

APPELLATE CRIMINAL.

Before Mr. Justice Cargenven and Mr. Justice Cornish.

Y. MAHABALESWARAPPA (PETITIONER), APPELLANT,

v.

M. GOPALASWAMI MUDALIAR (COUNTER-PETITIONER),
RESPONDENT.*

*Criminal Procedure Code (Act V of 1898), ss. 476 and 195—
“Civil Court”—Meaning of—Includes Election Commis-
sioner—Appeal from order of District Judge refusing to
prefer complaint lies to High Court.*

An Election Commissioner is a “Court” and a “Civil Court” within the meaning of sections 476 and 195, Criminal Procedure Code. He is a “Civil Court” in the sense that he is deciding on purely civil questions between persons seeking their civil rights. He is only not a Civil Court as that expression is used to denote the Courts of ordinary civil jurisdiction. The expression “Civil Court” is used in sections 476 and 195, Criminal Procedure Code, not in this restricted sense, but as denoting a Court which is exercising powers, and dealing with matters, of a civil nature.

Nilmoni Singh Deo v. Taranath Mukerjee, (1882) I.L.R. 9 Cal. 295 (P.C.), followed.

A Subordinate Judge *qua* Election Commissioner is competent to complain of an offence committed in, or in relation to, a proceeding in his Court.

A District Judge is competent to prefer a complaint in respect of an offence committed in, or in relation to, a proceeding before a Subordinate Judge as Election Commissioner, after the Court of the Subordinate Judge is closed. The District Judge can do so either as successor to the Subordinate Judge in the office of Election Commissioner, because the office of Election Commissioner is continuous, although the incumbent changes, or under section 476-A, Criminal Procedure Code, as the Court to which the Subordinate Judge, as Election

* Criminal Appeal No. 441 of 1934.

Commissioner, is subordinate within the meaning of section 195 (3), Criminal Procedure Code.

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An appeal lies to the High Court, under sections 195 (3) and 476-B, Criminal Procedure Code, against the order of the District Judge refusing to prefer a complaint.

APPEAL against the order of the District Court of Bellary, dated 13th February 1934, and made in Original Petition No. 3 of 1934.

K. S. Jayarama Ayyar and *V. Sankaran* for appellants.

Nugent Grant and *K. S. Krishnaswami Ayyangar* for *T. M. Venugopala Mudaliar* for respondent.

A. Narasimha Ayyar for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by CURGENVEN J.—This is an appeal against an order of the District Judge of Bellary refusing to prefer a criminal complaint of forgery against the respondent, Mr. M. Gopalaswami Mudaliar. Up to 10 a.m. on the 1st November 1932, Mr. Gopalaswami Mudaliar was President of the District Board of Bellary. He was succeeded in that office by the petitioner before the District Judge, one Mr. Mahabaleswarappa. In an election petition, which Mr. M. Gopalaswami Mudaliar filed in the Court of the Election Commissioner to unseat Mr. Mahabaleswarappa, the document now in question was produced. We are not at the present stage concerned with the merits of the case, and it is sufficient to remark that the document, which embodies an order of appointment, is alleged to have been ante-dated to make it appear that the order originated while Mr. Gopalaswami Mudaliar was still President of the District Board.

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The election petition was heard and decided by Mr. P. Rajagopalan, at the time Subordinate Judge of Bellary, as Election Commissioner. Subsequently his Court was closed. The rules for the decision of disputes as to the validity of elections held under the Local Boards Act (hereinafter referred to as the Rules) provide that, if there be no Subordinate Judge, the District Judge shall be the Election Commissioner. Application was accordingly made to the District Judge,—whether as such or as successor to Mr. Rajagopalan in the office of Election Commissioner we will discuss presently—to prefer a complaint. The ground upon which the application was dismissed was that proceedings could only be instituted “on the complaint of the Election Commissioner’s Court”, and that “the new Commissioner does not exercise jurisdiction in continuation of his predecessor’s jurisdiction”. In other words, the learned District Judge found that he was without jurisdiction to make a complaint.

