APPELLATE CRIMINAL.

Before Mr. Justice Curgenven and Mr. Justice King.

PICHAI PILLAI AND OTHERS (ACCUSED), PETITIONERS,

v.

BALASUNDARA MUDALY AND OTHERS (COMPLAINANTS), RESPONDENTS.*

1935, January 31.

Criminal Procedure Code (Act V of 1898), sec. 197 (1)—"Public servants"—Distinction between, for purposes of sanction of Local Government to prosecute.

The expression "any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority" in section 197 (1) of the Code of Criminal Procedure will not include public servants whom some lower authority has by law or rule or order been empowered to remove. The section clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the Local Government to their prosecution be necessary.

A police constable being removable by the District Superintendent of Police and a Sub-Inspector by the Deputy Inspector-General of Police, the previous sanction of the Local Government for their prosecution is not necessary under section 197 of the Criminal Procedure Code.

Sheik Abdul Kadir Saheb v. *Emperor*, 1916 M.W.N. 384, and *Narayana* v. *Emperor*, 1934 M.W.N. 370, dissented from.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Town Sub-Magistrate of Trichinopoly, dated 20th July 1934 and made in Calendar Case No. 1051 of 1932;

the order of the Court of the Third Presidency Magistrate of the Court of the Presidency Magistrates, Egmore, Madras, in Calendar Case No. 418 of 1934;

*Criminal Revision Cases Nos. 584, 628, 765, 773 and 829 of 1934 (Criminal Revision Petitions Nos. 539, 582, 706, 714 and 766 of 1934).

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the order of the Court of the Subdivisional Magistrate of Trichinopoly, dated 1st September 1934 and made in Preliminary Register Case No. 1 of 1934 ;

the order of the Court of the Second-class Magistrate of Turaiyur, dated 30th August 1934 and made in Calendar Case No. 234 of 1934 ;

and the order of the Court of the Subdivisional Magistrate of Trichinopoly in Calendar Case No. 19 of 1934.

K. S. Jayarama Ayyar for *G. Gopalaswami Ayyar*, *N. Suryanarayana*, *V. Sankaran* and *C. M. J. Ernest* for petitioners.

A. V. Narayanaswami Ayyar and *M. A. T. Coelho* for respondents.

A. Narasimha Ayyar for *Public Prosecutor* (*L. H. Bewes*) and *K. V. Ramaseshan* for *Crown Prosecutor* (*T. S. Anantaraman*) for the Crown.

Cur. adv. vult.

The ORDER of the Court was delivered by

CURGENVEN J. CURGENVEN J.—These five criminal revision petitions relate to prosecutions instituted against police officers for offences alleged to have been committed while acting or purporting to act in the discharge of their official duty, and they raise the general question whether the previous sanction of the Local Government should have been obtained under section 197 of the Criminal Procedure Code. We have to decide what is the correct construction to be placed upon the words

> " any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority ".

In *Sheik Abdul Kadir Saheb* v. *Emperor*(1) COUTTS TROTTER J. (afterwards CHIEF JUSTICE)

(1) 1916 M.W.N. 384.

had to deal with this point in a case in which the chairman of a Union Panchayat was prosecuted for the offence of criminal breach of trust. The learned Judge found that

"the power of removal was vested in the Local Government by section 126 of the Madras Local Boards Act and that by section 160 of the same Act the Local Government were empowered to delegate this power and in fact by notification had delegated it to the President of the District Board."

Upon this he observes :

"Now it is argued in the first place that by that act of delegation on the part of the Government the accused became *ipso facto* removed from the category of persons who are not removable from office without the sanction of the Government of India or the Local Government; because it is argued that by the act of delegation he becomes removable by a third authority, namely, the President of the District Board. To my mind that argument is unsound and, in my opinion, the delegation by the Local Government of its power to a special officer only means that the Local Government performs that act itself through the medium of a particular officer as the channel through which it is done; and it is an ordinary case of *qui facit per alium facit per se*. It is no doubt done in accordance with the delegation, but nevertheless it remains the act of the Local Government. I am therefore of opinion that the accused has established that he is within the meaning of this section a public servant not removable from his office without the sanction of the Local Government."

This case was followed by BARDSWELL J. in *Narayana* v. *Emperor*(1). Only one other case directly in point has been cited to us and it supports the opposite view. In *Emperor* v. *Jalal-ud-din*(2) the learned Judges think that the obvious intention of the language of the section which, as they point out, makes no reference to delegated authority, was to simplify the law regarding sanction and to narrow the circle of public servants for whose prosecution sanction

(1) 1934 M.W.N. 370. (2) (1925) I.L.R. 48 All. 264.

