

I must, therefore, accept these petitions and set aside the order of the District Judge, including the names of the petitioners in the list of touts. It would be open to the District Judge or to the Bar Association of Hissar or others concerned to initiate fresh proceedings against the petitioners or any of them, if such a course is deemed advisable and nothing stated above will debar them from doing so.

A. N. C.

Petition accepted.

REVISIONAL CRIMINAL.

Before Harrison J.

M. M. KHAN, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 829 of 1930.

Public Servants Act, XXXVII of 1850, section 8—Special Commissioners—whether a Court—within meaning of section 195, Code of Criminal Procedure, Act V of 1898.

Held, that the officers appointed as special Commissioners under Act XXXVII of 1850, to hold an enquiry regarding the conduct of a public servant, constitute a "Court" within the meaning of section 195 of the Code of Criminal Procedure and therefore a complaint by them is necessary.

Bilas Singh v. Emperor (1), relied upon.

In re Nataraja Iyer (2), distinguished.

Application for revision of the order of Mr. H. A. C. Blacker, Sessions Judge, Lahore, dated the 16th June 1930, affirming that of Mr. E. S. Lewis, Additional District Magistrate, Lahore, dated the 16th April 1930, refusing to stay proceedings and to dismiss the complaint.

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SLEEM, OBEDULLAH and MUHAMMAD MUNIR, for
 Petitioner.

JAWALA PARSHAD, Public Prosecutor, for Res-
 pondent.

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HARRISON J.—Two officers were appointed special Commissioners under Act XXXVII of 1850 to hold an enquiry under that Act regarding the conduct of Mr. M. M. Khan, Executive Engineer. A certain document was put in in the course of that enquiry and the Special Public Prosecutor *Rai Bahadur* Jawala Parshad then applied, under section 195 of the Code of Criminal Procedure, read with section 476, and asked the Commissioners to make a complaint. This application was opposed by Sir Muhammad Shafi, counsel for the officer whose conduct was under enquiry, and after a lengthy hearing an order was passed by the Commissioners to the effect that no complaint by them was necessary and that the case could proceed without it.

Rai Bahadur Jawala Parshad urged that a complaint was necessary, but that whether it was necessary or not it should anyhow be made as it could in no way injure or invalidate proceedings, and it would be a wise precaution if there was any doubt in the matter. I do not quite understand the reasoning of the Commissioners as to why they did not adopt this course and save themselves and others much trouble, expense and delay. Anyhow, a complaint was instituted by Mr. Nicholson, Superintending Engineer, and Mr. M. M. Khan then adopted the obvious tactics of instructing another counsel to object that the proceedings could not continue without a complaint. The same legal officer, who had appeared before the Commissioners, *Rai Bahadur* Jawala

Parshad, was then put in the difficult position of arguing on the other side.

Counsel for the petitioner points out that, although there is no definition of a Court in the Code of Criminal Procedure, there is such a definition in section 3 of the Evidence Act, and that it includes all persons authorised to take evidence on oath. It is conceded by the other side that so far as the Evidence Act goes the Commissioners are a Court.

He then points out that the proceedings before the Commissioners are judicial proceedings as defined in section 4 (m) of the Code of Criminal Procedure. This is really much the same as saying that the Commissioners are a Court for the purposes of section 3 of the Evidence Act. His remaining point consists of a hypothetical case and a challenge to the other side to say whether the Commissioners are or are not a Court under section 481 of the Criminal Procedure Code. Whether they are a Court or not under that section, they are given all the powers of such a Court by section 8 of the Public Servants Act, so the point is *ultra academic*. Counsel finally quotes the following rulings :—

In re Venkatachala Pillai (1), *Atchayya v. Gangayya* (2), *Bilas Singh v. Emperor* (3), *In re Punamchand Maneklal* (4).

Counsel for the Crown, on the other hand, relies on the authorities quoted in the order of the Commissioners, and more especially on the last, *In re Nataraja Iyer* (5). So far as the earlier rulings are concerned, they nowhere lay down that the test applied of the

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(1) (1887) I. L. R. 10 Mad. 154. (3) (1925) I. L. R. 47 All. 934.

(2) (1892) I. L. R. 15 Mad. 138, (4) (1914) I. L. R. 38 Bom. 642 (F. R.)
144 (F. B.).

(5) (1913) I. L. R. 36 Mad. 72.

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power of the Court to dispose of the case is exhaustive and conclusive. *In re Maharajah Madhava Singh* (1), a finding in the alternative is given. *In re Nataraja Iyer* (2), it is certainly stated that two tests must be applied before it can be held that any particular officer is a Court, and they are the authority to take evidence and the authority to deal out justice, which can only mean to give a final decision.

Mr. Sleem has pointed out that for the purposes of the case before the Judges in *In re Nataraja Iyer* (2), it was unnecessary to come to this decision in its entirety, for it was quite sufficient for them to decide, as they did, that the official in that case, namely, the Additional Income-Tax Officer, was a Court. He contends that the portion of the judgment, which lays down the general proposition and excludes all officers, who do not finally decide cases was *obiter*. I think this is so. The Commissioners give their conclusion in the following words:—

“The test of a Court is not only whether it is empowered to take evidence on oath, but whether it can give a final decision upon the points referred to it for determination.”

The only authority which goes so far as this is, in my opinion, *In re Nataraja Iyer* (2), and to apply the test strictly would lead to the conclusion that the Judicial Committee of the Privy Council is not a Court for it merely advises His Majesty what action should be taken, and the fact that His Majesty invariably accepts that advice does not alter the position. They do not in so many words give final decisions.

(1) (1905) I. L. R. 32 Cal. 1 (P. C.). (2) (1913) I. L. R. 36 Mad. 72.

It appears to me that *Bilas Singh v. Emperor* (1), lays down the correct view of the position. The question to be decided was whether Election Commissioners were a Court. The decision was that they were not a Civil Court, but the complaint which they purported to make must be deemed to be one under section 195 (1) (b) by a Court "in its wider meaning excluding a Civil, Revenue or Criminal Court." The definition in this section has been amplified, the word "include" being substituted for "means" in 1923. There are Courts outside the Criminal, Civil and Revenue Courts. The Election Commissioners constitute such a Court [*Bilas Singh v. Emperor* (1)]. The Income Tax Commissioners, as held in *In re Nataraja Iyer* (2), are such a Court. Similarly the Commissioners appointed under Act 38 of 1850 are such a Court and in just the same way as Election Commissioners are a Court. They do not in the narrow sense administer justice themselves but like the Election Commissioners they made a report as a result of their enquiry. Far be it from me to attempt to give an exhaustive definition of what or who is or is not a 'Court' for the purpose of section 195, but I do hold that the Commissioners appointed under this Act are a Court although their findings or conclusions like those of the Privy Council take the form of advice to superior authority. A complaint by them is therefore necessary in this case.

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(1) (1925) I. L. R. 47 All. 934.

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