APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

KAMISETTY RAJA RAO (COMPLAINANT), PETITIONER,

1927
January 11.

v.

T. RAMASWAMY (1ST ACCUSED), RESPONDENT.*

Public officials—Immunity from prosecution without sanction—Extent of—Act arising out of abuse of official position, and not purporting to be official—Municipal Chairman—Threatening injury to voter's property with intent to influence his vote—Complaint under section 54 (a) of the Madras District Municipalities Act (V of 1920)—Sanction under section 197 of the Criminal Procedure Code (Act V of 1898) —If necessary.

The privilege of immunity from prosecution without sanction accorded to public officials only extends to acts which can be shown to be in discharge of official duty, or fairly purporting to be in such discharge. A prosecution for an offence arising out of an abuse of official position by an act not purporting to be official does not require sanction under section 197 of the Code of Criminal Procedure.

Where a complaint against a Chairman of a Municipal Council charged him with an offence under section 54 (*a*) of the Madras District Municipalities Act (V of 1920) in that he threatened a voter with injury to his property, with intent to induce such voter to vote for a candidate or to abstain from voting, held that sanction under section 197 of the Code of Criminal Procedure (Act V of 1898) was not necessary for the institution of the complaint.

Sheik Abdul Kadir Saheb v. *Emperor*, (1916) M.W.N., 384, at 388, followed. In re *Gulam Muhammad Sharif-ud-daulah*, (1886) I.L.R., 9 Mad., 439, dissented from. *Municipal Commissioners of the City of Madras* v. *Bell*, (1902) I.L.R., 25 Mad., 15, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to

* Criminal Revision Case No. 771 of 1926.

revise the order of the Court of the District Magistrate of Guntūr in Case No. 4 of 1926, dated 24th August 1926.

K. S. Jayarama Ayyar for petitioner.

V. L. Ethiraj for respondent.

Public Prosecutor for the Crown.

JUDGMENT.

Petitioner seeks to revise the order of the District Magistrate, Guntūr, in C. C. No. 4 of 1926 refusing to take cognizance of a complaint against the Chairman of the Municipal Council, Tenali, under section 54 (*a*), Act V of 1920, because sanction had not been obtained under section 197 of the Code of Criminal Procedure.

2. The offence in question is threatening a voter with injury to his property with intent to induce such voter to vote for any candidate or to abstain from voting.

The petitioner would have it that this was done while the chairman was acting or purporting to act in the discharge of his official duty within the terms of section 197 of the Code of Criminal Procedure.

3. The section presents no difficulty if the obvious intention of the legislature is borne in mind. It is no part of British policy to set an official above the common law. If he commits a common offence he has no peculiar privilege. But if one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction, for the obvious reason that otherwise official action would be beset by private prosecution. Judges would be charged with defamation, policemen with wrongful restraint, and distrainers with theft. This privilege of immunity from prosecution without sanction only extends to acts which can be shown to be in discharge of official duty, or fairly purporting to be in such discharge.

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Thus, if the chairman had dismissed the petitioner, sanction would have to be obtained, because obviously he would have acted in his official capacity. Nor would it avail the petitioner to say that the chairman had dismissed him for no fault as a municipal servant, for the dismissal would at any rate purport to be in his official capacity. But a threat of dismissal because of the way in which he chose to vote cannot be said either to be or to purport to be in exercise of the chairman's official capacity, no more than if the chairman had hurt or robbed the petitioner it could be said to be in exercise of official capacity.

4. But the petitioner argues that the threatening, hurting or robbing would be in exercise of official capacity, if the chairman's office put him in a position in which he could commit these offences.

Suppose the chairman hurt the petitioner while reprimanding him for some short-coming as a municipal servant, or wrongfully threatened to dismiss him, taking advantage of the fact that in other circumstances connected with municipal administration he has the power to dismiss, could it then be said that he purported to act in his official capacity ? In short, does an offence arising out of abuse of official position by an act not purporting to be official necessitate sanction under section 197 of the Code of Criminal Procedure ? In my opinion it does not and the same opinion is expressed by the present Chief Justice sitting as a single Judge in *Sheik Abdul Kadir Sahib* v. *Emperor*(1) :

"The offence of criminal breach of trust is not an offence which is committed by the chairman in his capacity of public servant as such."

