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P. ARULSWAMI

v.

THE STATE OF MADRAS

August 29, 1966

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[V. RAMASWAMI, V. BHARGAVA AND RAGHUBAR DAYAL, JJ.]

Madras Village Panchayats Act (Mad. Act X of 1960), s. 106—In language similar to s. 197(1) Cr. P.C.—Sanction of State Government for prosecution for offence under s. 409 I.P.C.—Whether required—Circumstances in which such sanction necessary.

D The appellant, who was the President of a Panchayat Board, was charged with an offence under s. 409, I.P.C. for not bringing to account in the book of the Panchayat Board a sum of Rs. 4,000, belonging to the Board. The trial court was not satisfied that the prosecution had proved the charge and therefore acquitted the appellant ' but, on appeal, the High Court accepted the prosecution evidence and convicted him.

D It was contended on behalf of the appellant that the prosecution against him was not maintainable for want of sanction by the State Government under s. 106 of the Madras Village Panchayats Act (Mad. Act X of 1960); but the High Court rejected this contention.

On appeal to this Court.

E HELD : Sanction of the State Government was not necessary for the prosecution of the appellant under s. 409, Indian Penal Code.

As in the case of s. 197(1) of the Criminal Procedure Code, which is in similar language to s. 106 of the Madras Act, it is not every offence committed by a public servant that requires sanction for prosecution; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be F claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by s. 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the G protection is claimable. [205 D-F]

Case law reviewed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 130 & 131 of 1964.

H Appeals by special leave from the Judgment and order dated December 3, 1963 of the Madras High Court in Criminal Appeals Nos. 380 of 1961 and 72 of 1962 respectively.

M14Sup.C.I./66—14

R. Ganapathy Iyer, for the appellant (in both the appeals). A

A. V. Rangam, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

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Ramaswami, J.

Criminal Appeal No. 130 *of* 1964 :

This appeal is brought, by special leave, from the judgment of the Madras High Court dated December 3, 1963 in Criminal Appeal No. 380 of 1961 by which the appellant was convicted under C s. 409, Indian Penal Code and sentenced to rigorous imprisonment for one year.

The appellant was elected President of the Nerinjipet Panchayat Board on May 17, 1958. At that time he was a duly elected member of the Board. It appears that a sum of Rs. 4,000 of the Board had been invested in four National Plan Savings Certificates in the Bhavani Post Office. It was alleged that the appellant cashed them on February 11, 1959 and did not bring the amount in the account books of the Panchayat Board. The defence of the appellant was that he signed the certificates and handed them over to P.W. 4, the Deputy Panchayat Officer of the block within which the village was located. This was done by the appellant E because P.W. 4 approached him and asked him that the Board should subscribe through him for small savings certificates for Rs. 7,000 just as the Panchayat had subscribed Rs. 7,000 through Tahsildar representing the Revenue Department. For that purpose P.W. 4 got Rs. 500 in cash on December 2, 1958 and a cheque for Rs. 2,500 on February 9, 1959. It was the F case of the appellant that P.W. 4 represented that along with this sum of Rs. 3,000 he would cash the National Plan Savings Certificates of the total value of Rs. 4,000 and purchase small savings certificates for Rs. 7,000 that being his quota from the Narinjipet Panchayat. To enable P.W. 4 to make the purchase, the appellant endorsed the National Plan Savings Certificates and handed them over to P.W. 4. The Sub-Divisional Magistrate, Erode was G not satisfied that the prosecution had proved the charge and therefore acquitted the appellant, but on appeal the High Court accepted the prosecution evidence that it was the appellant who cashed the certificates at the Post Office and not P.W. 4 and accordingly found the appellant guilty of the offence.

It was argued on bealf of the appellant in the High Court H that prosecution was not maintainable for want of sanction by the State Government under s. 106 of the Madras Village

A Panchayats Act (Madras Act X of 1950) (hereinafter called the 'Madras Act'). That section reads as follows :

> "106. When the president, executive authority or any member, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government."

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Sanction for the prosecution was, however, given in this case by the Collector and not by the Government under powers purported to have been delegated to him under s. 127 of the Madras Act which provides :

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> "127. (1) The Government may, by notification, authorize any authority, officer or person to exercise in any local area, in regard to any panchayat or any class of panchayats or all panchayats in that area, any of the powers vested in them by this Act except the power to make rules; and may in like manner withdraw such authority.
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> ....."

The High Court held that no sanction of the Government was necessary as the appellant had ceased to hold the office of President when the prosecution was launched and further that the sanction of the Collector was sufficient in law.

E The question of law involved in this appeal is whether the sanction of the Government under s. 106 of the Madras Act is necessary for the prosecution of the appellant for the offence under s. 409, Indian Penal Code.

On behalf of the appellant it was contended that the sanction granted by the Collector was not valid in law and sanction should F have been given under s. 106 of the Madras Act by the State Government. It was submitted that s. 127(1) of the Madras Act has not authorised the Government to delegate the power for granting sanction under s. 106, to the Collector. and that what was delegated was the power of the State Government in respect of any panchayat or any class of panchayats or all panchayats in any local area, but G the power under s. 106 that could be exercised was only a power in regard to the President or any member of the panchayat. It was therefore submitted that the Government did not delegate its powers under s. 106 of the Madras Act by virtue of the authority conferred under s. 127(1). It is not necessary for us to express any concluded opinion on the argument put forward by the appellant, for we consider that no sanction of the Government under s. 106 of the H Madras Act is necessary for the prosecution of the appellant on the charge under s. 409, Indian Penal Code, and the conviction of the appellant on that charge is not invalid on this account.

