

1933

SRI  
KRISHNA  
CHANDRA  
v.  
MAHABIR  
PRASAD

The learned advocate for the respondents has further urged that inasmuch as the plaintiff added relief (b) which was to the effect that in addition to relief (a) any other relief which may, in the opinion of the court, be just may also be granted to the plaintiff against the defendants, he must be deemed to have claimed more than a mere declaratory decree. But such a relief is unnecessarily added in most plaints and is not intended to mean anything more than reminding the court of its power to grant other reliefs even though not specifically asked for. As the words are too vague and indefinite, and no specific and definite relief is referred to therein, we cannot regard it as one which requires the demand of additional court fee nor do we consider that coupled with the declaratory relief it changes the nature of the relief claimed.

Our answer to the question referred to us is in the affirmative.

### REVISIONAL CRIMINAL

Before Mr. Justice Bennet and Mr. Justice Bajpai  
EMPEROR v. RUDRA DATT BHATT\*

1933

April, 27

*District Boards Act (Local Act X of 1922), sections 34, 182—Indian Penal Code, section 168—Member of District Board engaging in trade on contracts by the Board—Sanction to prosecute—Criminal Procedure Code, section 197—Whether complaint by District Board necessary.*

A member of a District Board, without obtaining the permission of the Commissioner, entered into contracts, in another person's name, given on behalf of the Board by its Education Committee for the supply of coir matting and carried on that business for about two years. The Local Government sanctioned, under section 197 of the Criminal Procedure Code, his prosecution under section 168 of the Indian Penal Code read with section 34 of the District Boards Act. This sanction was conveyed in a letter addressed to the

\*Criminal Revision No. 563 of 1932, from an order of A. Hamilton, Sessions Judge of Kumaun, dated the 25th of July, 1932.

1933

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 EMPEROR  
 v.  
 RUDRA  
 DATT  
 BHATT

Deputy Commissioner, and the complaint was filed in court by the Assistant Inspector of Schools, according to the direction of the Deputy Commissioner.

*Held* that it was not necessary that the Deputy Commissioner should have himself filed the complaint because the letter of sanction was addressed to him. There is no provision in section 197 of the Criminal Procedure Code for a sanction to be addressed to any particular officer. A sanction is an order directing the prosecution of a certain person, and in the ordinary way that order is conveyed to the authorities who are responsible for initiating prosecutions in the locality in question.

*Held*, also, that it was not necessary that there should have been a complaint by or on behalf of the Board in accordance with section 182 of the District Boards Act. That section refers only to offences which are punishable under the said Act or under any rule or bye-law; and the offence in question, though arising under section 34 of the District Boards Act, was not punishable under that section, which prescribed no penalty; on the contrary it was punishable under section 168 of the Indian Penal Code.

*Held*, further, that the exemption contained in section 34(2), clause (f) of the District Boards Act refers to occasional sales of single articles, as distinct from contracts for the supply of large quantities of any material, and was inapplicable to the present case.

Dr. K. N. Katju and Messrs. P. L. Banerji and Banke Behari, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah) for the Crown.

BENNET and BAJPAI, JJ. :—This is an application in revision on behalf of one Pandit Rudra Datt Bhatt who has been convicted under section 168 of the Indian Penal Code read with section 34 of the District Boards Act and sentenced to four months' simple imprisonment and a fine of Rs.1,000 or three months' simple imprisonment in default of payment. The charge framed against the accused was that being a member of the District Board of Almora from November, 1928, to November, 1930, he carried on during this period the business of supplying

1933

EMPEROR  
v.  
RUDRA  
DATT  
BHATT

coir matting to the said District Board in the name of Gangaram Kishorimohan, thus engaging in trade without the permission of the Commissioner, contrary to section 34(1) of the District Boards Act and thereby committed an offence punishable under section 168 of the Indian Penal Code. The conviction and sentence of the Magistrate was upheld on appeal by the learned Sessions Judge. The finding of the sessions court is that there was "a carefully worked out scheme to get something like a 100 per cent. profit from the Board while the appellant was a member of it" and that "in one year the District Board paid Rs.1,005 and for matting the price came to a little under Rs.950. The price of the matting with freight as entered in the ledger of the accused came to about half that amount." The points in regard to the facts were not pressed before us and we consider that the facts found are correct. The arguments which have been addressed to us are arguments on points of law. In the first place it was argued that the sanction in this case was not sufficient and that the prosecution had not been properly initiated. There was a letter of sanction from the Local Government stating that Government gave sanction under section 197 of the Code of Criminal Procedure to the prosecution of the accused under section 168 of the Indian Penal Code read with section 34 of the District Boards Act and that the accused was formerly a member of the Almora District Board. The Local Government further directed that the trial should be held in the court of Rai Sahib Pandit Gokaran Nath Ugra, Deputy Collector of Almora. This sanction was conveyed in a letter addressed to the Deputy Commissioner of Almora and the Deputy Commissioner apparently had an inquiry made by the Tahsildar and a complaint was filed in the court by the Assistant Inspector of Schools, Kumaun. An argument was addressed to us that the sanction was addressed to the Deputy Commissioner and he should have filed the complaint. There is no provision in section 197 of the

Code of Criminal Procedure for a sanction to be addressed to any particular officer. A sanction is an order directing the prosecution of a certain person, and in the ordinary way that order is conveyed to the authorities who are responsible for initiating prosecutions in the locality in question. That was what was done in the present case and we do not see that there was anything irregular in the procedure. The sanction was given in the present case because when the accused was a member of the District Board he was not removable from his office without the consent of the Local Government.

