this Court by special leave; and the short question which the appeal raises for our decision is whether the Magistrate who entertained the application made before him by respondent 2 under s. 234 was an inferior criminal court under s. 439 of the Code of Criminal Procedure.

Before dealing with this point it is relevant to refer to the scheme of the material provisions of the Regulation. Section 153 confers power on the Municipality to order removal or repair of buildings which may be found in a dangerous state. Under this section the Committeee may by notice require the owner of the building, wall or structure to remove the same forthwith or cause such repairs as the Committee may consider necessary for the public safety. This section also empowers the Committee to take at the expense of the owner any steps which it thinks necessary for the purpose of averting imminent danger. If the owner on whom a notice is served under s. 153 complies with the requisition nothing more need be done. If, however, the owner does not comply with the requisition served on him the Committee is empowered to cause the repairs to be made after six hours' notice to the owner under s. 220. This section provides that whenever the terms of any notice issued under this Regulation have not been complied with the Committee may, after six hours' notice, cause the act to be done by its officers. As a corollary to this provision, and indeed as its consequence, s. 222 empowers the Committee to recover the cost of the work done

under s. 220. Section 222(1) authorises the Committee to recover the cost of the work from the person in default. Sub-sections (2) and (3) of s. 222 then deal with the question as to which person should be held to be in default, the owner or the occupier; with that question we are not concerned in the present appeal. Sub-section (4) of s. 222 provides that where any money recoverable by the Committee under this section is payable by the owner of the property, it shall be charged thereon and shall be recoverable as if it were a tax levied by the Committee on the property. By sub-section (5) it is provided that the contract between the owner and the occupier is not affected by this section. It is under s. 222(4) that a demand notice was served on the appellant by respondent 2. That takes us to s. 234 which provides for the machinery of recovery of municipal claims. This section provides, inter alia, that any tax claimable or recoverable by a Committee under this Regulation, after demand has been made therefor in the manner prescribed by rule, be recovered on application to a Magistrate having jurisdiction within the limits of the Municipality or in any other place where the person by whom the amount is payable may for the time being reside, by the distress and sale of any movable property within the limits of such Magistrate's jurisdiction belonging to such person. The proviso to this section prescribes that nothing in this section shall prevent the Committee at its discretion from suing for the amount payable in any competent Civil Court. It would thus be seen that the object of making an application to the Magistrate is to obtain an order from the Magistrate directing the recovery of the tax claimable or recoverable by distress and sale of any movable property belonging to the defaulter. It is under this section that the Magistrate was moved by respondent 2. That in brief is the scheme of the material provisions of the Regulation.

The main argument which Mr. Chatterjee, for the appellant, has pressed before us is that in determining the nature of the proceedings under s. 234 and the character of the Magistrate who entertains an application made under the said section, it is important to

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bear in mind that a person in the position of the appellant has no other opportunity to challenge the validity of the notice as well as the validity of the claim made against him by the Committee. The argument is that it would be open to the owner to contend that the notice issued under s. 153 is invalid or frivolous. It would also be open to him to contend that the amount sought to be recovered from him is excessive and that even if the repairs were carried out they could not have cost as much, and since the scheme of the Regulation shows that it provides no opportunity to the owner to raise those contentions except in proceedings under s. 234 the nature of the proceedings and the character of the Magistrate who entertains them should be liberally construed. The proceedings should be deemed to be judicial proceedings and the Magistrate should be held to be an inferior criminal court when he entertains the said proceedings.

If the assumption on which the argument proceeds that the Regulation provides no other opportunity to the owner to challenge the notice or to question the amount claimed from him were sound then there would be some force in the contention that s. 234 should be liberally construed in favour of the appellant. But is that assumption right? The answer to this question would depend upon the examination of three relevant provisions of the Regulation; they are ss. 222(4), 93 and 226. We have already seen that s. 222(4) provides that any money recoverable by the Committee under s. 222(1) shall be recovered as if it were a tax levied by the Committee on the property and shall be charged thereon. Section 93 provides for appeals against taxation. Section 93(1) lays down, inter alia, that an appeal against the assessment or levy of any tax under this Regulation shall lie to the Deputy Commissioner or to such officer as may be empowered by the State Government in this behalf. The remaining five sub-sections of s. 93 prescribe the manner in which the appeal should be tried and disposed of. If the amount recoverable by respondent 2 from the appellant is made recoverable as if it were

