

APPELLATE CIVIL.

Before Mr. Justice Srinivasa Ayyangar.

KRISHNA KONE (PETITIONER), PETITIONER,

v.

KULASEKHARA MUDALIAR (RESPONDENT), RESPONDENT.*

Sec. 55, Madras Local Boards Act (XIV of 1920)—Nomination of a member of village panchayat for election as member of a Local Board, validity of.

A member of a village panchayat exercising magisterial functions under the Madras Village Courts Act (I of 1889) is not an "Honorary Magistrate" within the meaning of section 55 of the Madras Local Boards Act (XIV of 1920); hence such member is not disqualified for nomination for election as a member of the Local Board.

"Magistrate" in the Madras Local Boards Act means according to section 3, clause 18 of the Madras General Clauses Act (I of 1891) one who exercises the powers of a Magistrate under the Code of Criminal Procedure and a member of a village panchayat who derives his magisterial powers only from the Madras Village Courts Act and not from the Criminal Procedure Code is not such a Magistrate.

PETITION, under section 115 of Act V of 1908 and section 107 of the Government of India Act, praying the High Court to revise the order, dated the 11th December 1922, of J. K. LANCASHIRE, District Judge of Tinnevely, in O.P. No. 156 of 1922.

The facts are given in the judgment.

K. S. Sankara Ayyar for petitioner.

V. Rajagopala Ayyar for respondent.

JUDGMENT.

The petitioner in this case was duly nominated for election to a Union Board according to the rules relating thereto. The President of the Taluk Board rejected the

* Civil Revision Petition No. 704 of 1923.

nomination of the petitioner on the ground that he was a person disqualified to be nominated under the provisions of section 55 of the Local Boards Act, Act XIV of 1920. Under clause 4 of that section, no officer or servant holding office under the Act or an Honorary Magistrate for the local area over which the Local Board concerned has jurisdiction is competent to be appointed as a member of such Local Board. The ground on which the President of the Taluk Board held the petitioner disqualified was that the petitioner was a member of the panchayat of the village which exercised criminal jurisdiction within the same jurisdiction and that as for the services rendered by the petitioner as a member of the panchayat in the administration of criminal justice he was not paid, he was an Honorary Magistrate within the meaning of clause 4 of section 55 of the Local Boards Act.

KRISHNA
KONE
v.
KULA-
SEKHARA
MUDALIAR

The word "Magistrate" is defined by the Madras General Clauses Act, Act I of 1891, section 3, clause 18. It sets out that the term "Magistrate" shall mean

"any person exercising all or any of the powers of a magistrate under the Code of Criminal Procedure, 1882."

And when we come to the Criminal Procedure Code we find that there are only four classes of Magistrates, namely, the Presidency Magistrates, Magistrates of the First Class, Magistrates of the Second Class, and Magistrates of the Third Class. Section 77 of the Village Courts Act (Madras Act I of 1889) provides that excepting section 403 of the Code of Criminal Procedure nothing contained in the Criminal Procedure Code shall apply to village courts. From this it necessarily follows that a member of the village panchayat exercising criminal jurisdiction under section 76 of the Village Courts Act is not a Magistrate within the meaning of the Local Boards Act Having regard to the definition of "Magistrate" in the General Clauses Act no person

KRISHNA
KONE
v.
KULA-
SEKHARA
MUDALIAR.

can be said to be exercising any powers of the Magistrate under the Code of Criminal Procedure to whom, under the express terms of section 77 of the Village Courts Act, the Code of Criminal Procedure is made inapplicable. Further there can be no doubt whatever that a member of a village panchayat derives his jurisdiction in criminal cases not from the Criminal Procedure Code but from the Village Courts Act.

It has been also attempted to be argued by the learned vakil for the petitioner that under the Village Courts Act it is a body of persons that is constituted into a Criminal Court and vested with magisterial powers and that therefore no individual member of that body could be said to be a Magistrate. I cannot possibly accede to such a contention. The object with which I take it that under the Local Boards Act an Honorary Magistrate is disqualified to be appointed as a member of the Taluk Board or the Union Board is that there may frequently be cases in which the Board is prosecuting and that it would be opposed to all the principles that a person who is really in the position of a prosecutor should also be a Judge.

Having regard therefore to the principle underlying this disqualification I have no hesitation in rejecting this contention that a member of a body exercising the powers of a Magistrate is not a Magistrate. But having regard to the definition of "Magistrate" I cannot hold that a member of the village panchayat is an Honorary Magistrate within the meaning of the Local Boards Act. I have therefore come to the conclusion that the lower Court was clearly wrong in holding that the action of the President of the Taluk Board in rejecting the nomination of the petitioner was right.

I therefore allow the petition of the petitioner in the lower Court and setting aside the declaration of the

election of the respondent as a properly appointed member of the Union Board, direct that the nomination of the petitioner be accepted as right and that an election be held on that basis.

KRISHNA
KONE
v.
KULA-
SEKHARA
MUDALIAR.

The respondent will pay the petitioner his costs both in this Court and the lower Court.

N.R.

APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice
Madhavan Nayar.*

KALYANJI (NOW DEAD) AND ANOTHER (RESPONDENTS 2 AND 3
AND PLAINTIFFS 2 AND 3), APPELLANTS,

1924,
November 6.

v.

RAM DEEN LALA (PETITIONER AND SECOND DEFENDANT),
RESPONDENT.*

Criminal Procedure Code (V of 1898 and XVIII of 1923), ss. 476 and 195—Order under sec. 476, Criminal Procedure Code, by a Judge of the Presidency Small Cause Court, Madras, to prosecute for offences under sections 193 and 196, Indian Penal Code—Appeal against order to the appellate side of the High Court, maintainability of.

An appeal against an order of a Judge of the Presidency Small Cause Court, Madras, directing under section 476, Criminal Procedure Codes; the prosecution of a person for offences under sections 193 and 196, Indian Penal Code, lies only to the appellate side of the High Court and not to the Full Bench of the Small Cause Court under section 38 of the Presidency Small Cause Courts Act (XV of 1882) or to the original side of the High Court. *In re Shivtal Padma*, (1910) I.L.R., 34 Bom., 316, followed. *Munisamy Mudaliar v. Rujaratnam Pillai*, (1922) I.L.R., 45 Mad., 928 (F.B.), explained.

As an order under section 476, Criminal Procedure Code, directing a prosecution for offences under sections 193 and

* Civil Miscellaneous Appeal No. 412 of 1923.