APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1893.
March 8, 14.

QUEEN-EMPRESS

v.

SAMAVIER.*

Criminal Procedure Code—Act X of 1882, s. 197—Prosecution of public servants—Necessary sanction—Indefiniteness of sanction.

An order by the Board of Revenue sanctioning the prosecution of a Deputy Tahsildar by the Collector of the District for "bribery or such of the charges set "forth in the Deputy Collector's report as he thinks likely to stand investigation "by a Criminal Court" is not a legal sanction within the meaning of the Criminal Procedure Code, s. 197, and a commitment on any of such charges should be quashed.

CASE referred for the orders of the High Court under Criminal Procedure Code, s. 438, by J. W. F. Dumergue, Acting Sessions Judge of Madura.

The case was stated as follows :—

"Under section 215, Criminal Procedure Code, I have the "honour to submit the following case for the orders of the High "Court—

"In a letter, dated 12th August 1892, the Deputy Collector "and Magistrate in charge of the Melur Division of this district "reported to the Collector and District Magistrate the result of "an inquiry he had been directed to make into certain accusations "preferred against Samavier, the Deputy Tahsildar and Second-"class Magistrate of Tiruppattur.

"In the fifth paragraph of his letter, the Deputy Collector "writes as follows:—'Several instances of receipt of bribes or "illegal gratification by the Sub-Magistrate have been mentioned "by the witnesses. The evidence regarding some of the instances "is hearsay, but as regards two or three cases, the evidence, so far "as it is available, is direct and satisfactory, and there is sufficient "ground to hold that the allegations are true.'

"In the succeeding three paragraphs the Deputy Collector "formulates three charges against the Deputy Tahsildar in his

* Criminal Revision Case No. 55 of 1893.

"capacity as a Magistrate. The ninth paragraph contains a recommendation that the Deputy Tahsildar should be suspended in order that 'further inquiries in respect of these cases, as well as in respect of the other cases which are mentioned by the witnesses, but in which the evidence is not so satisfactory,' may be made. The remainder of the letter is occupied with statements regarding 'the general reputation' of the Sub-Magistrate and his unfitness for the post he holds.

"This report was forwarded by the Collector to the Board of Revenue with an endorsement, dated 16th August 1892, in which it is requested that 'necessary sanction may be accorded to prosecute M.R.Ry. M. Samavier, Deputy Tahsildar and Second-class Magistrate of Tiruppattur, for bribery under the Indian Penal Code.'

"Thereupon the Board of Revenue, in the Department of Land Revenue, passed the following Resolution, dated 24th August 1892:—'The Collector may prosecute M. Samavier, Deputy Tahsildar and Sub-Magistrate of Tiruppattur for bribery or such of the charges set forth in the Deputy Collector's report as he thinks likely to stand investigation by a Criminal Court. The complaint should be lodged before the Head Assistant Magistrate as proposed.'

"This resolution was communicated by the Collector to the Deputy Collector who was 'requested to place the papers in the hands of the Public Prosecutor, Madura, with necessary instruction in view to M. Samavier, Deputy Tahsildar and Second-class Magistrate of Tiruppattur being prosecuted for bribery before the Head Assistant Magistrate at a very early date.'

"The Sub-Magistrate was accordingly prosecuted in three separate cases. In one case he was discharged, but in the other two cases he has been committed to this Court for trial under sections 161 and 165 of the Indian Penal Code. The question is whether the resolution passed by the Board of Revenue is the legal sanction required by section 197, Criminal Procedure Code, and whether the proceedings finally instituted against the accused are protected by legal sanction.

"The first objection which has been raised on behalf of the accused does not present any real difficulty. It has been argued that as the accused is prosecuted in his judicial capacity, the Board of Revenue is incompetent to grant sanction and cannot

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"be considered 'an officer' empowered by Government. But "under section 197, Criminal Procedure Code, sanction may be "granted by the 'court or other authority' to which a Judge or "public servant is subordinate and whose power to give such "sanction has not been limited by Government. Then in the "case of *Raghoobuns Sahoy* v. *Kokil Singh* alias *Gopal Singh*(1), "it was held that the word 'court' used in section 195, Criminal "Procedure Code, includes a tribunal empowered to deal with a "particular matter and authorized to receive evidence bearing on "that matter, in order to enable it to arrive at a determination. "The same interpretation must, I think, be applied to the word "'court' used in section 197, Criminal Procedure Code, and, "although the Board of Revenue is not the authority to which "the accused is subordinate as a Judge, nevertheless the Govern-"ment in its Order, dated 26th March 1891, Mis. No. 582, "Judicial, expressly authorized the Board of Revenue to sanction "the prosecution of Tahsildars, Deputy Tahsildars and Taluk "Sheristadars in their magisterial capacity. Under these circum-"stances I overruled this objection and held that the Board of "Revenue was competent to grant sanction in this case.