In considering the correctness of this finding the two questions we have to decide are, firstly, whether the District Judge, *qua* District Judge or *qua* Election Commissioner, is competent under section 476, Criminal Procedure Code, to make a complaint and, secondly, whether an appeal lies to this Court under section 476-B from his order. The former question requires in the first instance a decision on the point whether an Election Commissioner can complain of an offence “committed in or in relation to a proceeding in his Court”; because it necessarily follows that if he cannot complain neither can his successor (if he have one) nor the Court to which he is subordinate

within the meaning of section 195, sub-section 3, Criminal Procedure Code (see section 476-A). Thus we have to determine whether the Subordinate Judge, as Election Commissioner, could have made a complaint.

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Section 476 confers this power upon "any Civil, Revenue or Criminal Court". Was the Subordinate Judge, *qua* Election Commissioner, such a Court? Was he, to begin with, a "Court" at all? We are invited to return an answer in the negative upon the language of rule 1 (3), which runs as follows:—

"An Election Commissioner exercising jurisdiction under these rules shall be deemed to exercise such jurisdiction as a *persona designata* and not in his capacity as a Judge or other officer of Government as the case may be."

Are the terms "*persona designata*" and "Court" mutually exclusive? There can be no doubt that if by "Court" we understand the normal Civil, Revenue or Criminal Court which forms a unit of the hierarchy of Courts constituted for the ordinary dispensation of justice, the question must receive an affirmative answer. The rule, it is acknowledged, owes its origin to a resolve to exclude the revisional jurisdiction of the High Court, exercisable under section 115 of the Civil Procedure Code or other similar provision. A Full Bench of this Court, in *Parthasaradhi Naidu v. Koteswara Rao*(1), had held that a District or Subordinate Judge, in deciding an election petition, acts not merely as a *persona designata* but as a Court in the exercise of its ordinary jurisdiction extended for that purpose; so that the High Court can exercise its powers of revision over such decisions. It is essential to

(1) (1923) I.L.R. 47 Mad. 369 (F.B.).

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grasp the scope of this ruling if we are to understand certain observations of SCHWABE C.J., which ran as follows (pages 373, 374) :—

“ A preliminary point is taken that this Court has no power of revision, under section 115 of the Code of Civil Procedure, over the decision of a District or Subordinate Judge when acting under that rule. That depends on whether the Judges therein referred to are acting as Courts, or acting merely as *personae designatae*, that is to say, persons selected to act in the matter in their private capacity and not in their capacity as Judges. There has been considerable conflict of opinion on this point since the coming into force of this Act, and I do not think that the decisions that have been given on the matter are of great assistance to us in arriving at the proper conclusion, and we have to look at the Act and the rules and the law as it stands. The law is, I think, quite definitely established by the decision in *National Telephone Company, Limited v. Postmaster-General*(1) in the words of Lord Parker at page 562, that ‘ where by statute matters are referred to the determination of a Court of Record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same.’ If this matter had been referred to the District Court or Subordinate Judge’s Court in terms, in my judgment, no question could arise, because, following the words of the judgment just quoted, the matter would be determined by the Court as a Court, it being given jurisdiction for this particular purpose, and all the incidents, which include the incident of being liable to revision, must follow, although no appeal would lie in this particular case because an appeal has been expressly precluded, for by section 57 (2) of the Act, and by the rules, this ‘ decision is to be final’. But as the word ‘ Judge ’ is used and not the word ‘ Court ’, one has to look carefully to see whether the word ‘ Judge ’ was used of him in his capacity as Judge or in his personal capacity, and I think great light is thrown upon this by two other rules. Rule 12 (2) of the rules for election refers to ‘ an election or other competent Court ’ and it is quite clear that it is there referring to a Court of a District Judge or

(1) [1913] A.C. 546.

Subordinate Judge; and, by Rule 4 (3) of the rules for the conduct of inquiries, power is given to the District or Subordinate Judge in certain cases 'to direct any Court subordinate to him to hold the inquiry'. I find it impossible to hold that a reference to a Judge with power to refer to a Court subordinate to him can mean anything else than reference to a Judge sitting as a Judge in the exercise of his ordinary jurisdiction extended for that purpose. For these reasons, in my judgment, the power of revision lies."