A further argument was addressed to us. Under section 182 of the District Boards Act of 1922 the following provision is made: "Unless otherwise expressly provided, no court shall take cognizance of any of the offences punishable under this Act or under any rule or bye-law, except on the complaint of, or upon information received from, the Board or some person authorised by the Board by general or special order in this behalf." The argument for the applicant was that the present prosecution should have been started under this section on a complaint of the Board or some person authorised by the Board and that this has not been done. But the section refers to "offences punishable under this Act or under any rule or bye-law". The present offence is not an offence which falls within this description. It was argued that the present offence was one under section 34 of the District Boards Act. That may be so, but it is not punishable under section 34; on the contrary it is punishable under section 168 of the Indian Penal Code. Section 34, sub-section (1) runs as follows: "A member of the Board who, otherwise than with the permission in writing of the Commissioner, knowingly acquires, or continues to have directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the Board shall be deemed to have committed

1933

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 EMPEROR  
 v.  
 RUDRA  
 DATT  
 BHATT

1933

EMPEROR  
 vs.  
 RUDRA  
 DATT  
 BHATT

an offence under section 168 of the Indian Penal Code.”

There is no penalty prescribed in section 34 itself, and to ascertain a penalty we have to look to section 168 of the Indian Penal Code. Learned counsel argued that because reference was made to section 168 of the Indian Penal Code, therefore that section was incorporated into section 34 of the District Boards Act. He referred to a ruling of their Lordships of the Privy Council in *Secretary of State for India v. Hindusthan Co-operative Insurance Society* (1). That ruling was on a point which is different from the point before us and the ruling merely laid down that where a statute is incorporated by a reference into a second statute the repeal of the first statute does not affect the second. We think therefore that the ruling cannot be applied in the further extended meaning which learned counsel desires. If section 182 had been intended to cover the present case it would have referred to “offences punishable under this Act or any Act referred to in this Act or under any rule or bye-law”. As the wording of section 182 is different and does not purport to deal with offences referred to in the Act we consider that section 182 has no application to the present case.

An argument was next made as to whether this was a contract given by the Board or not. The contracts in question were given by the Education Committee of the Board under the provisions of sections 63A and 65A of the District Boards Act which empower the Education Committee to give contracts for educational purposes, but the wording in section 34 is not merely a contract by the Board but a contract by or on behalf of the Board. We consider that a contract given in accordance with the Act by the Educational Committee is a contract given on behalf of the Board. We may also refer to the definition of “Board” in section 3 of the Act where it is stated that “Board” includes, in any case where a power is expressed as being conferred or a duty as being imposed

on a Board, a committee appointed by a Board. It was further argued that the contracts were given by the Educational Committee and that accused was not a member of the Educational Committee and therefore it was said he would not be guilty of the offence under section 34; but section 34, sub-section (1) refers in general terms to "a member of the Board" and is not limited to members of particular committees.

1933

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 EMPEROR  
 v.  
 RUDRA  
 DATI  
 BHATT

The next argument addressed to us was that the accused would be exempted under section 34(2)(f) which states that the section does not apply to a person "having a share or interest in the occasional sale to the Board of an article, in which he regularly trades, up to a value not exceeding, in any one year, such amount as the Board with the sanction of the Local Government fixes in this behalf". It is not shown that any amount has been fixed under this sub-section. We consider that the sub-section refers to occasional sales of single articles as distinct from contracts. In the present case the accused entered into contracts for the supply of thousands of yards of coir matting. Such contracts cannot be considered to be occasional sale of single articles. The exemption therefore does not apply. Some argument was made in regard to an alleged irregularity in the signature of one contract and it was said that exhibit 25 was signed by the Chairman of the Educational Committee instead of by the Secretary as prescribed by section 65A(4). This document, exhibit 25, does not appear to be a contract but an order by the Chairman directing the purchase of certain articles including matting. No irregularity is shown. If there was any such irregularity it does not appear to us that it would have any bearing on the guilt of the accused.

We consider that the conviction of the accused under section 34 of the District Boards Act read with section 168 of the Indian Penal Code is correct. On the question of sentence we consider that this is not a case

1933

EMPEROR  
v.  
RUDRA  
DATT  
BHATT

in which any further period of imprisonment should be undergone and accordingly we reduce the period of imprisonment to the period already undergone, which is only a few days, and we maintain the sentence of fine of Rs.1,000 or three months' simple imprisonment in default. We do not consider the fine excessive in view of the illegal profit which the accused is found to have made.

### MISCELLANEOUS CIVIL

1933  
April 23

*Before Mr. Justice Niamat-ullah and Mr. Justice Bennet*  
IN THE MATTER OF PALLUMAI BHOLANATH\*

*Income-tax Act (XI of 1922), sections 22(4), 23(4), 30(1) proviso, 31—Notice to produce account books—Whether such notice can be issued after the assessee has made a return—Appeal from assessment made under section 23(4)—Assistant Commissioner examining the record to satisfy himself that section 23(4) was applicable—Whether amounts to entertaining and deciding the appeal.*

It is open to an Income-tax Officer to issue a notice under section 22(4) of the Income-tax Act at any time after he has called upon the assessee to furnish a return, and even after a return has been furnished by the assessee. The failure of the assessee to comply with such a notice renders him liable to be assessed under section 23(4) of the Act.

In an appeal filed against an assessment made under section 23(4) the Assistant Commissioner is justified in so far examining the record as to satisfy himself whether the Income-tax Officer was right in proceeding to make an assessment under section 23(4), and, on being so satisfied, in rejecting the appeal on the ground that no appeal lay, according to the proviso to section 30(1) of the Act. Such procedure on the part of the Assistant Commissioner does not virtually amount to an order dismissing an appeal under section 31, and therefore the assessee has no right to approach the Commissioner to state a case.

Mr. Gopi Nath Kunzru, for the appellant.

Mr. Kamalakanta Verma, for the Crown.