"It was then argued that sanction ought not to have been "conveyed in the vague terms used by the Board of Revenue; "that it was the duty of the Board itself to arrive at a deter-"mination regarding the particular offences for which the accused "was liable to prosecution; that in failing to do this and leaving "the Collector to decide what offence or offences should be chosen "as the subject of prosecution, the Board of Revenue practically "delegated its power of sanction to the Collector; that this course "is opposed to the rule of law *delegatus non potest delegare*, and "that consequently there has been no legal sanction. These "arguments have, in my opinion, considerable force.

"It appears to me that the principle which is enunciated "in section 195, Criminal Procedure Code, and which requires "all practicable definiteness in respect of the offence for which "prosecution is sanctioned must be held to apply at least equally "to cases falling under section 197, Criminal Procedure Code. "I am inclined to think that this principle must be held to apply "with even greater force to cases under the latter section, because

(1) I.L.R., 17 Cal., 872.

"under section 537, Criminal Procedure Code, irregularity with "regard to the sanction required by section 195 can be remedied "within certain limits, but no such provision is made with regard "to section 197, and any failure to comply with its requirements "must therefore be absolutely fatal to a prosecution. In the "present case the utmost precision in respect of the offences "for which the accused was to be prosecuted was practicable, but "nothing could be more indefinite than the terms in which "sanction to prosecute was granted.

"It is true that in *Regina* v. *Vinayak Divakar*(1), the Govern- "ment sanctioned the prosecution of a magistrate 'on such "charges as Mr. C. may be prepared to prefer against him,' and "that no disapproval of these terms was expressed by the Bombay "High Court. But between that case and the present one there "is, I submit, a marked difference. In the former case the Govern- "ment, in giving sanction, ordered that 'before the commence- "ment of the proceedings, the accused magistrate should be "furnished with copies of charges and lists of the witnesses by "whom they will be supported and allowed full opportunity for "the preparation of his defence.' The accused therefore was "definitely informed, before proceedings commenced, what the "charges against him were, and *Westropp*, C.J., observed that "'Government was careful that the prisoner should have fair "play.' But in the present case the accused was denied access "to material papers until after he had been committed for trial, "when copies were furnished from this court. No explanation "was taken from him before he was prosecuted, and altogether, "therefore, he had no opportunity of knowing, until proceedings "actually commenced, what charges he was called upon to answer.

"Moreover, in a case with reference to the section corre- "sponding to section 195 of the present Code of Criminal "Procedure, a 'so-called sanction' in the following terms: 'If "the petitioner thinks there is sufficient evidence against Annoda "Prasad Sircar, I have no objection to give same sanction asked "for herein, was held insufficient.' In the present case the sanc- "tion given by the Board of Revenue was certainly limited "to the cases reported on by the Deputy Magistrate, but it was "left to the Collector to prosecute the accused 'for bribery or such

(1) 8 Bom. H.C.R. (C. C.), p. 32.

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"other charges as he thinks likely to stand investigation by a "Criminal Court.' Here it must be noted that according to "the Deputy Magistrate himself the three specific cases as well "as the others required 'further inquiries.' The Madras High "Court *Vythiyanatha Aiyan* v. *Vythiyanatha Aiyan*(1) and *Queen-*"*Empress* v. *Natchi*(2) have, with reference to section 195, "Criminal Procedure Code, laid down the rule that 'it is not "enough that a case is alleged which requires investigation, that "sanction should not be given by any court without first examin-"ing the evidence and that the object of giving the power to "sanction is to secure, as far as possible, that no man shall be "prosecuted unless the Court hearing the case or a superior court "is satisfied that it is a proper case to put the party on his trial. "The same rule is implied in the Calcutta case to which I "have alluded in paragraph 9 of this letter, and this rule does not "appear to have been followed in the present case. Unless "the evidence is to be examined and a definite decision arrived at "by the authority empowered to grant sanction, whether under "section 195 or section 197, Criminal Procedure Code, there "would be no necessity for previous sanction.