a tax levied by the Committee, then against the levy of such a tax an appeal would be competent under s. 93(1). Mr. Chatterjee argues that s. 93(1) provides for an appeal against the levy of a tax, and he draws a distinction between the amount made recoverable as if it were a tax and the amount recoverable as a tax. His contention is that the amount which is recoverable under s. 222(1) is no doubt by fiction deemed to be a tax but against an amount thus deemed to be a tax an appeal would not be competent under s. 93(1). We are not impressed by this argument. If by the fiction introduced by s. 222(4) the amount in question is to be deemed as if it were a tax it is obvious that full effect must be given to this legal fiction; and in consequence, just as a result of the said section the recovery procedure prescribed by s. 234 becomes available to the Committee so would the right of making an appeal prescribed by s. 93(1) be available to the appellant. The consequence of the fiction inevitably is that the amount in question can be recovered as a tax and the right to challenge the levy of the tax accrues to the appellant. This position is made perfectly clear by s. 226. This section provides, inter alia, that where any order of a kind referred to in s. 222 is subject to appeal, and an appeal has been instituted against it, all proceedings to enforce such order shall be suspended pending the decision of the appeal, and if such order is set aside on appeal, disobedience thereto shall not be deemed to be an offence. It is obvious that this section postulates that an order passed under s. 222 is appealable and it provides that if an appeal is made against such an order further proceedings would be stayed. It is common ground that there is no other provision in the Regulation providing for an appeal against an order made under s. 222(1); and so inevitably we go back to s. 93 which provides for an appeal against the levy of a tax. It would be idle to contend that though s. 226 assumes that an appeal lies against an order made under s. 222(1) the Legislature has forgotten to provide for such an appeal. Therefore, in our opinion, there can be no doubt that reading

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ss. 222, 93 and 226 together the conclusion is inescapable that an appeal lies under s. 93(1) against the demand made by the Committee on the owner of the property under s. 222(1). If that be so, the main, if not the sole argument, urged in support of the liberal construction of s. 234 turns out to be fallacious.

Now, looking at s. 234 it is clear that the proceedings initiated before a Magistrate are no more than recovery proceedings. All questions which may legitimately be raised against the validity of the notice served under s. 153 or against the validity of the claim made by the Committee under s. 222 can and ought to be raised in an appeal under s. 93(1), and if no appeal is preferred or an appeal is preferred and is dismissed then all those points are concluded and can no more be raised in proceedings under s. 234. That is why the nature of the enquiry contemplated by s. 234 is very limited and it prima facie partakes of the character of a ministerial enquiry rather than judicial enquiry. In any event it is difficult to hold that the Magistrate who entertains the application is an inferior criminal court. The claim made before him is for the recovery of a tax and the order prayed for is for the recovery of the tax by distress and sale of the movable property of the defaulter. If at all, this would at best be a proceeding of a civil nature and not criminal. That is why, we think, whatever may be the character of the proceedings, whether it is purely ministerial or judicial or quasi-judicial, the Magistrate who entertains the application and holds the enquiry does so because he is designated in that behalf and so he must be treated as a *persona designata* and not as a Magistrate functioning and exercising his authority under the Code of Criminal Procedure. He cannot therefore be regarded as an inferior criminal court. That is the view taken by the High Court and we see no reason to differ from it. In the present appeal it is unnecessary to consider what would be the character of the proceedings before a competent Civil Court contemplated by the proviso. Prima facie such proceedings can be no more than execution proceedings.

Mr. Chatterjee also attempted to argue that the proceedings under s. 234 taken against the appellant by respondent 2 were incompetent because a demand has not been made by respondent 2 on the appellant in the manner prescribed by rule as required by s. 234. It does appear that rules have not been framed under the Regulation and so no form has been prescribed for making a demand under s. 222(1). Therefore the argument is that unless the rules are framed and the form of notice is prescribed for making a demand under s. 222(1) no demand can be said to have been made in the manner prescribed by rules and so an application cannot be made under s. 234. There are two obvious answers to this contention. The first answer is that if the revisional application made by the appellant before the High Court was incompetent this question could not have been urged before the High Court because it was part of the merits of the case and so cannot be agitated before us either. As soon as it is held that the Magistrate was not an inferior criminal court the revisional application filed by the appellant before the High Court must be deemed to be incompetent and rejected on that preliminary ground alone. Besides, on the merits we see no substance in the argument. If the rules are not prescribed then all that can be said is that there is no form prescribed for issuing a demand notice; that does not mean that the statutory power conferred on the Committee by s. 222(1) to make a demand is unenforceable. As a result of the notice served by respondent 2 against the appellant respondent 2 was entitled to make the necessary repairs at its cost and make a demand for reimbursement of the said cost. That is the plain effect of the relevant provisions of the Regulation; and so, an amount which was claimable by virtue of s. 222(1) does not cease to be claimable just because rules have not been framed prescribing the form for making the said demand. In our opinion, therefore, the contention that the application made under s. 234 was incompetent must be rejected.

It now remains to consider some decisions to which

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our attention was drawn. In *Crown through Municipal Committee, Ajmer* v. *Amba Lal* (1), the Judicial Commissioner Mr. Norman held that a Magistrate entertaining an application under s. 234 of the Regulation is an inferior criminal court. The only reason given in support of this view appears to be that the Magistrate before whom an application under the said section is made is appointed under the Code of Criminal Procedure, and so he is a criminal court although he is not dealing with crime. That is why it was held that he had jurisdiction to decide whether the conditions under which the Municipality can resort to the Magistrate are fulfilled. Having come to this conclusion the learned Judicial Commissioner held that a revision against the Magistrate's order was competent. In our opinion this decision does not correctly represent the true legal position with regard to the character of the proceedings under s. 234 and the status of the Magistrate who entertains them.