(1) (1916) M.W.N., 384 at 388.

That is to say, he was never appointed with the intention that his official functions would embrace criminal breach of trust, "his capacity of public servant being only that which puts him, so to speak, in a position in which such an offence can be committed."

That is to say, it is not enough for him merely to be in an official position which he may abuse. He must act in his official capacity. The head-note perhaps does not put this very clearly; and another reason why section 197 often occasions difficulty is the sense in which acting is commonly understood in this country. "Offence alleged to have been committed while acting in the discharge of his official duty", some persons are prone to interpret as meaning "any offence committed by him while he is in office." That, as I have shown above, is quite wrong; and "acting" here refers to the specific action which comprises the offence. The section might run

"is accused of any action done by him in the discharge of his official duty, alleged to be an offence."

5. It is interesting to note that the section still causes difficulty because it was newly drafted in 1923 to clear up the ambiguity of the wording in the 1898 Code, which itself was an attempted improvement upon that of 1872. These variations must be kept in view in examining the case law, though, I think, that, throughout, the legislature has been endeavouring to state the same thing only in different words.

6. In *Imperatrix* v. *Lakshman Sakharam Vaman Hari and Balaji Krishna*(1) it appears that some sort of Munsif fabricated an entire civil suit as heard by himself from the plaint to the decree, and the learned Judges held that sanction was necessary. The 1872 Code, section 466, ran

(1) (1878) I.L.R., 2 Bom., 481.

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"An offence committed by a public servant in his capacity as such public servant"

And this was held to extend to all acts ostensibly done by a public servant, that is, to acts which would have no special signification (significance?) except as acts done by a public servant.

I confess to some difficulty in following this decision. If the ingenious man had forged the record as coming before some other Court, there presumably would be no question of sanction, and why must there be sanction because he selected his own Court? The forgery and fabrication were not done in his capacity as public servant. Perhaps he signed the decree in that capacity.

7. However this ruling seems to have been approved by a single Judge of this Court in *In re Gulam Muhammad Sharif-ud-daulah*(1). There a Judge of the Court of Small Causes was accused of using, when on the Bench, defamatory language to a witness. It was held that a Judge on the Bench cannot act in a private capacity. It is probably to avoid any difficulty arising out of the word capacity that the word now finds no place in the section. It could never have been intended by the legislature that a Judge as soon as he takes his seat upon the Bench can only act in an official capacity. Suppose that instead of defaming he had shot the witness. This authority is questioned in *Sheik Abdul Kadir Saheb* v. *Emperor*(2) and I concur. It is also dissented from in *Nando Lal Basak* v. *Mitter*(3). In *Municipal Commissioners for the City of Madras* v. *Bell*(4) one Major Bell, a public servant, was prosecuted for bringing timber into this town in contravention of section 341 of the then Municipal Act, and the

(1) (1886) I.L.R., 9 Mad., 439.
(2) (1916) M.W.N., 384.
(3) (1899) I.L.R., 26 Calc., 852.
(4) (1902) I.L.R., 25 Mad., 15.

question again arose whether sanction was necessary. The point is well put by MOORE, J.:

"It cannot be held that the offence of bringing wood into the city of Madras without a licence is one which could be committed by a public servant only, or that such an offence involves as one of its elements that it was committed by (e.g.) the Superintendent of the Gun Carriage Factory."

Applying these words to the present case, it cannot be held that threatening the voter with injury could be committed by a public servant only, or such an offence involves as one of its elements that it was committed by a chairman of a Municipality. No doubt it was the accident of his position which gave the major timber to bring in, or the chairman a servant to threaten, but neither the illicit import nor the illicit threat were acts committed in the discharge of official duty. Therefore I hold that sanction was not necessary in respect of the complaint under section 54 (*a*), Act V of 1920, and direct the District Magistrate to proceed according to law. His order is cancelled. It will be noted that this proceeding is confined to the complaint under section 54 (*a*).

B.C.S.