

PETITIONER:
STATE OF MAHARASHTRA AND ORS.

Vs.

RESPONDENT:
MOHAMMED SALIM KHAN AND ORS.

DATE OF JUDGMENT 22/11/1990

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
SINGH, K.N. (J)
KULDIP SINGH (J)

CITATION:
1990 SCR Supl. (3) 340 1991 SCC (1) 550
JT 1990 (4) 469 1990 SCALE (2) 1099

ACT:

Criminal law: Code of Criminal Procedure 1973: Sections 20 and 21--Interpretation and Scope of Section 21--Special Executive Magistrates--Powers of--Entitled to exercise the powers conferred by the Code much the same way as the Executive Magistrates--'Powers conferred' and 'powers conferrable'--Distinction.

HEADNOTE:

A complaint was lodged by Respondent No. 7 against Respondent Nos. 1 to 6 before the Senior Inspector of Police--Appellant No. 2. After investigation proceedings under Section 107 of the Code were initiated before appellant No. 3, an Assistant Commissioner of Police invested with the powers of Special Executive Magistrate pursuant to the Notification dated 11th April 1974 issued by the Government of Maharashtra whereby all Assistant Commissioners of Police in the Metropolitan area of Greater Bombay were appointed as Special Executive Magistrate. These proceedings were challenged before the High Court of Bombay by Respondents 1 to 6. While quashing these proceedings the High Court observed that the Special Executive Magistrate is not entitled to exercise the powers of Executive Magistrate and cannot be conferred with the powers of an Executive Magistrate under Section 107 of the Code. The State Government has challenged this decision of the High Court.

Disagreeing with the High Court on the scope and con- 7

3 judgment of the High Court and allowing the appeal,

HELD: The aim of Section 21 as evinced in its language should be ascertained and the provision so construed as to effectuate the purpose of the legislation. [345H]

The purpose of empowering the State Government to appoint Special Executive Magistrates was evidently to meet the special needs of a particular area or to perform particular functions in a given area. Such appointments without adequate powers would be futile and the

341 legislation without providing such powers would be pointless. Special Executive Magistrates are also entitled to exercise the powers of the Executive Magistrates conferred

by the Code. It was unnecessary for the State Government to have conferred the powers under Section 107 on the Special Executive Magistrate. [346H; 347C-D]

The powers conferred by the Code on the Executive Magistrate are the powers that are attached to this post for instance powers under Section 107, 108, 109, 110, 129, 145 and 147 etc. Any person appointed as Executive Magistrate is entitled to exercise such powers. These powers are not the powers conferrable on them though they may be conferred on others like the Police Commissioner under Section 20 sub-section (5). But there are other provisions in the Code which may be said to be conferrable powers under the Code such as Sections 133, 143 and 144 etc. These powers cannot be exercised by the Executive Magistrate unless they are specially empowered in that behalf. [345F-G]

JUDGMENT :