

CRIMINAL REVISION.

Before Henderson and Khundkar J.J.

KAZI ALI HAIDAR

v.

UPENDRA NATH KUNDU.*

1939

June 26.

Election—“Electoral roll”, Meaning of—Complaint by any voter of any ward, if maintainable—Limitation for such complaint—Bengal Municipal Act (Ben. XV of 1932), ss. 21, 34.

The “electoral roll” refers to the whole municipality and not to the separate list of any particular ward. Consequently any person whose name is on the electoral roll is entitled to make a complaint under s. 34 of the Bengal Municipal Act even though he is not a voter of the particular ward in which the election takes place.

Naranarayan Mandal v. Aghorechandra Ganguli (1) distinguished.

The period of limitation of fourteen days referred to in s. 34(b) of the Bengal Municipal Act relates to offences committed in connection with a particular election and the period of seven days to other offences.

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This was a Rule obtained by the accused to show cause why a proceeding under s. 34 of the Bengal Municipal Act pending against him should not be quashed as incompetent.

Sudhangsu Sekhar Mukherjee and *Pritibhusan Barman* for the petitioner.

Anil Chandra Ray Chaudhuri for the Crown.

Apurbadhan Mukherjee and *Chandranarayan Laik* for the complainant.

*Criminal Revision, No. 437 of 1939, against the order of M. H. B. Lethbridge, Sessions Judge of 24-Parganas, dated April 21, 1939, affirming the order of A. Wooler, Sub-Divisional Magistrate of Barrackpore, dated April, 1939.

HENDERSON J. This is a Rule calling upon the District Magistrate of 24-*Parganás* to show cause why certain proceedings against the petitioner should not be quashed.

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There was a bye-election in Ward No. IV of the Barrackpore Municipality. The petitioner headed the poll and was one of the two candidates declared to be elected. The complainant, who had just been unseated on an election petition had the mortification of finding himself at the bottom of the poll. No steps were taken by him to challenge the election but he instituted criminal proceedings against the petitioner and the other successful candidate charging them with offences under s. 29 of the Bengal Municipal Act in connection with the election. No such charge was made against the other unsuccessful candidate. The petitioner then obtained this Rule.

The first ground upon which the Rule was issued was that the Magistrate had no jurisdiction to take cognizance of the offence on a complaint made by this complainant. The controlling section is s. 34—the relevant portion of which is in these terms:—

No Magistrate.....shall take cognizance of any offence punishable under ss. 28 to 38.....except on the complaint of a person whose name is on the electoral roll.

The complainant is not a voter in Ward No. IV. Mr. Mukherjee's contention is that the electoral roll referred to in the section is the list of voters of the particular ward in which the election has taken place.

In support of this contention reliance was placed upon the decision of my learned brother and myself in the case of *Naranarayan Mandal v. Aghorechandra Ganguli* (1). In that case we were dealing with quite a different problem—the meaning of the words “any person qualified to vote at the election to which “such question refers” found in s. 36 of the Act.

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That is a matter which does not arise in connection with the present case.

The provisions with regard to the electoral roll are to be found in s. 21 of the Act. Sub-section (1) of that section is in these terms:—

A committee consisting of the Chariman and two commissioners to be appointed by the commissioners at a meeting for this purpose shall prepare and publish at the time and in the manner prescribed an electoral roll showing the names of persons qualified to vote.

Sub-section (3) lays down:—

When a municipality has been divided into wards the electoral roll shall be divided into separate lists for each ward.

It is thus plain that the "electoral roll" refers to the whole municipality and any person whose name is on it is entitled to make a complaint under s. 34.

The second ground on which the Rule was issued was that the complaint is barred by limitation. This is regulated by s. 34(b) of the Act, which is in these terms:—

Unless such complaint has been made within fourteen days of the date of the declaration of the result of any election to which the offence relates, or within seven days of the date on which the offence is alleged to have been committed.

Here the offences are alleged to have been committed on the 3rd and 4th of March. The result of the election was declared on the 4th, the complaint was filed on the 15th.

In support of the Rule, Mr. Mukherjee argued that the shorter period of limitation refers to corrupt practices and the longer to other offences. The reason suggested for this was that it is easier to discover corrupt practices and hence a shorter period of limitation is prescribed. In our opinion it is impossible to say *a priori* which class of offence is easier to detect. But at any rate in most cases it is impossible to discover a corrupt practice without the connivance of the other party to the corruption. To give this suggested interpretation to the section would be both forced and meaningless.

We agree with Mr. Ray Chaudhuri, who appears on behalf of the Crown to oppose the Rule, that the meaning is perfectly clear. The period of fourteen days relates to offences committed in connection with an election and the shorter period to other offences. For example, the offences enacted in s. 28 have nothing to do with an election and accordingly complaints must be made within seven days of the commission of the offences. In the present case the offences in question are alleged to have been committed in connection with the election and in consequence the complaint was not barred.

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The Rule is accordingly discharged.

KHUNDKAR J. I agree.

Rule discharged.

A. C. R. C.