

CRIMINAL REVISION.

Before Mukerji and Bartley JJ.

HEMCHANDRA DAS

1933

Dec. 14, 15, 21.

v.

SUBODHCHANDRA DAS GUPTA.*

Municipality—Revising Authority—Deposit, if a condition precedent for a complaint—Bengal Municipal Act (Beng. XV of 1932), ss. 28 (1) & (2), 34.

A member of the Revising Authority appointed to revise a Preliminary Electoral Roll of a municipality is neither a municipal officer nor servant within the meaning of section 28(2) of the Bengal Municipal Act. Section 28(1) also does not apply to him, because it is from him that an improper entry is procured, whereas the words "by using false documents or by a false declaration or by any deceitful means procures" indicate a person who practises a deception and thereby obtains from some other individual or body an improper entry.

Section 34(c) of the Act indicates that the deposit of Rs. 50 is a condition precedent to the entertaining of a complaint; although a complaint dismissed merely on the ground of such non-deposit may be revived on the deposit being subsequently made.

CRIMINAL REVISION :

The material facts of the case and the arguments in the Rule appear from the judgment.

Santoshkumar Basu and Praphullachandra Nag for the petitioner.

Debendranarayan Bhattacharjya and Himangshu-bhushan Chaudhuri for the opposite party.

Cur. adv. vult.

MUKERJI AND BARTLEY JJ. The first two petitioners are pleaders practising in the court of the Munsif at Sherpur and the third petitioner is a

*Criminal Revision, No. 783 of 1933, against the order of R. F. Lodge, Sessions Judge of Mymensingh, dated Aug. 1, 1933, affirming the order of Mahammad Mahmud, Subdivisional Magistrate, Jamalpur, dated June 28, 1933.

1933

*Hemchandra
Das
v.
Subodhchandra
Das Gupta.*

tâlukdâr and merchant of the Sherpur town. In connection with the first general election of commissioners of the Sherpur municipality, which was to be held under the Bengal Municipal Act (Bengal Act XV of 1932), a committee consisting of the Chairman and two commissioners was appointed under section 21 of the Act. The said committee appointed the three petitioners as the Revising Authority under Order 4 of the Orders issued under Notification No. 5717 M., dated the 1st December, 1932, to revise the Preliminary Electoral Roll.

The complainant, who is a rate-payer of the said municipality, instituted a complaint against the three petitioners and the three members of the committee on the 21st January, 1933, alleging that certain malpractices had been committed by them in regard to the revision of the Preliminary Electoral Roll. The deposit of Rs. 50 contemplated by section 34, clause (c) of the Act was not made at the time. The complaint was filed before an Honorary Magistrate, who was not willing to deal with it, and so forwarded it to the Subdivisional Magistrate, Mr. Tribedi, who dismissed the complaint under section 203 of the Code of Criminal Procedure, observing as follows:—

No case under section 28(2) of Bengal Municipal Act, XV of 1932, is made out. The Revising Authority is alleged to have rejected the objections. This is not sufficient for showing any offence..... The cost of Rs. 50 required to be deposited by law was not deposited.

The complainant then moved the Sessions Judge, who ordered that a further enquiry should be held on the complaint, on the complainant depositing Rs. 50. When the case came back to the file of the Subdivisional Magistrate, a date was fixed within which the complainant was to make the deposit. On the deposit being made, when the Subdivisional Magistrate was about to hold the enquiry, an objection was taken on behalf of the petitioners that they are not persons who can come under clause (2) of section 28. The complainant then took up the position that his case, as against the petitioners,

fell within clause (1) of section 28. The Subdivisional Magistrate then proceeded to hold a judicial enquiry, in which the complainant was to adduce evidence "for the purpose of proving that "the omission of the names of certain rate-payers "from the electoral roll was procured deceitfully by "the petitioners."

The complainant then examined certain witnesses on his behalf and the Subdivisional Magistrate issued summonses against the petitioners for an offence under section 28, clause (1) of the Act. The present Rule is directed against the summonses so issued and the proceedings following them.

We are of opinion that the petitioners are not persons to whom clause (1) of section 28 can possibly apply. They are the Revising Authority, who are vested with the powers of holding a summary enquiry into claims and objections preferred in connection with the revision of the Preliminary Electoral Roll, and their orders, allowing or disallowing such claims and objections, are to be mechanically followed in amending the said roll (*vide* Orders 12 and 13 of the notification). The words of the clause "who by "claiming a qualification" apply only to the case of claimant; the words "by using false documents or by "a false declaration or by any other deceitful means "procures" indicate a person who practises a deception and thereby obtains from some other individual or body an improper entry, *etc.* The clause, in our opinion, cannot possibly include the Revising Authority from whom the order is procured.

It has been contended before us on behalf of the complainant that the present case is covered by clause (2) of section 28. We are unable to hold that a member of the Revising Authority is either a municipal officer or servant.

We desire also to point out that the words of clause (c) of section 34 clearly indicate that the deposit of Rs. 50 is a condition precedent to the entertaining

1933

*Hemchandra
Das
v.
Subodhchandra
Das Gupta.*

1933

*Hemchandra
Das
v.
Subodhchandra
Das Gupta.*

of a complaint; though, of course, a complaint dismissed merely on the ground of such non-deposit may be revived on the deposit being subsequently made, if the complaint is otherwise in order.

The Rule is made absolute. The proceedings complained of are quashed and the complaint of the opposite party is dismissed.

If the petitioners are on bail, their bail bond will be discharged.

Rule absolute.

A. C. R. C.