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The tests applied were no doubt conclusive for the determination of the matter then in issue. But, although the amendment of the rules has succeeded in excluding the power of revision, it is not equally clear that it has divested the Election Commissioner of his standing as a "Court". As soon as we come to examine the exact meaning of the new rule perplexities arise. A *persona designata*, as the phrase implies, is a person pointed out by name or other personal description in contra-distinction to one whose identity is to be ascertained by the office which he holds. To qualify the phrase by stipulating that the Election Commissioner is to be the Subordinate Judge or, if there be no Subordinate Judge, the District Judge, is to deprive it of all real significance, and to grant to and withdraw from the Local Government, at one stroke, the power of designating the person who is to exercise these functions. We take the meaning to be simply this, that the selected Judge is to act not in virtue of his jurisdiction as such Judge but in virtue of a species of extra jurisdiction, specially conferred. The work has no connexion with his ordinary duties; but so far from being done by him as *persona designata* it attaches to him by virtue of his office, and he does it *ex officio*.

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This construction of the rule suffices to secure the object with which it was drafted and, as we shall show, averts certain consequences which we cannot but think would be unforeseen and undesigned. The object was to remove the Election Commissioner from among the ranks of those Courts which are subject to the revisional jurisdiction of the High Court. He has been placed in a position apart, outside "the Civil Courts of the Presidency of Madras" referred to in Clause 16 of the Letters Patent. This results from the manner of his appointment and the sources from which he derives his authority. Although the powers may be exercisable by one of the ordinary judicial officers, they are in all respects exercised independently of the ordinary judicial powers. In this sense it may be said that the Commissioner is *persona designata*, working in isolation from other judicial authorities.

But the possession of these characteristics, it will be seen, in no way necessarily decides what are the powers which the Commissioner is to exercise and what is the procedure he is to follow. It does not serve in any way to distinguish in kind his activities from those, say, of his *alter ego*, the Subordinate or District Judge. While therefore the circumstances of his appointment hold him aloof from the ordinary Civil Courts, it by no means follows that, if to be a "Court" means to satisfy certain general tests which may apply independently of specific statutory provisions, he is not a Court merely because the rule provides that he should exercise his functions as *persona designata*. We can discover no reason why a

persona designata should be incapacitated from functioning as a Court. And we think that the question whether he is not a "Court", as that word is used in sections 476 and 195 of the Criminal Procedure Code, is not to be decided otherwise than upon a consideration, firstly, of any definitions which that word, or words allied to it, has received in any Act regulating judicial procedure, and, secondly, upon the answer to be given to the question whether an Election Commissioner, in respect of the subject-matter of his inquiry, and of his general behaviour in relation to it, is distinguishable from a Court.

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Definitions are of limited scope, being framed only for the purposes of the Act in which they occur, unless specially extended. Such are the definitions of "Court" in section 3 of the Evidence Act, and of "Court of Justice" in section 20 of the Indian Penal Code. By section 4 of the Criminal Procedure Code the latter phrase is to be understood in the same sense in that Code. The definition in the Evidence Act requires that the person constituting the "Court" shall be legally authorized to take evidence. The Penal Code defines a "Court of Justice" as a Judge acting judicially, and a "Judge" as every person "who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive". It is not disputed that an Election Commissioner trying an election petition would fall within these definitions. This brings us to the second and more general test, that of the nature of the subject-matter and of the

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Commissioner's action in relation to it. We take it to be clear that all matters which may form the subject of an election inquiry relate to rights of a civil nature. These rights have been created by statute, or statutory rule, and are enforceable under section 42 of the Specific Relief Act. Under section 9 of the Civil Procedure Code the ordinary Civil Courts have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. Such a bar is created by Rule 1, which provides that an election may only be called in question by an election petition. But for this, the ordinary Courts would have jurisdiction to try these disputes as ordinary suits. See *Sabhapat Singh v. Abdul Gaffur*(1), *Gur Charan Das v. Har Sarup*(2), *Mahamed Maijaddin Khan v. Janakiballav Dutt*(3) and *Sarvothama Rao v. Chairman, Municipal Council, Saidapet*(4). It would be somewhat difficult to accept the proposition that the mere transfer of the cause to a special tribunal altered its character. Next, does the manner in which it is dealt with accord with the procedure of a "Court"? It is laid down in Rule 6 that an election petition shall be inquired into "as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits." The device of assimilating the procedure to be followed in special inquiries to the ordinary civil procedure is usual—for other instances, see section 192 of the Madras Estates Land Act and section 17 of the Provincial Small Cause Courts Act. In all such

(1) (1896) I.L.R. 24 Calc. 107.

(3) (1932) 37 C.W.N. 122.

(2) (1912) I.L.R. 34 All. 391.

