

DORASAMY  
PILLAI  
v.  
EMPEROR.

to the accused, and under section 104 the accused was justified in voluntarily causing to the complainant the slight harm which he inflicted on him, and the constable cannot be regarded under section 99, Indian Penal Code, as acting in good faith (*vide* section 52, Indian Penal Code) under colour of his office though his act may not be strictly justifiable by law. No Police Circular Order or any other order has been pointed out which, though not strictly justifiable in law, he can *bonâ fide* plead in support of the course pursued by him of entering upon the premises of the accused at midnight and knocking at the door. I may also remark that the sentence of three months' rigorous imprisonment which was passed upon the accused is unduly severe under the circumstances of the case even if he were guilty of any offence. I reverse the conviction and sentence and acquit the accused and direct that he be set at liberty, the bail bond being cancelled.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Bhashyam Ayyangar.*

IN THE MATTER OF KALAGAVA BAPIAH (ACCUSED).\*

1903.  
March.

*Criminal Procedure Code—Act V of 1908, ss. 195, 196, 197, 215, 436—Sanction—  
Notice to accused—Reference to High Court—Revisional powers.*

Section 215 of the Code of Criminal Procedure is not applicable to a case in which a commitment in question has not been made under any one of the four sections therein specified, but has been made under the directions of the High Court under section 526 (1) IV. An order of a Sessions Judge or District Magistrate passed under section 436, directing commitment, may be quashed by the High Court in the exercise of its revisional powers, though not under section 215. But an order passed by the High Court itself under section 526 cannot be so revised.

Sanction accorded by Government under section 197 is not null and void for the reason that no notice was given to the accused to show cause why it should not be given. It is a matter left to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution.

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\* Criminal Miscellaneous Petition No. 11 of 1903 submitting to the High Court for orders the order of commitment of the accused in Sessions Case No. 41 of 1902 on the file of the Sessions Court of Godavari.

There is a marked distinction between the classes of offences dealt with in section 195, clauses (b) and (c), and those dealt with in section 197. A Court granting sanction under section 195 (b) and (c) does so in connection with offences committed in or in relation to any proceeding in such Court, and the Court therefore Acts in its judicial capacity in granting the sanction on legal evidence. But the Government, in according or withholding sanction, under section 197 (for the prosecution of a public servant in respect of an offence alleged to have been committed by him as such public servant), acts purely in its executive capacity and the sanction need not be based on legal evidence.

The Criminal Procedure Code does not prescribe any particular form for the sanction required by section 197, as it does in the case of a sanction accorded under section 195.

REFERENCE to the High Court under section 215 of the Code of Criminal Procedure. The accused had been a member of the Municipal Council of Ellore and was charged with having committed an offence under section 168, Indian Penal Code. The accused had been committed to the Sessions Court for trial in pursuance of an order of the High Court. On the case being called on, objection was taken to the legality of the sanction, which had been accorded by Government in the following order:—Sanction is accorded to the prosecution of [naming the accused] a member of the Municipal Council of Ellore on a charge of having committed an offence under section 168, Indian Penal Code. The grounds of objection were (1) that no notice had been given to the accused before the sanction had been accorded; and (2) that the order did not specify with sufficient clearness the offence with which he was charged. The Acting District Judge referred to *Queen-Empress v. Sheik Beari*(1) and *Queen-Empress v. Samaxier*(2) and, in submitting the case for orders, expressed the view that the employment of the word “sanction” by the legislature imported a judicial element into the act of the executive. On the second objection, he referred to the fact that in the order according sanction no intimation was given as to the nature of the offence under section 168, which the accused was charged with committing, nor as to the place where or the time when it had been committed; nor was there anything in the order to show whether the facts of the charge eventually preferred were before the Government when the sanction was accorded.

Mr. *John Adam* for the accused.

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(1) I.L.R., 10, Mad., 232.

(2) I.L.R., 16 Mad., 468.

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ORDER.—The Acting Sessions Judge of Godavari makes this reference under section 215 of the Criminal Procedure Code for quashing a commitment made to his Court, by the Sub-Divisional Magistrate of Ellore, under an order made by the High Court under section 526, clause (1) IV, Criminal Procedure Code—the points of law urged by him for quashing the commitment being that the Local Government accorded the sanction, under section 197, Criminal Procedure Code, for the prosecution of the accused without giving him previous notice, and that the sanction accorded does not specify with sufficient clearness the offence for which he is to be prosecuted.

In my opinion section 215 of the Criminal Procedure Code under which this reference has been made, is inapplicable to the case inasmuch as the commitment in question is not one made under any one of the four sections therein specified, but is one made under the direction of the High Court under section 526 (1) IV. The case was pending before the Sub-Divisional Magistrate of Ellore, who was trying the case (under chapter XXI, Criminal Procedure Code) on a charge which had been framed against the accused when the case was pending before the Joint Magistrate of Rajahmundry, before it was transferred by the District Magistrate to Ellore; and on an application made by the accused to the High Court under section 526 of the Criminal Procedure Code for a transfer of the case, the High Court transferred its trial to the Sessions Court of Rajahmundry and directed the Sub-Divisional Magistrate to commit the accused for trial to that Court.

It will be observed that, under sections 436 and 526 of the Criminal Procedure Code, a commitment may be made without a charge against the accused (*vide* section 226 of the Criminal Procedure Code) and neither of these sections is specified in section 215. The order of a Sessions Judge or District Magistrate passed under section 436 directing commitment can be quashed by the High Court in the exercise of its revisional powers, though not under section 215; but an order passed by the High Court itself under section 526 cannot be so revised. The case, which has been thus committed to the Sessions Judge for trial, should be disposed of by him according to law and it will of course be competent to him to discharge the accused, if, in his opinion, the points of law urged by him be well founded.

