

**REVISIONAL CRIMINAL.**

*Before Mr. Justice Fforde and Mr. Justice Addison.*

MUHAMMAD ISMAIL (ACCUSED) Petitioner

1927

*versus*

March 3.

THE CROWN, THRO. KANSHI RAM (COMPLAINANT)

Respondent.

**Criminal Revision No. 917 of 1926.**

*Criminal Procedure Code, Act V of 1898, section 197—  
Complaint against Municipal Commissioner—Sanction of  
Local Government—whether necessary.*

The complaint against the accused-petitioner, a member of the Municipal Committee, Sirsa, alleged that he by reason of his position as Municipal Commissioner and member of the Public Works Sub-Committee exercised undue influence upon a Sub-Overseer, a servant of the Committee, and compelled him to stop purchasing bricks from a certain D.M. and to give his assent to the purchase of accused's bricks.

*Held*, that as it was not alleged that the accused obtained this advantage to himself by acting, or purporting to act, in the discharge of his official duty as a Municipal Commissioner or a member of the Public Works Sub-Committee, the case did not fall within the provisions of section 197 of the Code of Criminal Procedure (as amended by Act XVIII of 1923), and that no sanction was therefore necessary.

*Application for revision of the order of Pandit Kundan Lal, Bashisht, Sessions Judge, Hissar, dated the 12th May 1926, affirming that of S. K. Kirpalani, Esquire, Magistrate, 1st Class, Sirsa, District Hissar, dated the 21st September 1925, framing a charge against the accused.*

ZAFARULLAH KHAN, for Petitioner.

D. R. SAWHNEY, Public Prosecutor, for Respondent.

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[The order of Mr. Justice Campbell, dated 11th November 1926, referring the case to a Division Bench.]

The point which arises in this revision petition is one which, I think, should be decided by a Division Bench. The question concerns the interpretation of section 197, Code of Criminal Procedure, which in its present form is different from the previous section under which the Punjab rulings *Bakhshi Ram v. Dewan Gampat Rai* (1), *Nur Bakhsh v. The Emperor* (2) and *Amir Singh v. King-Emperor* (3) were delivered. Section 197 prohibits a Court from taking cognizance of any offence which a person is alleged in a complaint to have committed while acting or purporting to act in the discharge of his official duties. In the present instance a certain person Kanshi Ram filed a complaint against Muhammad Ismail, a member of the Municipal Committee, Sirsa, alleging that he had by reason of his position as municipal commissioner and member of the Public Works Sub-Committee exercised undue influence upon a Sub-Overseer, a servant of the Committee, and had compelled him to give him, the accused, a contract for bricks to be supplied to the Municipal Committee. The Magistrate to whom this complaint was presented did not record the statement of the complainant but issued process to the accused under section 168 of the Indian Penal Code and section 48 of the Punjab Municipal Act. Subsequently the Magistrate framed a charge against the accused under these sections. Objection to the want of sanction under section 197 was taken as soon as the accused came into Court. Later on, after the charge had been framed, the objection was repeated

(1) 14 P. R. (Cr.) 1890.

(2) 17 P. R. (Cr.) 1902.

(3) 29 P. R. (Cr.) 1904.

in a petition to the Sessions Judge who in repelling it treated the matter as if the solution lay in the contents of the charge. It seems to me, however, that the point is what was alleged in the complaint since section 197 prohibits a Court, not from framing a charge, but from taking cognizance of an offence alleged.

Under the former section the offence excluded from cognizance was one of which a public servant was accused "as a public servant" and under that section it would seem that no complaint against a municipal commissioner under section 168, Indian Penal Code, could have been proceeded with unless the sanction of the Local Government had been obtained. It is argued that the same is the spirit of the new section, but the actual words of that section now are:—"Any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties."

It is desirable to have an authoritative interpretation of these words and I, therefore, refer the case to a Division Bench.

#### JUDGMENT.

FFORDE J.—The only question in this revision is whether the complaint alleges that the petitioner has committed an offence while acting or purporting to act in the discharge of his official duty as a member of the Municipal Committee and of a Building Sub-Committee. This is a pure question of fact. According to the complaint itself the petitioner is alleged, by exercising undue influence on a Sub-Overseer to have stopped that Sub-Overseer from purchasing bricks of a certain Din Muhammad, and to have compelled him to give his assent to the purchase of

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the petitioner's bricks. The complaint does not allege that the petitioner obtained this advantage to himself by acting or purporting to act in the discharge of his official duty as a Municipal Commissioner or a member of the Sub-Committee. In fact the suggestion in the complaint is that, taking advantage of the fact that he was a member of the Municipal Committee and of the Sub-Committee, he went outside his official duty altogether to obtain this contract himself. I am of opinion that on the particular facts of this case it does not fall within the provisions of section 197 of the Code of Criminal Procedure, and that, therefore, sanction is not required for a prosecution. Had it been alleged that the petitioner in obtaining this contract held himself out to be acting as a member of the Sub-Committee or of the Municipal Committee, then the question would arise whether or not sanction to prosecute would be necessary. Upon the facts of this case in my judgment no sanction is required and the petition must accordingly be rejected, and the order for stay discharged.

ADDISON J.

ADDISON J.—I agree.

A. N. C.

*Revision rejected.*