

Before Mr. Justice Mulla

SOHAN LAL v. MUBARAK ALI KHAN*

1939
July, 7

Criminal Procedure Code, section 197—Cognizance of offence committed by public servant—Sanction of Local Government, when necessary—Municipal Commissioner of a non-city municipality—Removability from office by an authority lower than the Local Government—No sanction necessary for cognizance of offence committed by him—Municipalities Act (Local Act II of 1916), section 40.

A Municipal Commissioner of a non-city municipality is, under section 40 of the Municipalities Act, removable from office by the Commissioner; so he is not a public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority, and therefore the sanction of the Local Government is not required, under section 197 of the Criminal Procedure Code, for taking cognizance of an offence committed by him while acting in his capacity of Municipal Commissioner. The fact that the offence of criminal breach of trust, of which he is accused, is not one of the reasons for which the Commissioner can remove him from his office under section 40 of the Municipalities Act is immaterial, the crucial point being that he is not an officer who is "not removable from his office save by or with the sanction of the Local Government", as required by section 197 of the Criminal Procedure Code.

Mr. B. S. Darbari, for the applicant.

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

MULLA, J.:—These are two connected references by the learned Additional Sessions Judge of Aligarh at Etah which give rise to the same question of law for decision and can therefore be conveniently disposed of together. The facts out of which the question of law arises may briefly be stated as follows. One Babu Sohan Lal in whose behalf the references have been made is a member of the Municipal Board of Jalesar. The Chairman of that Board is one Mr. Mubarak Ali Khan. It appears that in his capacity as a Municipal Commissioner Babu Sohan Lal was entrusted with certain public

*Criminal Reference No. 477 of 1939.

moneys. The Chairman has made two separate complaints against him for having dishonestly misappropriated those moneys and he is charged under section 409 of the Indian Penal Code because he is a public servant as defined by section 21 of the Indian Penal Code. The Magistrate before whom the complaints were made took cognizance of the two offences and issued summonses to Babu Sohan Lal. In both cases an objection was taken on behalf of Babu Sohan Lal that in view of section 197 of the Criminal Procedure Code the Magistrate was not authorised to take cognizance of the offences. It was contended in each case that Babu Sohan Lal was a public servant who was not removable from his office save by or with the sanction of a Local Government or some higher authority and as he was accused of an offence alleged to have been committed by him while acting in the discharge of his official duty, no court could take cognizance of such an offence except with the previous sanction of the Local Government. It is admitted that no sanction of the Local Government has been obtained in this case. When the Magistrate took cognizance of the case, Babu Sohan Lal made an application in revision to the learned Additional Sessions Judge who has made these references. The learned Judge has accepted the contention on behalf of Babu Sohan Lal and has consequently recommended that the Magistrate's order summoning Babu Sohan Lal in each case should be quashed.

Upon a careful consideration of the facts I find that I am unable to agree with the view taken by the learned Additional Sessions Judge. The decision obviously turns upon the interpretation of the words, "not removable from his office save by or with the sanction of a Local Government", contained in section 197 of the Criminal Procedure Code. The simple point is whether this description rightly applies to Babu Sohan Lal so that he can claim the protection afforded by section 197 of the Criminal Procedure Code. In order to decide this point reference must be made to section 40 of the

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U. P. Municipalities Act which provides for the removal of a Municipal Commissioner. That section draws a clear distinction between city municipalities and non-city municipalities. In the case of city municipalities the Local Government alone has the power of removing a Municipal Commissioner. In other cases even the Commissioner can remove a Municipal Commissioner under section 40 for any one of the reasons mentioned therein. Now the municipality of Jalesar of which Babu Sohan Lal is a Commissioner is admittedly a non-city municipality so that the Commissioner has the power of removal in respect of the Commissioners of that municipality under section 40 of the U. P. Municipalities Act. It necessarily follows that a member of the Jalesar Municipal Board who is removable by the Commissioner under section 40 of the U. P. Municipalities Act cannot be described as a person not removable from his office save by or with the sanction of a Local Government or some higher authority. The learned Additional Sessions Judge has given a rather curious reason for arriving at the finding that Babu Sohan Lal is a person not removable from his office save by or with the sanction of a Local Government or some higher authority. The reason is that the offence of criminal breach of trust with which he is charged is not an offence for which the Commissioner can remove any member of the Jalesar Municipal Board. This argument is obviously unsound. At this stage when the Magistrate has to decide whether he can take cognizance of the offence or not, the question whether the offence with which Babu Sohan Lal is charged is one for which the Commissioner would or would not eventually have the power to remove him does not arise at all. It is only when Babu Sohan Lal is convicted of the offence with which he is charged that the question of his removal can possibly arise. At this stage all that the court is concerned with is the interpretation of the words, "not removable from his office save by or with the sanction of a Local Government or some higher authority."

For the reasons which I have already given it is perfectly clear that Babu Sohan Lal does not fulfil that description and he cannot therefore claim any protection under section 197 of the Criminal Procedure Code. The result therefore is that I reject the references made by the learned Additional Sessions Judge.

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Before Mr. Justice Ismail and Mr. Justice Mulla

EMPEROR *v.* QUDRAT AND ANOTHER*

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Criminal Procedure Code, section 289(2)—No evidence to prove the offence—Direction to jury to return a verdict of not guilty—Jury bound to return such verdict—Evidence Act (I of 1872), section 45—Medical evidence as to age, value of.

The direction given by the Judge to the jury, under section 289(2) of the Criminal Procedure Code when he considers that there is no evidence that the accused committed the offence, to return a verdict of not guilty is binding on the jury and must be followed by them, whether they agree with the Judge's view or not, and any other verdict returned by the jury must be set aside.

Where, in a trial under a charge of kidnapping, the doctor's statement as to the age of the girl was an opinion based entirely on such particulars as her height, weight and teeth, which could be observed by any layman, and it did not appear that the doctor brought any scientific knowledge to bear upon his opinion, it was *held* that such opinion did not amount to legal proof of age of the girl.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

Mr. Madan Mohan Lal, for the opposite parties.

ISMAIL and MULLA, JJ.:—This is a reference under section 307 of the Criminal Procedure Code by the learned Assistant Sessions Judge of Benares.

Mst. Bhagmania, said to be about 12 or 13 years of age, was living with her father-in-law named Sudaman in village Lachhmangarh. On the 1st of August, 1938, Sudaman found at about 8 or 9 p.m. that Mst. Bhagmania had disappeared from the house in which the