This on the face of it is an untenable position. The District Magistrate has jurisdiction to hear appeals only from the decisions of Second-class Magistrate. The moment a Second-class Magistrate is invested with the powers of a First-class Magistrate he becomes a First-class Magistrate and any convictions by him in cases which were taken up by him as a Second-class Magistrate would be only convictions as a First-class Magistrate. We do not think it necessary to cite any authority but we may refer with approval to the case of *Sheobhanjan* v. *Emperor*(1). The District Magistrate not having had jurisdiction to hear the appeal, his decision must be set aside as being without jurisdiction. We therefore set aside the acquittal by the District Magistrate on appeal, direct the Sessions Judge to send for the appeal records from the District Magistrate's Court, to take it on his file and to dispose of it according to law, after giving notice to the accused.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Madhavan Nayar and Mr. Justice Curgenven.

1927, September 23.

S. S. JAGANADHASWAMI NAIDU (ACCUSED), PETITIONERS,

v.

T. MANIKYAM (COMPLAINANT), RESPONDENT.*

Criminal Procedure Code, sec. 197—*Tahsildar—Appointed polling officer by municipal chairman—Complaint against, of falsification and fabrication of election records—Previous sanction of local Government, if necessary.*

Where the services of a Tahsildar were lent to a Municipal Chairman and the Chairman appointed him as a polling officer

(1) (1925) A.I.R. (Patna), 472.

* Criminal Revision Case No. 872 of 1927.

JAGANADHA-SWAMI NAIDU v. MANIKYAM.

to conduct an election and a complaint was filed against him, alleging falsification and fabrication of election records, *held*, the previous sanction of the local Government was not necessary, under section 197 of the Criminal Procedure Code, to institute the proceedings against him, as, in working as a polling officer, he could not be said to be acting or purporting to act in the discharge of his official duty which was that of a Tahsildar.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of Session, West Gōdāvari at Ellore, in Criminal Revision Petition No. 23 of 1926 presented to revise the judgment of the Court of the Joint First-class Magistrate of Narasapur in Calendar Case No. 80 of 1926.

The facts necessary for this report appear in the judgment.

P. Venkatramana Rao for petitioner.

V. Suryanarayana for respondent.

Public Prosecutor for the Crown.

The JUDGMENT of the Court was delivered by

MADHAVAN NAYAR, J.

MADHAVAN NAYAR, J.—This petition raises the question whether sanction under section 197 of the Criminal Procedure Code should be obtained before instituting criminal proceedings against a Tahsildar who acted as a polling officer in connection with a municipal election.

The facts are briefly these:

"Under G.O. No. 1367, L. and M., dated April 3, 1925 . . . where a Chairman of a Municipal Council or the President of a Local Board desires to have the services of an officer of the Revenue Department for the conduct of a particular election he may apply to the Collector and the Collector may spare an officer's services if he is able to do so".

Acting under the Government Order, the Chairman of the Ellore Municipality obtained from the Collector the services of the petitioner, a Tahsildar, to act as a polling officer in the 5th ward of the Ellore Municipality during a recent municipal election. It is alleged that, while acting in that capacity, the petitioner

committed an offence under section 58 of the District Municipalities Act, which runs as follows:

"Every person who in the course of electoral operations falsifies or attempts to falsify the record of an election by removing, destroying, altering or fabricating nomination papers or voting papers or by any other act or by any omission, shall be punishable with imprisonment of either description which may extend to one year or with fine or with both."

The case against the petitioner is described in paragraphs 6 and 7 of the complaint. Paragraph 7 runs thus:

"The accused wilfully marked the votes wrongly and falsified and attempted to falsify and fabricate the records of the election and committed an offence punishable under section 58 of the Madras District Municipalities Act and also sections 465 and 469 of the Indian Penal Code."

It is not necessary for the purposes of this case to state the facts of the complaint in greater detail.

When the case was taken up for trial, objection was taken on behalf of the petitioner that this was a case in which sanction of the Government was necessary under section 197 of the Criminal Procedure Code and that, as such sanction had admittedly not been obtained, the complaint should be dismissed. Upholding the objection the Joint Magistrate dismissed the complaint. The learned Sessions Judge on revision set aside the order of the Joint Magistrate and directed him to dispose of the case according to law. The present revision petition is against the order of the Sessions Judge.

Section 197(1) of the Criminal Procedure Code runs as follows:

"When any person who is a judge within the meaning of section 19 of the Indian Penal Code, or when any magistrate, or when any public servant who is not removable from his office save by or with the sanction of a local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of

JAGANADHA-SWAMI NAIDU v. MANIKYAM.

MADHAVAN NAYAR, J.

such offence except with the previous sanction of the local Government."

To establish the contention that sanction should have been obtained the petitioner has to show (1) that he is a public servant who is not removable from his office save by or with the sanction of the local Government and (2) that he is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. If either of these conditions does not apply to the petitioner, then clearly it is not necessary to obtain the previous sanction of the local Government to institute proceedings against him. Following the argument of the learned vakil for the petitioner, dealing with the second question first, we have to see whether the petitioner, while acting as a polling officer under the District Municipalities Act, was acting or purporting to act in the discharge of his official duty, his official duty being that of a Tahsildar. It is alleged that, because the Collector has lent the petitioner's services to the Chairman, notwithstanding the fact that he was acting as a polling officer, he still remains a Tahsildar and was acting or purporting to act in the discharge of his official duty as a Tahsildar. No direct authority in support of the argument has been brought to our notice. Under rule 8 (1) of the Rules for the Conduct of Elections of Municipal Councillors,

> "If, owing to there being more candidates than there are vacancies, a poll has to be taken, the Chairman shall appoint forthwith one or two polling officers for each polling station and may pay them reasonable remuneration for their services."

It is conceded that the petitioner, when his services were lent to the Chairman, was appointed as a polling officer by the Chairman and that it was after this appointment that he began to discharge the duties of a polling officer. In certain cases it is the duty of the Municipal Chairman to appoint a polling officer, and the

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.