

CRIMINAL REFERENCE.

Before Henderson and Sen JJ.

EMPEROR

v.

HIRA LAL DAS.*

1939

May 12.

Sanction—*Elected Vice-Chairman of a municipality, if can be prosecuted without sanction—Bengal Municipal Act (Ben. XV of 1932), s. 61—Code of Criminal Procedure (Act V of 1898), s. 197.*

An elected Vice-Chairman of a municipality cannot be prosecuted without the sanction of the Local Government under s. 197 of the Code of Criminal Procedure for having abetted another person in cheating the municipality, taking advantage of his position as such Vice-Chairman.

Noor Ahmad v. Jogeshchandra Sen (1) followed.

CRIMINAL REVISION.

This was a Reference under s. 438 of the Code of Criminal Procedure by the learned Additional Sessions Judge of 24-*Parganás* for quashing certain proceedings against one Hira Lal Das, an elected Vice-Chairman of the Baranagar Municipality. The facts of the case were that one Anil Prakash Lahiri supplied a number of barrels containing "Kleantsit Oil" to the Baranagar Municipality. It was subsequently discovered that each barrel which was represented to contain 10 cwts. of oil, actually contained only 7 cwts. although the full value for 10 cwts. was realised from the municipality. It was alleged that, in thus deceiving the municipality, he was abetted by its Vice-Chairman, Hira Lal Das. Both Anil Prakash and Hira Lal were put upon their trial before Mr. Mahmud, Magistrate, First class, of Barrackpore, who framed three charges under s. 420

*Criminal Reference, No. 45 of 1939, made by S. B. Bapat, Additional Sessions Judge of 24-*Parganás*, dated Mar. 13, 1939.

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of the Indian Penal Code against Anil for cheating the municipality. He also framed three charges of abetment under s. 420 read with s. 109 against Hira Lal. The trial commenced on July 19, 1938, and the charges were framed on January 29, 1939. On the latter date an application was made by Hira Lal that being a commissioner of a municipality he was not removable from his office save by an order of the Local Government and, therefore, the proceedings were bad for want of sanction as required by s. 197 of the Code of Criminal Procedure. The trial Court rejected his application, whereupon Hira Lal moved the Sessions Judge of 24-Parganás. The case was heard by an Additional Sessions Judge who made the present reference.

Prabodh Chandra Chatterjee, Lalit Mohan Sanyal and Purnendu Sekhar Basu for the accused in support of the Reference. The accused Hira Lal was a commissioner of the municipality and was duly elected its Vice-Chairman under s. 48 of the Bengal Municipal Act. A Vice-Chairman so elected does not cease to be a commissioner. As a matter of fact nobody but a commissioner can be a Vice-Chairman. A commissioner is also a public servant. See s. 540 of the Act. Under s. 62 of the Act, no commissioner can be removed from his office except by the Local Government. It was alleged by the prosecution that the accused Hira Lal abetted the commission of cheating the municipality by the other accused in the discharge of his duties as a Vice-Chairman. He could not therefore be prosecuted except with the previous sanction of the Local Government under s. 197 of the Code of Criminal Procedure. *Noor Ahmad v. Jogeshchandra Sen* (1). The proceeding should therefore be quashed.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharyya, and Satindra Nath Mukherjee for the Crown. No sanction is

required under s. 197 of the Code of Criminal Procedure for the prosecution of a Vice-Chairman of a municipality. Under s. 61 (2) of the Bengal Municipal Act, a Vice-Chairman can be removed from his office as such by a resolution of the commissioners in support of which not less than two-thirds of the whole number of the commissioners have given their votes at a meeting specially convened for that purpose. No sanction or approval of the Local Government is required for such purpose. He may still continue as a commissioner, but would cease to hold the office of the Vice-Chairman. In the present case the offence he had committed was in the exercise of his function as a Vice-Chairman and not as an ordinary commissioner. The case of *Noor Ahmad v. Jogeshchandra Sen* (1) is distinguishable inasmuch as that was the case of a nominated Chairman and s. 61 (2) of the Bengal Municipal Act did not apply to him. The distinction has been created by the Act itself and one result is that an elected Vice-Chairman is not entitled to the protection contemplated in s. 197 of the Code of Criminal Procedure. The Reference should be rejected.

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HENDERSON J. This is a Reference under s. 438 of the Code of Criminal Procedure made by the learned Additional Sessions Judge of 24-Parganás and it involves a short point of law.

The petitioner is a commissioner of the Baranagar Municipality and he was elected as Vice-Chairman. The prosecution case is that, taking advantage of his position as such, he abetted the other accused in cheating the municipality. The point raised on behalf of the petitioner is that he cannot be prosecuted without the sanction of the Local Government in view of the provision of s. 197 of the Code of Criminal Procedure.

The Reference has been opposed on behalf of the Crown and the contention of the learned Deputy

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Legal Remembrancer is that, inasmuch as the petitioner can be removed from his office as Vice-Chairman by a vote of two-thirds of the commissioners under the provisions of s. 61 of the Bengal Municipal Act, s. 197, has no application to the proceedings.

In our judgment it is impossible to divorce the position of the petitioner as Vice-Chairman from his position as commissioner. He was still a commissioner while acting as Vice-Chairman and, indeed, unless he was a commissioner, it would be impossible for him to be appointed to that office. If the position were that anybody could be appointed to the post of Vice-Chairman, the argument of the Crown might have some force in it. In fact, however, in discharging the duties of that office, the petitioner was working as a commissioner.

This point came up for consideration in connection with another matter in the case of *Noor Ahmad v. Jogeshchandra Sen* (1). The reasoning on which that decision was based applies to the facts of the present case and we respectfully agree with it.

We, accordingly, accept the Reference and direct that the proceeding pending against the petitioner be quashed. If it is desired to make further proceedings against him, the sanction of the Local Government must be obtained.

SEN J. I agree.

Reference accepted, proceedings quashed.

A. C. R. C.

(1) (1934) I. L. R. 62 Cal. 275.