polling officer acquires the status of a polling officer by the appointment by the Municipal Chairman. The Municipal Chairman may appoint any person he likes as a polling officer subject to the restrictions contained in the rule. The fact that the officer so appointed happens to be a Tahsildar or that he was appointed after obtaining the permission of the Collector does not affect the decision of the question. We are of opinion that the person appointed, though he is a Tahsildar, was, for the time being, not acting or purporting to act in the discharge of his official duty as a Tahsildar and, therefore, section 197 of the Criminal Procedure Code can have no application. As one of the essential conditions necessary for the application of the section is not satisfied in this case, it is not necessary to consider the other condition, namely, whether the petitioner is a public servant who is not removable from his office save by or with the sanction of the local Government.

We think the order of the Sessions Judge is right and dismiss this criminal revision petition.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Madhavan Nayar.

KRISHNASAMI NAIDU (ACCUSED), PETITIONER.*

1927, August 25.

Indian Penal Code, sec. 114—Conviction under—Abetment to be complete apart from mere presence.

To sustain a conviction under section 114 of the Indian Penal Code the abetment must be complete apart from the mere presence of the abettor. *Ram Ranjan Roy* v. *Emperor*, (1915) I.L.R., 42 Calc., 422; *In re Annavi*, (1924) 21 L.W., 19; and *In re Jogali Bhaigo Naik*, (1926) 27 Cr. L.J., 1098, referred to.

* Criminal Revision Case No. 151 of 1927.

KRISHNA-SAMI NAIDU, *In re.*

PETITION under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of the Court of Sessions of Trichinopoly in Criminal Appeal No. 36 of 1926 preferred against the judgment of the Court of the Subdivisional Magistrate of Trichinopoly in C.C. No. 18 of 1926.

V. L. Ethiraj and *A. S. Sivakaminathan* for petitioner.

K. N. Ganpati for *Public Prosecutor* for the Crown.

JUDGMENT.

The petitioner is the second accused in C.C. No. 18 of 1926 on the file of the Subdivisional Magistrate, Trichinopoly. His son the first accused was convicted under section 326, Indian Penal Code, with having voluntarily caused grievous hurt with an aruval to P.W. 1. The petitioner was convicted under sections 114 and 326, Indian Penal Code, with having abetted the first accused (the son) and being present at the occurrence. He was sentenced to rigorous imprisonment for four months. It appears from the judgments of the Lower Courts that the part taken by the petitioner in the commission of the offence was only this, namely, that he desired his son to cut P.W. 1. In one part of the judgment of the Sessions Judge the part played by the petitioner is thus described:

"Appellant 1 (the son) cut him with an aruval at the instigation of the appellant 2 (the petitioner)."

There is no evidence that prior to this incident there was any conspiracy between the father and son to waylay P.W. 1 and cut him. The petitioner himself has not taken any other part in the offence. On these facts the Courts below convicted him under sections 114 and 325, Indian Penal Code. It appears to me that the conviction cannot stand and should be set aside. To come within section 114 of the Indian Penal Code the

abetment must be complete apart from the presence of the abettor. The only abetment charged in this case required the presence of the abettor and as I have already observed there is no evidence of any conspiracy prior to the occurrence between the petitioner and his son. In these circumstances section 114 cannot be invoked for convicting the petitioner reading it with section 326. This view of section 114 was taken by the learned Judges of the Calcutta High Court in *Ram Ranjan Roy* v. *Emperor*(1). In that case the facts were very similar to the facts of the present case except that the main charge there was one of murder. This decision has been followed by our High Court in *Annavi, In re*(2). The same view of the law had been taken by a Bench of this Court in *In re Jogali Bhaigo Naik*(3). In this view the conviction of the petitioner under section 326 read with section 114 must be set aside.

The petitioner was sentenced to undergo four months' rigorous imprisonment of which I understand he has already undergone three months. I do not think, therefore, that it is necessary in the interests of justice that he should be called upon to undergo a fresh trial. I set aside the conviction and sentence and acquit him. His bail bond will be cancelled.

B.C.S.

---

(1) (1915) I.L.R., 42 Calc., 422. (2) (1924) 21 L.W., 19.
(3) (1926) 27 Cri. L.J., 1098.