APPELLATE CRIMINAL.

Before Mr. Justice Waller and
Mr. Justice Anantakrishna Ayyar.

1928, March 12.

JUJJAVARAPU GANGARAJU (Accused), Appellant,

v.

KANDIBOYINI VENKI (Complainant), Respondent.*

Code of Criminal Procedure (V of 1898), sec. 197—Prosecution of public servant for offence alleged to have been committed while actually engaged or purporting to be engaged in official duty—Sanction—If a pre-requisite.

Sanction under section 197 of the Code of Criminal Procedure is an essential pre-requisite to the prosecution of a public servant in respect of an offence alleged to have been committed by him, while he was actually engaged in or purported to be engaged in the discharge of his official duty. The question is not as to the nature of the offence, such as, whether the alleged offence contained "an element necessarily dependent upon the offender being a public servant", but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official duty.

Sivaramakrishnayyar v. *Seshappa Naidu*, (1928) I.L.R., 52 Mad., 347, referred to.

Case referred for the orders of the High Court, under section 438 of the Criminal Procedure Code, by the Sessions Judge of West Gōdāvari at Ellore in his letter Dis. No. 708/21—12—1928, dated 18th December 1928.

K. N. Ganpati for *Public Prosecutor* for the Crown.
B. T. M. Raghavachari for accused.
Ch. Raghava Rao for complainant.

* Criminal Revision Case No. 34 of 1929.

The JUDGMENT of the Court was delivered by

WALLER, J.—This is a reference by the Sessions Judge, West Gōdāvari. One Venki preferred a complaint against the Village Magistrate of her village, charging him with wrongful confinement and bribery. The Sub-Magistrate took cognizance only of the former offence and issued notice to the Village Magistrate. The latter appeared and objected that sanction for the prosecution was necessary under section 197 of the Criminal Procedure Code. The Sub-Magistrate overruled the objection and the Village Magistrate took the matter up to the Sessions Judge, who, disagreeing with the Sub-Magistrate, has made a reference to this Court.

Sub-section (1) of section 197 of the Criminal Procedure Code as amended by section 50 of Act XVIII of 1923, 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 removeable 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 such offence except with the previous sanction of the Local Government."

It is framed in very wide terms. It requires that Judges, Magistrates and certain public servants shall not be prosecuted without the sanction of the competent authority for any offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duties. The object obviously is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them, while they were acting or purporting to act as public servants. The policy of the Legislature is, we conceive,

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to afford adequate protection to public servants, to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause and, if sanction is granted, to confer on the Local Government, if they choose to exercise it, complete control of the prosecution. We can see nothing in these precautions to which the public at large can legitimately take exception, and consider that the sub-section should be construed as widely as it has been framed. If the policy of the Legislature has been to afford a reasonable protection to public servants against vexatious charges arising out of the performance by them of their official functions, it has not been conspicuously successful. By a series of judicial decisions that protection has been refined down to the vanishing point. A learned Judge of this Court, SESHAGIRI AYYAR, J., remarked in *Sankaralinga Tevan* v. *Avudai Ammal*(1), "If this argument is pushed to its logical conclusion, no public servant or Judge can have the safeguard of a sanction, as it is not within the powers of such an officer to commit an offence. Any offence committed by such a person must *prima facie* be beyond his official rights and duties. I do not think that such a result is the necessary consequence of the language employed by the Legislature." And yet that is the effect of some of the decisions, that the commission of an offence being no part of a public servant's duties, no sanction is required for his being prosecuted for an offence alleged to have been committed by him while he was discharging or purporting to discharge those duties. The language of section 197, Criminal Procedure Code, does not, in our opinion, afford any justification for such a construction.

(1) (1916) 35 I.C., 826.

Numerous decisions have been cited on the point. Most of them turn on the wording of the corresponding sections in the Codes of 1882 and 1898. In this connexion we endorse the criticism of Mitra in his commentary on the present Criminal Procedure Code, see page 521 of the 5th Edition.

"These cases, though correctly decided under the old Codes, would be of no authority now as the language of the present section materially differs from the language of the old law. Under the present section it will not be necessary to decide whether the fact of the accused being a Judge or a public servant was a necessary element in the offence or whether the offence was one which could not have been equally committed by a private person. These nice questions would no longer arise; and if it is found that the Judge, Magistrate or public servant has committed the act at a time when he was doing (or purporting to do) an official duty, this will be sufficient to attract the provisions of this section. In other words, the Legislature has now given a greater protection to the officers concerned than it did under the old section."