(4) (1923) 45 M.L.J. 23.

cases the procedure is, we think it will be found, judicial in character, though the mere application of such procedure may not necessarily suffice to create a "Court". It is, for instance, an essential feature of the power of a Court that it should be able to give "a definitive judgment" upon the matter in hand, and this power is not conferred merely by extending the provisions of the Procedure Code. This was recognized in *Bilas Singh v. Emperor*(1) where the function of the Election Commissioners was found to be not to decide but to report. This was a fatal objection to holding that they constituted a "Civil Court", as that expression is used in section 476. In *Shell Co. of Australia v. Federal Commissioner of Taxation*(2) the Judicial Committee had to decide whether a "Board of Review", created by the Income-tax Assessment Act of the Commonwealth of Australia, was a Court, and it was found instructive to compare its powers with those of the tribunal which it had succeeded, the Board of Appeal. The orders of the Board of Appeal, it was pointed out, on questions of fact were expressly declared to be final and conclusive on all parties, whereas the orders of the Board of Review were not to be conclusive for any purpose whatsoever. We may also quote the following passage from the judgment :

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"What is 'judicial power'? Their Lordships are of opinion that one of the best definitions is that given by GRIFFITH C.J. in *Huddart, Parker & Co. v. Moorehead*(3), where he says: 'I am of opinion that the words "judicial power" as used in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide

(1) (1925) I.L.R. 47 All. 934.

(2) [1931] A.C. 275.

(3) (1909) 8 C.L.R. 330, 357 (Aus.).

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controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.' ”

After observing that there may be tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power, and enumerating a number of “negative propositions” on the subject, Their Lordships held that the Board of Review was an administrative tribunal, not a Court, emphasis being laid, as we have said, upon the test as to the conclusive character of the orders passed. Judged by this test, an Election Commissioner equally with a Subordinate or a District Judge appears to exercise the functions of a Court.

A case which deals with the subject on broad lines, and which has been approved in later cases, is *Raghoobuns Sahoy v. Kokil Singh* alias *Gopal Singh*(1). The question was whether a Collector, acting in appraisal proceedings under the Bengal Tenancy Act, was a Court. These general observations are made (see headnote) :

“The word ‘Court’, used in section 195 of the Criminal Procedure Code, without the previous sanction of which, offences therein referred to, committed before it, cannot be taken cognizance of, has a wider meaning than the words ‘Court of Justice’ as defined in section 20 of the Penal Code. It includes a tribunal empowered to deal with a particular matter and authorized to receive evidence bearing on that matter, in order to enable it to arrive at a determination.”

This was followed in *Nanda Lal Ganguli v. Khetra Mohan Ghose*(2), which decided that the President of the Tribunal constituted under the

(1) (1890) I.L.R. 17 Cal. 872, 875.

(2) (1918) I.L.R. 45 Cal. 585.

Calcutta Improvement Act was a "Court" within the meaning of section 195, Criminal Procedure Code. Here, as elsewhere, the learned Judges were impressed by the mischief which would ensue if "any private person, who alleged that false evidence had been given before the Tribunal, might institute a prosecution without any control on his action by the Tribunal before whom the evidence was given". In Madras it has been held by a Full Bench, *Atchayya v. Gangayya*(1), that a Registrar is a Court for the purposes of section 195, Criminal Procedure Code. PARKER J. thought that the word "Court" in that section had the same meaning as that assigned to it in section 3 of the Evidence Act. SHEPHARD J. analysed the Registrar's procedure, and found that it was on the lines which are to be followed in the adjudication of an ordinary civil suit. In the Order of Reference, to which the third Judge, MUTTUSAMI AIYAR J. was a party, stress is laid upon this aspect of the matter and upon the need for the restrictive provisions of section 195. Another decision—that a Tahsildar, holding an inquiry as to whether a transfer of names in a land register should be made or not, is a Revenue Court—was upon the same lines; *Queen-Empress v. Munda Shetti*(2). It was followed in *In re Nataraja Iyer*(3), where it was held that a Divisional Officer hearing appeals under the Income-tax Act is a Court.

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In England, too, the question what is a "Court" has been answered, not by reference to any formal definitions or hard and fast system of classification, but by analysing the functions and

(1) (1892) I.L.R. 15 Mad. 138 (F.B.). (2) (1900) I.L.R. 24 Mad. 121.

(3) (1912) I.L.R. 36 Mad. 72.

