

APPELLATE CRIMINAL

Before Mr. Justice Bennet

EMPEROR *v.* SURAJ NARAIN CHAUBE*

1938
May, 25

Indian Penal Code, section 169—Purchase by member of District Board of property auctioned by the Board—District Boards Act (Local Act X of 1922), section 34—Criminal Procedure Code, section 197(1)—Sanction to prosecute public servant under section 169 of the Penal Code—Not necessary where he ceased to be a public servant at the time of the accusation.

For the application of section 197(1) of the Criminal Procedure Code to the case of a public servant mentioned therein, it is necessary that the person accused must be a public servant not only at the time of commission of the alleged offence but also at the time when he is accused, that is, at the time when the accusation is made against him either by a complaint or by a police report. No sanction of the Local Government is necessary, therefore, where at the date of the accusation the accused had ceased to be a public servant.

The purchase by a member of a District Board, of property of the District Board at an auction sale thereof, would not be acquiring "an interest in any contract with or by the Board" within the meaning of section 34 of the District Boards Act, 1922, and is not prohibited by that section. Also, the section refers only to section 168 of the Indian Penal Code and is not intended to apply to section 169 thereof.

So, where a member of a District Board was convicted of an offence under section 169 of the Indian Penal Code for having purchased, in the name of another, a buffalo belonging to the Board at an auction sale held by the Board, it was held that the conviction was illegal.

Messrs. *Chaturbhuj Sahai* and *S. N. Misra*, for the appellant.

The Assistant Government Advocate (*Mr. Vishwa Mitra*), for the Crown.

BENNET, J.:—This is a criminal appeal on behalf of one Suraj Narain Chaube who has been convicted

*Criminal Appeal No. 741 of 1937, from an order of S. Ali Muhammad, Sessions Judge of Ghazipur, dated the 9th of October, 1937.

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under section 169 of the Indian Penal Code and sentenced to one year's rigorous imprisonment and a fine of Rs.100 or in default to six months' rigorous imprisonment. The accused was in 1935 a member of the District Board of Ballia, and the cattle pound of Sahatwar was under his charge. A buffalo was auctioned on the 26th of May, 1935, by and under the supervision of the accused. The cattle pound is close to the police outpost and the police head constable Amir Ali was anxious to buy this buffalo which was of good breed. The buffalo was sold for Rs.30 to Baleshar Nonia and the auction was closed. Some allegations were made that Baleshar only paid Rs.13 but the court below was satisfied on the evidence of the pound keeper that the Rs.30 was paid and entered as paid that day. There is evidence that Baleshar Nonia and Dharaka Dusadh took away the buffalo. On the next day, the 27th of May, 1935, Suraj Narain made a complaint to the Superintendent of Police alleging that the head constable Amir Ali intimidated him and wrongfully confined Baleshar Nonia and Dharaka Dusadh and demanded bribe from them. Inquiry was made into this, and eventually Suraj Narain was prosecuted under section 182 of the Indian Penal Code for making a false report and fined Rs.200. Now the police also reported that Suraj Narain had improperly got this buffalo bought for himself by Baleshar Nonia and that Dharaka Dusadh who helped to take it away was a servant of Suraj Narain. The matter was further complicated by allegations of forgery which have now been found by the court below to be incorrect. The court below has convicted the accused under this section 169 of the Indian Penal Code which runs as follows: "Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which

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may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated." Now one question which arises in the case which was urged by learned counsel for the defence was that sanction was required from the Local Government under section 197 of the Criminal Procedure Code. That section states in sub-section (1): ". . . . 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," Now there are two periods mentioned in this quotation, the first being the time of the accusation and the second period being the time of the offence. As the section is worded, it appears to me that the section requires that for the section to apply, the accused must be a public servant at both these periods. It is not sufficient that the accused should be a public servant at the time of the offence. The accused must also be a public servant at the time when he is accused, that is, at the time when the accusation is made against him either by a complaint or a police report. Now the accusation was made against this accused before the Magistrate at the time when he had ceased to be a member of the District Board. The matter did not start until the year 1937, and the charge is dated the 3rd of August, 1937. The accused had ceased to be a District Board member in the end of 1936. In my opinion, therefore, no sanction was necessary.

It is necessary for the prosecution to prove the ingredients of the offence under section 169 of the Indian Penal Code. Now one ingredient is that the purchase was by the accused in the name of another person. There is no direct evidence that the purchase was on behalf of the accused. It is true that on the 12th of August, 1935, there was a search of the house of the

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accused by the second officer Munshi Habib-uddin and he had a search list Exhibit B drawn up for the finding of this buffalo outside the house of the accused. In that the witness states that in green ink he made a certain endorsement in Hindi and this endorsement runs: "*Pandit Suraj Narain Chaube ke darwaza se unke qabze se bhains baramad kia.*" The accused has denied that this endorsement was on the search list when he signed it. Now it appears to me looking at this endorsement that the words "*unke qabze se*" are written with a steel pen whereas the rest of the Hindi writing is written with a wooden or reed pen and the letters in the rest of the endorsement are much thicker. It is, I think, therefore very doubtful whether the important words "*unke qabze se*" were in the endorsement when the accused signed it. Therefore the alleged admission of the accused from these words is not in my opinion established. It is also doubtful how far such an alleged admission could be legal proof in a criminal trial. The mere signing by the accused, who was not present at the search, of this document does not at the most in my opinion show more than that the buffalo was found at his house. As it is stated to have been bought by his servant there is nothing surprising that the buffalo should be at his house and the possession of his servant is not necessarily the possession of the accused. As the buffalo was found in August at the house of the accused and the sale had taken place in May I would have expected that there should be some evidence to connect the accused with the buffalo in the intervening period. But no such evidence was produced. It is not shown for example that he was obtaining milk from this female buffalo or anything of that sort. It appears to me therefore that the prosecution has failed to establish an essential part of its case. As regards the other part of the case that the accused was a public servant legally bound not to purchase or bid for certain property, the courts below have assumed that it is sufficient to show that the

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accused was a member of the District Board and the property being sold was District Board property. It is true that section 34 of the District Boards Act says that a member of the Board without permission in writing from the Commissioner shall not have any share or interest in any *contract* or employment with, by, or on behalf of the Board and if he does so he shall be guilty of an offence under section 168 of the Indian Penal Code. It is to be noted that this section 34 refers to section 168 of the Indian Penal Code and not to section 169. Learned counsel for the Crown referred to sub-section (2)(f) of section 34 which refers to a share or interest in the occasional sale to the Board of an article. I am afraid this argument is not sound because sub-section (2) is an exception to sub-section (1) and says that a member of the Board will not come under sub-section (1) by various activities shown in sub-section (2) of which (f) is one, that is, the supply of articles to the Board. I find a difficulty in saying that by purchasing property of an auction sale, the property being the property of the Board, a member would be acquiring an interest in a contract of the Board. If these words are to be given such a general interpretation they will mean that at any auction sale of the Board no member must bid. Now the objection taken in the present case is largely that the sale was conducted by this member himself. I do not think that section 34 of the District Boards Act is intended to apply to section 169 at all and it definitely refers only to section 168 of the Indian Penal Code. This is another weakness in the case and learned counsel for the Crown has not satisfied me on this point.

For these reasons I acquit the accused on appeal of the offence under section 169 of the Indian Penal Code and as he is on bail the liability of his sureties is now released.