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was necessary under the previous Code. They confess themselves unable to follow the judgment of COUTTS TROTTER J.

In several cases in which this question might have been raised it appears to have been taken for granted that the section will not apply to public servants who are by delegation of powers removable by some authority other than and not superior to the Local Government; see, for instance, *Reddy Venkayya*(1), *Imperatrix* v. *Bhagwan Devraj*(2), *Venkatesalu Naidu* v. *Heeraman Chetty*(3) and *Abboy Naidu* v. *Kanniappa*(4).

We do not think that the general principle expressed by the phrase *qui facit per alium facit per se* should necessarily be acted upon if it appears that its application would involve the breach of another legal principle more specifically applying to the case in point. It is an elementary rule in construing a statute to give due meaning to every part of the language which it employs, and a construction which fails to do this *prima facie* fails to give effect to the intention with which the provision was drafted. Sub-section 1 of section 197, Criminal Procedure Code, runs thus :

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

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(1) (1912) 12 M.L.T. 351.
(2) (1879) I.L.R. 4 Bom. 357.
(3) (1898) 2 Weir. 226.
(4) (1928) 2 Mad. Crl. C. 143.

Now, if we adopt the construction accepted by COUTTS TROTTER J., the result would be that all servants of Government, as that expression is commonly understood, will come within the section, because the power to remove them is in every case derived either from the Local Government or from some higher authority—the Government of India or the Secretary of State. It is true that if the expression "public servant" had been used without any qualification, it would have had to bear the meaning attached to it by section 21 of the Indian Penal Code and extended to the Criminal Procedure Code by section 4 of the latter Code; and it would thus have included such persons as jurors, arbitrators and others not ordinarily comprehended within the term. It may thus be argued that it was the purpose of the framers of the section to exclude "public servants" of this kind and that the section does so. We do not think that this accounts for the particularity of the language used. If the notion of delegation was present to the minds of the drafters of the section, there was nothing to prevent them from indicating this. Even so, to frame a section on such lines would have been a very unnatural and a very misleading way of expressing the intention that all Government servants, in the usual acceptation of that phrase, were to be included. How misleading it would be is shown by the cases we have cited in which the alternative view has been taken for granted.

We think that the section clearly intends to draw a line between public servants and to provide that only in the case of the higher ranks should the sanction of the Local Government to

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their prosecution be necessary. This intention appears to us to be so clear from the terms of the section that, while we agree that a protective provision of this nature should be construed as widely as possible, we do not feel called upon to enter into the merits of a policy which thus distinguishes between public servants who may be prosecuted and those who may not be prosecuted without the sanction prescribed. Nor do we think that any valid ground of distinction is to be found in the means adopted to empower the officer beneath the rank of the Local Government to pass an order of removal. Mr. Jayarama Ayyar has endeavoured to distinguish between an act of delegation and an act of empowerment, and between statutory provisions and executive orders. It may be conceded that all such means to achieve the end proposed are nothing more nor less than acts of delegation, and that while so delegating its power the delegating authority does not divest itself of a corresponding power. It is not reasonable to suppose that in framing the section it was intended that any such fine-drawn distinctions should be observed, and we conclude accordingly that the expression

> "any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority"

will not include public servants whom some lower authority has by law or rule or order been empowered to remove. In the cases now in point, admittedly the police officers are removable by such authorities—the police constable involved in Criminal Revision Case No. 584 by the District Superintendent of Police and the Sub-Inspectors

involved in the other cases by the Deputy Inspector-General of Police.

The result is that, so far as this point is concerned, the criminal revision petitions fail, and since it is the only point raised in Criminal Revision Petitions Nos. 584, 765, 773 and 829 of 1934 we dismiss these petitions. In Criminal Revision Petition No. 628 the accused, who is a Sub-Inspector of the Madras City Police, has been convicted under sections 323 and 355, Indian Penal Code. He has been awarded non-appealable sentences under these sections and we could only interfere, if at all, in revision. The questions involved are no more than questions of fact and after carefully considering the evidence and the learned Third Presidency Magistrate's judgment we are clearly of opinion that there is no ground for such interference. We have been asked as an alternative course to permit a composition of the offences under sub-section 5 *A* of section 345, Criminal Procedure Code. We do not think that we ought to exercise this power in the circumstances of the case. The Sub-Inspector has been convicted of what must for an officer in his position be regarded as serious offences against a member of the public and the conviction accordingly has an aspect quite other than as it stands between himself and the complainant. In this case too we must accordingly dismiss the revision petition.

K.W.R.