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procedure of the tribunal under scrutiny. The term is restricted to "such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to such jurisdiction" (Halsbury's Laws of England, 2nd Edn., Vol. VIII, paragraph 1166). Hence arbitrators do not constitute a Court. We have already referred to the Privy Council case, *Shell Co. of Australia v. Federal Commissioner of Taxation*(1). Another instructive discussion of the subject is to be found in *Copartnership Farms v. Harvey-Smith*(2), where SANKEY J. (as he then was) had to decide whether a military tribunal constituted under the Military Service Regulations Order, 1916, to deal with questions of exemption was a Court of Justice. The learned Judge applied the tests of (i) the constitution, (ii) the functions and (iii) the procedure of the tribunal. As to (i) the mere method of appointment was not a deciding factor. (ii) The functions were found to include the power to interfere with the status of a man, in other words, a civil right was involved. (iii) The proceedings were ordinarily to take place in public, and the fact that the chairman possessed a casting vote did not make the tribunal non-judicial. Certainly the tribunal then in question was of a far more equivocal nature than is an Election Commissioner.

To summarize the effect of these decisions, it would seem that we have to look not to the source of a tribunal's authority, or to any peculiarity in the method adopted of creating it (though it is undoubtedly a consideration that it derives its

(1) [1931] A.C. 275.

(2) [1918] 2 K.B. 405.

powers mediately or immediately from the Crown) but to the general character of its powers and activities. If it has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions, and if its procedure is judicial in character, in such matters as the taking of evidence and the administration of the oath, then it is a "Court". Not only do the powers and procedure of an Election Commissioner respond to these tests, but there is no other test applicable to an undoubted Court which they fail to satisfy. In all these respects the one Court is indistinguishable from the other.

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It is then contended that although an Election Commissioner may be a "Court", still he is not a Civil, Revenue or Criminal Court, within the meaning of section 476. The corresponding interpretation clause to section 195 runs thus :

"In clauses (b) and (c) of sub-section (1) the term 'Court' includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877 [1908]."

It must be found, therefore, that an Election Commissioner is a "Civil Court" as here understood. We find some confusion created by the use of this term in two different senses. It is used in the narrower sense of a Court established under the Civil Courts Act and governed by the provisions of the Procedure Code. Section 3 of the Code makes the District Court subordinate to the High Court, and "every Civil Court of a grade inferior to that of a District Court . . . subordinate to the High Court and District Court". Such Civil Courts are amenable to the revisional powers of the High Court under section 115 of the

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Civil Procedure Code and to its powers of superintendence and control under Clause 16 of the Letters Patent and section 106 of the Government of India Act. We have already found that an Election Commissioner is no longer a "Civil Court" in this sense, and it seems to us that such decisions as *Lakshmanan Chetty v. Kannappar*(1) and *The Municipal Corporation of Rangoon v. M. A. Shakur*(2) do not intend to go further than this. If certain observations in the latter judgment are read in this context we do not think that the view we propose to take runs counter to them. The judgment of MUKERJI J. in *Masoon Ali Khan v. Ali Ahmad Khan*(3) appears to hold that a *persona designata* and a "Court" are two mutually exclusive positions. As we have already pointed out, this is true of a *persona designata* and a "Civil Court" in the narrower sense, and that was enough in that case to decide that the High Court could not exercise revisional jurisdiction.

If an Election Commissioner is a Court at all, it would seem indisputable that he must be a "Civil Court", because he settles disputes which, but for the existence of this special jurisdiction, would fall to be decided by the ordinary Civil Court. To adopt the language of the Privy Council in *Nilmoni Singh Deo v. Taranath Mukerjee*(4), his Court is a Civil Court "in the sense that it is deciding on purely civil questions between persons seeking their civil rights". He is only not a Civil Court as that expression is used to denote the Courts of ordinary civil jurisdiction.

(1) (1926) I.L.R. 50 Mad. 121.

(2) (1925) I.L.R. 3 Rang. 560 (F.B.).

(3) A.I.R. 1933 All. 764.

(4) (1882) I.L.R. 9 Cal. 295 (P.C.).

There seems to be no doubt that the expression "Civil Court" is used in sections 476 and 195 of the Criminal Procedure Code not in this restricted sense, but as denoting a Court which is exercising powers, and dealing with matters of a civil nature. We have already extracted from *Raghoobuns Sahoy v. Kokil Singh* alias *Gopal Singh*(1) the opinion that, for the purposes of section 195, Criminal Procedure Code, the expression should be given the widest possible meaning.