"On these considerations it appears to me that the Board of "Revenue did delegate its power of sanction to the District "Magistrate, and it further appears that the District Magistrate "then delegated it to the Deputy Magistrate who was directed "generally to instruct the Public Prosecutor 'in view to M. "Samavier being prosecuted for bribery.' Hence the offences, "in respect of which the accused was prosecuted, were selected "by the Deputy Magistrate. Even if, under the authority of "*Regina* v. *Vinayak Divakar*(3), the Board of Revenue, standing "in the place of Government, could confide the duty of preferring "charges to a particular officer, still under the same authority that "duty cannot legally be delegated by that officer to any one else.

"Under all these circumstances I am of opinion that no such "sanction as is required by law has been given in the present case "and that the commitment of the accused for trial is illegal.

"On my expressing this opinion it was contended that the "commitment ought to be quashed and the accused discharged by

(1) Weir's Criminal Rulings, 3rd Ed., p. 852. (2) *Ib.*, p. 857.
(3) 8 Bom. H.C.R. (C. C.), p. 32.

"this court under section 532, Criminal Procedure Code. But in "this case there was no question as to the competency of the Head "Assistant Magistrate to commit for trial, and objection was made "on behalf of the accused as soon as the Head Assistant Magistrate "commenced the inquiry. Moreover, the section quoted does not "authorize this court to discharge the accused in cases falling "under it, but to order a fresh inquiry by a competent magistrate. "If the sanction under which the inquiry was undertaken is "invalid, no magistrate is competent to make a fresh inquiry. I "ruled therefore that the section was inapplicable, that the case "is governed by section 215, Criminal Procedure Code, and that "the accused must be held to bail, pending the orders of the "High Court."

Mr. *P. A. D'Rozario* and *Sundara Ayyar* for the accused.

The *Acting Government Pleader and Public Prosecutor* (*Subramanya Ayyar*) for the Crown.

JUDGMENT.—It is not now contested that the Board of Revenue is the authority that has been empowered by the Local Government to grant the requisite sanction under section 197, Criminal Procedure Code, and we agree with the Acting Sessions Judge that the Resolution of the Board, dated 24th August 1892, is not a legal sanction.

The sanction required under section 197, Criminal Procedure Code, must be granted with reference to some specific offence with which the accused is charged in his capacity as a public servant, and the intention of the legislature clearly was that the authority empowered to grant the sanction should take the responsibility of deciding there were reasonable grounds for prosecuting such public servant for such offence.

In the Resolution of 24th August 1892 the Board does not sanction the prosecution of the accused for any offence designated by itself, but merely delegates to the Collector the power of selecting, out of several, such charges as *he* thinks likely to stand investigation.

The Board has no legal power so to delegate its discretion, and irregularity in a sanction granted under section 197, Criminal Procedure Code, is not cured by the provisions of section 537.

The omission to re-enact in section 197 the permission given in section 195 to grant a sanction in general terms—as also the exclusion of a sanction (irregularly) granted under section 197 from

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the operation of section 537—point to a deliberate intention on the part of the legislature to throw upon the authority empowered to grant the sanction, the duty of designating the offence for which leave to prosecute is given, and this duty cannot be delegated.

On the ground that no legal sanction has been given we must quash the commitment under section 215, Criminal Procedure Code.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1892. Dec. 5, 14.

SRINIVASA (PLAINTIFF), APPELLANT,

v.

RATHNASABAPATHI (DEFENDANT), RESPONDENT.*

District Municipalities Act (Madras)—Act IV of 1884, s. 261—Limitation—Contract Act—Act IX of 1872, s. 74—Penalty.

The council of a municipality, under Madras Act IV of 1884, entered into a contract for the lighting of the town whereby it was provided that the deposit made by the contractor should be forfeited on any default made by him in carrying out the terms of the contract. One holding a decree against the contractor attached the amount of the deposit in the hands of the municipal council, but the council subsequently passed a resolution in July 1888 declaring that the amount of the deposit had been forfeited. The decree-holder having purchased from the contractor his right to the money in question now sued in 1890 to recover it from the municipality:

Held, (1) that the suit was not barred by the rule of limitation in Madras District Municipalities Act, s. 261;

(2) that the provision for forfeiture in the contract was penal and unenforceable and consequently that the resolution of July 1888 was *ultra vires*.

PETITION under Provincial Small Cause Courts Act, s. 25, praying the High Court to revise the proceedings of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in Small Cause suit No. 914 of 1890.

In 1887 one Harithirthayyan entered into a contract with the Municipal Council at Negapatam for the lighting of that town, and under the terms of the contract he deposited Rs. 500 which it was provided should be forfeited on any default made by him in carrying out his contract. The contractor failed to perform his

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* Civil Revision Petition No. 465 of 1891.