

REVISIONAL CRIMINAL.

Before Mr. Justice Tek Chand.

MUHAMMAD BAKHSH (ACCUSED) Petitioner

versus

THE CROWN, THROUGH THE MUNICIPAL COMMITTEE,
KHUSHAB (COMPLAINANT) Respondent.

Criminal Revision No. 1077 of 1928.

*Criminal Procedure Code, Act V of 1898, section 556—
Magistrate—personal interest of—what constitutes.*

Held, that where a prosecution has been directed in pursuance of orders passed by a local body in a meeting presided over or attended by a Magistrate in his capacity as an office-bearer or member thereof, such Magistrate, being 'legally interested' in the matter, is disqualified from trying the matter in his judicial capacity.

Puran Mall v. Queen-Empress (1), *Fazl Ilahi v. Municipal Committee of Murree* (2), and *Emperor v. Bisheswar Bhattacharya* (3), followed.

In a case under section 121 of the Municipal Act, the trial Magistrate, as President of the Municipal Committee, had presided over the meeting in which a resolution was passed for the prosecution of all persons working flour mills, etc., without license.

Held, that as the cases of the alleged offenders were considered at the meeting at which it was decided to prosecute them, section 556 of the Criminal Procedure Code applied, the explanation thereto covering only those cases in which the Magistrate, though a member, has not taken part in directing or sanctioning the prosecution.

Gopi Chand v. King-Emperor (4), distinguished.

Queen-Empress v. Pherozsha Pestonji (5), *Kharak Chand Pal v. Tarack Chander Gupta* (6), and *Deendayal v. Emperor* (7), referred to.

(1) 3 P. R. (Cr.) 1895.

(4) (1923) I. L. R. 1 Rang. 517.

(2) 5 P. R. (Cr.) 1896.

(5) (1894) I. L. R. 18 Bom. 442.

(3) (1910) I. L. R. 32 All. 635.

(6) (1884) I.L.R. 10 Cal. 1030.

(7) (1917) 42 I. C. 761.

Case reported by Khan Bahadur Munshi Rahim Bakhsh, Additional Sessions Judge, Shahpur at Mianwali, with his No. 201-J./23-E. of 27th/30th March, 1928.

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S. R. LAUL, for Petitioner.

ANANT RAM KHOSLA, for Government Advocate,
and Malik RAM LAL, for Respondent.

Report of Additional Sessions Judge.

The facts of this case are as follows:—

Muhammad Bakhsh who was running a flour mill at Khushab without obtaining a license therefor from the Municipal Committee has been fined Rs. 50 by the Sub-Divisional Magistrate, Khushab, who is also the President of the Municipal Committee.

The accused, on conviction by *Lala Daulat Ram Budhwar*, Sub-Divisional Officer, Khushab, exercising the powers of a Magistrate of the 1st Class in the Shahpur District, was sentenced, by order, dated 8th December, 1927, under section 121 of the Municipal Act, to a fine of Rs. 50 or, in default simple imprisonment for one month.

The proceedings are forwarded for revision on the following grounds:—

It was urged before me that as the Sub-Divisional Magistrate had taken a part in promoting the prosecution, as for instance by concurring in sanctioning it at the meeting of the Committee, he was disqualified by reason of the existence of a personal interest and thus the conviction was illegal and must be set aside.

Reliance was placed on *Queen-Empress v. Pheroz-sha Pestonji* (1), *Kharak Chand Pal v. Tarack Chander Gupta* (2) and *Deendayal v. Emperor* (3).

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The Resolution No. 175 of the Committee passed on 25th July 1927 by which this and the connected prosecutions were sanctioned reads as below—

“ All those persons, who under section 121 of the Municipal Act, III of 1911, have not paid fee and obtained the license be prosecuted and that the Secretary is authorised to launch prosecution.”

The order is signed by Mr. Budhwar. The only difficulty which I felt in this case was that the accused had confessed his guilt before the Magistrate; but what I think is that the maximum punishment (which was not called for) awarded by the Magistrate has led the applicant to file this revision application. *Prima facie* the trial being illegal, I submit the case for orders to the High Court.

ORDER OF THE HIGH COURT

TEK CHAND J.

TEK CHAND J.—The petitioner Muhammad Bakhsh was convicted by Mr. Daulat Ram, *Budhwar*, Sub-Divisional Magistrate, Khushab, of an offence under section 121 of the Punjab Municipal Act for running a flour mill without having previously obtained a license from the Municipal Committee. He preferred a petition for revision to the Sessions Judge, Mianwali, who has forwarded the proceedings to this Court with a recommendation that the conviction be quashed, as the trial by Mr. Budhwar was illegal and contrary to the provisions of section 556 of the Criminal Procedure Code, he having presided over the meeting of the Municipal Committee, at which it was decided to prosecute the petitioner. Before me the recommendation is opposed on behalf of the Crown, it being urged that the explanation to section 556 covers the case and that Mr. Budhwar was not disqualified from trying it.

Counsel for the Crown admits that the learned trial Magistrate was the President of the Municipal Committee, Khushab, and that he presided over the meeting in which a resolution was passed for the prosecution of certain offenders under section 121 of the Municipal Act, in pursuance of which a complaint was lodged against the petitioner. He urges, however, that section 556 is inapplicable to this case, as in the resolution the names of the persons to be prosecuted were not specifically mentioned, but it was stated generally that proceedings under section 121 be taken against all those persons who were working flour mills, and manufacturing fire-works, etc., without a proper license from the Municipal Committee. In my opinion this argument is without any substance. It is no doubt true that the resolution is couched in somewhat general terms, but from the proceedings-book it is clear that the cases of the alleged offenders were considered at the meeting and it was decided to prosecute them. As stated already Mr. Budhwar presided over this meeting. He was, therefore, the prosecutor and could not be a judge in his own cause, *Nemo sibi esse iudex vel sui jus dicere debet*. It has been held over and over again that if a prosecution has been directed in pursuance of orders passed by a local body in a meeting presided over or attended by a Magistrate in his capacity as an office-bearer or member thereof such Magistrate is "legally interested" in the matter and therefore disqualified from trying the matter in his judicial capacity (see *inter alia*, *Puran Mall v. Queen-Empress* (1), *Fazl Ilahi v. Municipal Committee of Murree* (2) and *Emperor v. Bisheshar Bhattacharya* (3). The explanation to section 556 covers only those cases in

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which the Magistrate, though a member, has not taken part in directing or sanctioning the prosecution. Mr. Anant Ram principally relies on *Gopi Chand v. King-Emperor* (1), but in that case the prosecution had not been directed by the Magistrate concerned and it was definitely ruled, that if it had been so, the Magistrate would have been disqualified from trying it. In my opinion the trial of the petitioner by Mr. Daulat Ram, *Budhwar*, was illegal and the conviction cannot stand.

I accept the petition for revision and set aside the trial. The fine, if paid, will be refunded. The case will be remitted to the District Magistrate for re-trial by another Magistrate of competent jurisdiction.

N. F. E.

Revision accepted.

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REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

KARIM BAKHSH—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 1450 of 1923

*Criminal Procedure Code, Act V of 1898, section 562—
 Release on probation—whether accused can be fined.*

Held, that where an offender is released on probation under section 562 of the Criminal Procedure Code, the imposition of a fine is illegal.

Case reported by L. A. Bull, Esquire, District Magistrate, Dera Ghazi Khan, with his No. 1592, dated 25th July 1928.

Report of District Magistrate.

The facts of the case are as follows:—

Karim Bakhsh, Accused, aged 17 years, was servant of the complainant *Mussammatt Rasti* for 10 or