Hori Ram Singh v. *Emperor*(1) was a decision of the Federal Court on the necessity for sanction under s. 270 of the Government of India Act, 1935, which is similar to s. 197(1) of the Code of Criminal Procedure and s. 106 of the Madras Act. The facts in that case were that a Sub-Assistant Surgeon was charged under s. 409 with having dishonestly removed certain medicines from a hospital which was under his charge, to his own residence, and under s. 477-A, with having failed to enter them in the stock book. The sanction of the Government had not been obtained for the prosecution under s. 270 of the Government of India Act. The question for decision in that case was whether such sanction was necessary. It was held by the Federal Court that the charge under s. 477-A required sanction, as 'the official capacity is involved in the very act complained of as amounting to a crime'; but that no sanction was required for a charge under s. 409, because 'the official capacity is material only in connection with the entrustment and does not necessarily enter into the later act of misappropriation or conversion, which is the act complained of. In *Gill v. The King*(2) the question arose directly with reference to s. 197(1) of the Criminal Procedure Code. In that case the accused was charged under s. 161 with taking bribes, and under s. 120-B with conspiracy. On the question whether sanction was necessary under s. 197(1) it was held by the Judicial Committee that there was no difference in scope between that sanction and section 270 of the Government of India Act, 1935, and approving the statement of the law by Varadachariar, J. in *Hori Ram Singh* v. *Emperor*,(1) Lord Simonds observed in the course of his judgment at page 40 of the Report :

> "In the consideration of s. 197 much assistance is to be derived from the judgment of the Federal Court in Hori Ram Singh v. The Crown (1939) F.C.R. 159, and in particular from the careful analysis of previous authorities which is to be found in the opinion of Varadachariar, J. Their Lordships, while admitting the cogency of the argument that in the circumstances prevailing in India a large measure of protection from harassing proceedings may be necessary for public officials, cannot accede to the view that the relevant words have the scope that has in some cases been given to them. A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining,

(1) [1939] F. C. R. 159. (2) [1948] F. C. R. 19.

A though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by virtue of the office
B that he held. Without further examination of the authorities their Lordships, finding themselves in general agreement with the opinion of the Federal Court in the case cited, think it sufficient to say that in their opinion no sanction under s. 197 of the Code of Criminal Procedure was needed."

C The view expressed by the Judicial Committee in *Gill* v. *The King*(1) was followed by the Judicial Committee in the later cases; *Albert West Meads* v. *The King*(2) and *Phanindra Chandra* v. *The King*(3) and has been approved by this Court in *R.W. Mathams* v. *State of West Bengal*(4). It is not therefore every offence committed by a public servant that requires sanction for prosecution under s. 197(1) of the
D Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and
E range of his official duties the protection contemplated by s. 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. The same principle
F has been expressed by this Court in *Om Prakash Gupta* v. *State of U.P.*(5) in which it was pointed out that sanction to the prosecution of a public servant under s. 409 of the Indian Penal Code is not necessary since the public servant is not acting in his official capacity in committing criminal breach of trust. In a later case—*Satwant Singh* v. *The State of Punjab*(6), it was held that if a public servant
G commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty. The same view has been taken by this Court in a later decision—*Baijnath Gupta and Ors.* v. *The State of Madhya Pradesh*(7), and it was held that the sanction of the State Government was not necessary for the prosecution of

H (1) [1948] F.C.R. 19. (2) 75 I.A. 185.
(3) 76 I.A. 10. (4) [1955] 1 S.C.R. 216.
(5) [1957] S.C.R. 423. (6) [1960] 2 S.C.R. 89.
(7) [1966] 1 S.C.R. 210.

the appellant under s. 409 of the Indian Penal Code because the act of criminal misappropriation was not committed by the appellant while he was acting or purporting to act in discharge of his official duties and that offence had no direct connection with the duties of the appellant as a public servant, and the official status of the appellant only furnished the appellant with an occasion or an opportunity of committing the offence. A B

Section 106 of the Madras Act is similar in language to s. 197 of the Criminal Procedure Code and for the reasons already expressed we are of the opinion that the sanction of the State Government was not necessary for prosecution of the appellant under s. 409, Indian Penal Code. We accordingly reject the argument of learned Counsel for the appellant on this aspect of the case and dismiss this appeal. C

Criminal Appeal No. 131 *of* 1964 :

This appeal is brought, by special leave, from the judgment of the Madras High Court dated December 3, 1963 in Criminal Appeal No. 72 of 1962 convicting the appellant of the offence under s. 409, Indian Penal Code and sentencing him to rigorous imprisonment for 6 months. D

The question of law involved in this appeal is the same as in Criminal Appeal No. 130 of 1964 and for the reasons given in that case we hold that the sanction of the Government is not necessary for prosecution of the appellant under s. 409, Indian Penal Code and the conviction of the appellant on that charge is not defective in law. This appeal also must be dismissed. E

R.K.P.S. *Appeals dismissed.*