Even if it were competent to the High Court to quash the commitment under section 215 of the Criminal Procedure Code or under any other power I see no sufficient reason to do so, as in my opinion neither of the grounds urged by the Sessions Judge is well founded.

The sanction accorded by Government under section 197 cannot be held to be null and void for the reason that no notice was given to the accused to show cause why such sanction should not be given. It is a matter left entirely to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution and the Criminal Court before which he is prosecuted is not an appellate authority over Government in the matter of the sanction. There is a marked distinction between the classes of offences dealt with in section 195, clauses 1 (b) and (c), and those dealt with in section 197. A Court granting sanction under section 195, clauses (b) and (c), does so in connection with offences committed in or in relation to any proceeding in such Court and the Court therefore acts in its judicial capacity in granting the sanction upon legal evidence. But the Government in according or withholding sanction under section 197—for the prosecution of a public servant in respect of an offence alleged to have been committed by him as such public servant—acts purely in its executive capacity and the sanction need not be based upon legal evidence. The Government is certainly not acting in a judicial capacity nor exercising a judicial function in authorising or sanctioning a prosecution under sections 196 and 197 of the Criminal Procedure Code, and there is nothing in the signification of the word ‘sanction’ to ‘import’ as the Sessions Judge supposes “a judicial element into the act of the executive,” and the ruling of the Full Bench in *Queen-Empress v. Sheikh Beari*(1) referred to by the Sessions Judge has no application whatever to the present case.

Nor can it be reasonably held that the sanction accorded by Government to the prosecution of the accused for an offence under section 168 of the Indian Penal Code is not a sanction for prosecuting the accused on the charge specified in the complaint. The offence with which he is charged in the complaint is “that during the term of his office as Municipal Councillor he was a

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(1) I.L.R., 10 Mad., 232.

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partner in the year 1898 in all the contracts of Mr. Andrews, who had no capital of his own but was trading with the funds supplied to him by the defendant (and) that the said Mr. Andrews had taken up in July 1898 the contract for the supply of gravel and metal to the Ellore Municipality." The proceedings of the Government of Madras sanctioning the prosecution of the accused for having as a member of the Municipal Council of Ellore, committed an offence punishable under section 168 of the Indian Penal Code, recite that a letter from the Collector, Godavari district, dated 9th January 1902, "submitting report in the matter of the proposed removal, etc., of certain Councillors of the Ellore Municipality" was read and thereupon an order is passed declining to remove from office two of the Municipal Councillors named in the order, but sanctioning the prosecution of the present accused. It is therefore clear that the report of the Collector related to the proposed removal of two of the Councillors and to the prosecution of the accused for having, while a Municipal Commissioner, had an interest in contracts with the Municipal Council and that Government after consideration of the facts set forth in the Collector's report accorded its sanction for the prosecution of the accused and did not delegate its authority to the Collector, as was done by the Board of Revenue in the case of *Queen-Empress v. Samavir*(1) in which it was held that no sanction for prosecution had in law been given by the Board of Revenue, inasmuch as it simply authorised the Collector to prosecute the accused in that case "on such of the charges set forth in the Deputy Collector's report as he thinks likely to stand investigation by a Criminal Court." The Criminal Procedure Code does not prescribe any particular form for the sanction required by section 197, though in the case of a sanction accorded under section 195, sub-section (4) thereof prescribes that the sanction "shall, as far as practicable, specify the place in which and the occasion on which the offence was committed."

The complaint lodged against the accused in the present case is definite and specific and the complainant produced the above proceedings of the Government as according sanction for the prosecution instituted by him and it is simply a captious objection on the part of the accused—raised apparently for the first time before the Sessions Court—to say that the sanction accorded by

(1) I.L.R., 16 Mad., 468.

Government does not disclose the particular contracts in respect of which his prosecution has been sanctioned. The sanction of Government to prosecute him, as a Municipal Councillor of Ellore under section 168 of the Indian Penal Code, can only be in respect of his alleged interest in some municipal contracts and it is not pretended or suggested that the sanction might relate to some contract or contracts other than that referred to in the complaint. If the letter of the Collector read in the proceedings of the Government and thus incorporated therewith had been produced before the Magistrate or were even now produced before the Sessions Court by the Public Prosecutor, there would be no room for such quibble and captious objection on the part of the accused.

For the above reasons the commitment made to the Sessions Court will stand and the Sessions Judge will proceed to try and dispose of the case according to law.

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## APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice  
Subrahmania Ayyar.*

IN THE MATTER OF TAMMI REDDI (COMPLAINANT).\*

*Criminal Procedure Code—Act V of 1898, s. 250—Order for compensation.*

1903.  
February  
18.

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The question whether the discretion given by section 250 of the Code of Criminal Procedure has been rightly exercised, must always depend upon the facts of the particular case. If the false charge is of such a nature that a prosecution is necessary on grounds of public policy, it may well be that a magistrate would exercise his discretion wrongly if, instead of sanctioning a prosecution, he awarded compensation. If the false charge is one which does not render it necessary on grounds of public policy that a prosecution should be sanctioned, a magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly.

ORDER for compensation under section 250 of the Code of Criminal Procedure. The case was referred to the High Court for orders, under circumstances which are set out in the following

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\* Case referred No. 157 of 1902 (Criminal Revision Case No. 556 of 1902) for the orders of the High Court under section 438 of the Code of Criminal Procedure by Lewis Moore, Sessions Judge of Bellary Division, in his letter dated 11th November 1902, No. 2769.