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In the Full Bench case, *Empress of India v. Sabsukh*(2), the question arose whether the Court of a Deputy Collector was a Civil Court for the purposes of the corresponding sections of the Code of 1872. This question would no longer arise under the present Code, because Revenue Courts are expressly included, but the decision contains some expressions of opinion as to the meaning of "Civil Court". Thus STUART C.J. says :

"By 'Civil Court' here I understand any Court established for the administration of civil justice as distinguishable from a Criminal Court. To hold otherwise would be to give to Revenue Courts and their suitors unlimited powers of prosecution in such cases, for which no intelligible reason has been attempted to be offered, or could possibly be given, the essence of such offences being the perjury or false swearing and falsehood common to all Courts which act upon written or spoken evidence, and it could not for a moment be contended that a Revenue Court is not such a Court."

According to PEARSON J., in these sections Civil Courts are broadly distinguished from Criminal Courts :

"There is no reason to suppose that by the terms 'any Civil Court' only the ordinary Civil Court is meant. The object in view is to prevent wanton, groundless or malicious prosecutions of the offences therein mentioned, by requiring

(1) (1890) I.L.R. 17 Calc. 872.

(2) (1879) I.L.R. 2 All. 533 (F.B.).

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the sanction of the Courts in or before or against which those offences may be committed to the prosecution of them. It is impossible to suppose that the restriction thereby imposed on such prosecutions is applicable only to such offences committed in or before or against the ordinary Civil Courts, and not equally to similar offences committed in or before or against the Revenue Courts which, not less than the ordinary Civil Courts, try and determine suits of a civil nature."

STRAIGHT J. considers that the expression "Civil or Criminal Courts" is intended to include "all tribunals concerned in the administration of civil or criminal Justice". A case directly in point, being that of the District Judge hearing an Election petition, is in *Nanchand Shivchand, In re*(1). The learned Judges, after putting aside as inapplicable a ruling that the District Judge would not be a Civil Court amenable to revisionary jurisdiction, adopt the test proposed in *Raghoobuns Sahoy v. Kokil Singh alias Gopal Singh*(2), adding :

"We think that the same reasons which necessitate the precautions imposed on a prosecution in respect of offences committed in regard to an ordinary Civil or Criminal Court equally require that those precautions be observed where the alleged offences have occurred in connexion with proceedings held by the District Judge acting under the Municipal Act."

There is thus clear authority for giving a wide construction to the expression "Civil Court" in the sections of the Criminal Procedure Code now under reference—such a construction as found favour with the Privy Council in *Nilmoni Singh Deo v. Taranath Mukerjee*(3). All agree that an Election Commissioner ought to be able to control the institution of criminal proceedings in respect of offences committed in his Court and this cannot be the less necessary for the reason that he may

(1) (1912) I.L.R. 37 Bom. 365.

(2) (1890) I.L.R. 17 Calc. 872.

(3) (1882) I.L.R. 9 Calc. 295 (P.C.).

be styled *persona designata*. He should also receive the protection afforded by sections 480 to 482 of the Code. We consider that he is a "Civil Court" for these purposes.

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Two minor points remain. The learned District Judge was unable to regard himself as exercising jurisdiction in continuation of that of his predecessor, before whom the alleged offence was committed. This position has not been taken up before us, and seems untenable in face of the terms of section 14 of the Madras General Clauses Act. The office of Election Commissioner was continuous, although the incumbent changed. Apart from this, under section 476-A the power which the Subordinate Judge, as Election Commissioner, could have exercised was exercisable by the Court to which he was subordinate within the meaning of section 195, sub-section (3), i.e., by the District Judge as the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction the Election Court was situate. Accordingly it was open to the District Judge, in that capacity and not as Election Commissioner, to file a complaint. This consideration settles the other question, that of the appealability of his order; for under sections 195 (3) and 476-B it will be appealable to the Court to which appeals ordinarily lie from the Court of the District Judge, i.e., the High Court.

We conclude accordingly that the District Judge had jurisdiction to make a complaint under section 476, Criminal Procedure Code, in this case. We must therefore set aside his order dismissing the petition and direct him to dispose of it according to law.

K.W.B.