In *Re Dinbai Jijibhai Khambatta* (2) the Bombay High Court held that the order made by a Magistrate under s. 161(2) of the Bombay District Municipalities Act, 1901 (Bombay III of 1901) can be revised by the High Court under s. 435 of the Code of Criminal Procedure. This decision was based on the ground that the former part of s. 161 was purely judicial and it was held that the latter part of the said section though not clearly judicial should be deemed to partake of the same character as the former part. Thus the decision turned upon the nature of the provisions contained in s. 161(2).

In *V. B. D'Monte* v. *Bandra Borough Municipality*(3) a Full Bench of the Bombay High Court, while dealing with a corresponding provision of the Bombay Municipal Boroughs Act XVIII of 1925, namely, s. 110, has held that in exercising its revisional jurisdiction under s. 110 the High Court is exercising a special jurisdiction conferred upon it by the said section and not the jurisdiction conferred under s. 435 of the Code of Criminal Procedure. According to this

(1) Ajmer-Merwara Law Journal, Vol. V, p. 92.
(2) (1919) I.L.R. 43 Bom. 864. (3) I.L.R. 1950 Bom. 522.

decision the matter coming before the High Court in such revision is of civil nature and so the revisional application would lie to the High Court on its civil side and not on its criminal side. It is significant that the decision in the case of *Emperor* v. *Devappa Ramappa* (1) which took a contrary view was not followed.

In *Re Dalsukhram Hurgovandas* (2) the Bombay High Court had occasion to consider the nature of the proceedings contemplated by s. 86 of the Bombay District Municipal Act III of 1901. Under the said section a Magistrate is empowered to hear an appeal specified in the said section; and it was held that in hearing the said appeals the Magistrate is merely an appellate authority having jurisdiction to deal with questions of civil liability. He is therefore not an inferior criminal court and as such his orders are not subject to the revisional jurisdiction of the High Court under s. 435 of the Code of Criminal Procedure.

The Madhya Bharat High Court had occasion to consider a similar question under s. 153 of the Gwalior Municipal Act (1993 Smt.) in *Municipal Committee, Lashkar* v. *Shahabuddin* (3). Under the said section an application can be made by the Municipality for recovering the cost of the work from the person in default. It was held that the order passed in the said proceedings cannot be revised by the High Court under s. 435 because the order is an administrative order and that there was no doubt that the Magistrate was not an inferior criminal court.

In *Mithan Musammat* v. *The Municipal Board of Agra & Anr.*, (4) the Allahabad High Court has held that a Magistrate passing an order under s. 247(1) of the United Provinces Municipalities Act, 1926 does not do so as an inferior criminal court within the meaning of s. 435 of the Code of Criminal Procedure. To the same effect is the decision of the Allahabad High Court in *Madho Ram* v. *Rex* (5).

We have referred to these decisions only to illustrate that in dealing with similar provisions under the

(1) (1918) 43 Bom. 607.
(2) (1907) 6 Cr. L.J. 425.
(3) A.I.R. (39) 1952 M.B. 48.
(4) I.L.R. (1956) 2 All. 60.
(5) I.L.R. (1950) All. 392.

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municipal law different High Courts seem to have taken the view that Magistrates entertaining recovery proceedings under the appropriate statutory provisions are not inferior criminal courts under the Code of Criminal Procedure. Though we have referred to these decisions we wish to make it clear that we should not be taken to have expressed any opinion about the correctness or otherwise of the views taken by the different High Courts in regard to the questions raised before them.

The result is the appeal fails and is dismissed.

Appeal dismissed.

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CHANDI PRASAD CHOKHANI

v.

THE STATE OF BIHAR

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and T. L. VENKATARAMA AIYAR, JJ.)

Supreme Court—Grant of Special Leave—Practice—Appeal by Special Leave—Grant of special leave—Propriety, if can be questioned at hearing of appeal.

Sales tax—Orders of Board of Revenue in revision—Orders of High Court—Special leave granted against orders of Board—Maintainability of appeal.

The appellant firm was assessed to sales tax under the provisions of the Bihar Sales Tax, 1944, for three periods commencing from October 1, 1947, and ending on March 31, 1950. Its claim for certain deductions was disallowed, and its applications in revision under s. 24 of the Act to the Board of Revenue, Bihar, were dismissed by three orders dated August 20, 1953, September 3, 1953 and April 30, 1954. Under s. 25(1) of the Act the appellant applied to the Board to state a case to the High Court of Patna on certain questions of law, but the applications were dismissed by order dated August 30, 1954, on the ground that no questions of law arose. The appellant then moved the High Court for requiring the Board to state a case on the said questions of law. The High Court dismissed the applications in respect of the first two periods of assessment, but by order dated November 17, 1954, directed the Board to state a