At the same time, we would express a doubt whether the Legislature, when it departed, in the Codes of 1882 and 1898, from the language of the Code of 1872, really intended to diminish the protection afforded to public servants by section 466 of that Code. It is not permissible for us, in attempting to interpret section 197 of the present Code, to rely on the statement of objects and reasons that led to its modification, but, it is of some significance as indicating what view the Legislature took of section 466 of the Code of 1872 and with what intention section 197 in its present form was framed. As stated, the intention was "to amplify the words with the object of rendering the section clear, reverting rather to the wording of the Code of 1872." The inference appears to be that the Legislature had not intended in the Codes of 1882 and 1898 to abandon the

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policy of the Code of 1872, but, finding that its intention had been misinterpreted by the Courts, decided to go back to that Code.

The leading Madras case, *Municipal Commissioners for the City of Madras* v. *Major Bell*(1), was decided with reference to the Code of 1898. Major Bell, who was a public servant, was prosecuted for having, in his official capacity, brought timber into the City without the statutory licence. The Bench overruled the plea that sanction was necessary "as the offence charged was not one which could be committed only by a public servant, nor did it involve as one of its elements that it had been committed by a public servant." In arriving at this conclusion, they attached the greatest importance to the difference in language between section 466 of the Code of 1872 and section 197 of the Code of 1898, admitting, at the same time, that, if they had had to apply section 466 to the facts of the case, they would have been obliged to arrive at exactly the opposite conclusion. Section 466 reads as follows:—

> A complaint of an offence committed by a public servant in his capacity as such public servant, of which any Judge or public servant not removable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the Local Government shall not think fit to limit or reserve. No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of Government. . . .

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(1) (1901) I.L.R., 25 Mad., 15.

Its effect was considered by PONTIFEX and FIELD, JJ., in an unreported case which is referred to in *Nando Lal Basak* v. *Mitter*(1). They decided, on the facts, that the second paragraph of the section applied and that sanction was necessary. As regards the first paragraph, they thought that it "was intended to apply to those cases in which the offence charged is an offence which can be committed by a public servant only, cases, that is, in which the being a public servant is a necessary element." In other words, prosecution for all offences alleged to have been committed by public servants purporting to act as such required sanction, while prosecution for all but a very limited class of offences alleged to have been committed by public servants when acting as such did not. With great respect, we think that the Legislature when it decided to re-enact the provisions of section 466, took a more correct view of what that section was intended to mean. Where, in the present section 197, it used the words "while purporting to act in the discharge of his official duty," it was, in effect, reproducing the second paragraph of the old section. When it used the words "while acting . . . in the discharge of his official duty," it was recasting the first paragraph in a clearer and more compendious form. As we have stated already, we think it probable that the Legislature, though it adopted a different phraseology in 1882 and 1898, never intended to depart from the policy it had laid down in 1872, and explicitly reverted to it in the present Code, because that policy had been nullified by a series of judicial decisions. We will refer to only one other case, which was decided with reference to the present Code. In *Sivaramakrishna Ayyar* v. *Seshappa Naidu*(2), CURGENVEN, J.,

(1) (1899) I.L.R., 26 Calc., 851.

(2) (1928) I.L.R., 52 Mad., 347.

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held that the offence contemplated by section 197 "must contain an element necessarily dependent upon the offender being a public servant." We are of opinion that that is too limited a construction of the section. The question is not as to the nature of the offence, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official duty. We hold that, if the offence alleged was committed by the public servant, while he was as actually engaged in or purported to be engaged in the discharge of his official duty, sanction is required. Assuming that *In re Gulam Muhammad Sharif-ud-daulah*(1), was wrongly decided, as the law then stood—the decision would certainly be correct—in our judgment—as the law now stands.

It only remains to apply this principle to the facts of the present case. The complainant's story is that the Village Magistrate sent his talayari to fetch her in connexion with a case before him, in which she had not appeared, told her that "for not appearing when summons were sent to her, he sentenced her to imprisonment in the chavadi," and he confined her in his chavadi—the place where the persons he sentences are by law to be confined. It is clear that—assuming all this to be true—he was purporting to act in the discharge of his duty as a Village Magistrate. Sanction for his prosecution was therefore necessary. We quash the proceedings. It will of course, be open to the complainant, if and when she obtains sanction from the proper authority, to file a fresh complaint.

B.C.S.

[(1) (1866) I.L.R., 9 Mad., 439.