

30 C. 927 (=7 C. W. N. 750.)

## [927] CRIMINAL REFERENCE.

1903  
JULY 7.CRIMINAL  
REFERENCE.30 C. 927=7  
C. W. N. 750.CORPORATION OF CALCUTTA v. ADMINISTRATOR-GENERAL OF  
BENGAL.\* [7th July, 1903.]

*Administrator General of Bengal—Sanction to prosecute Administrator to estate of deceased person—Public servant, offence by—Criminal Procedure Code (Act V of 1898), s. 197—Calcutta Municipal Act (Bengal III of 1899), ss. 320, 574.*

The Administrator General of Bengal, who was appointed by the High Court administrator to the estate of a deceased person, was served with a notice by the Calcutta Municipal Corporation under s. 320 (i), cl. (b) of Bengal Act III of 1899, requiring him to remodel a privy on certain premises belonging to that estate. In consequence of his not complying with the requisition he was prosecuted under s. 574 of the Act.

At the trial it was contended that as the Administrator General of Bengal was a public servant not removable from his office without the sanction of the Government of India, he could not, under the terms of s. 197 of the Criminal Procedure Code, be prosecuted without the sanction of such Government:—

*Held*, that the sanction of Government was not necessary for the institution of the prosecution, s. 197 of the Criminal Procedure Code not being applicable to a case like the present; that the Administrator General of Bengal was in charge of the premises, in respect of which the offence charged was said to have been committed, not by virtue of his office, but by virtue of his appointment by the Court as administrator to the estate of the deceased; and that he was charged with having committed the offence in the latter capacity.

*Nando Lal Basak v. N. N. Mitter* (1) followed.

REFERENCE under s. 432 of the Code of Criminal Procedure.

In this case the Administrator General of Bengal was, by an order of the High Court, appointed administrator to the estate of one Assaram Burmano deceased, which consisted *inter alia*, of the premises No. 54 Cotton Street in the town of Calcutta.

On the 25th November 1902 a notice was served by the Municipal Corporation of Calcutta, on the Administrator General requiring him, under s. 320 (1) (b) of Bengal Act III of 1899, to [928] thoroughly remodel the privy belonging to the premises in Cotton Street. The requisition in the notice not having been complied with, the Administrator General was summoned by the Municipal Magistrate of Calcutta to answer to charge under s. 574 of the Act. At the trial it was contended on behalf of the Administrator General that he being a public servant and removeable from his office by the Government of India he could not, under the provisions of s. 197 of the Criminal Procedure Code, be prosecuted without the sanction of that Government.

On the 25th June 1903 the Magistrate referred, under s. 432 of the Code of Criminal Procedure, for the opinion of the High Court the question,—whether the Administrator General of Bengal could be prosecuted under the Calcutta Municipal Act without the sanction of the Government for non-compliance with the requirements of the Act in respect of houses vested in him as Administrator General.

\* Criminal Reference No. 6 of 1903 by P. N. Mukerjee, Municipal Magistrate of Calcutta, dated June 29, 1903.

(1) (1899) I. L. R. 26 Cal. 852.

The letter of reference was as follows:—

*Corporation of Calcutta v. Administrator-General of Bengal as administrator to the state of Assaram Burmano* under section 320 (1) (b) of Act III (B. C.) of 1899.

“ Under the provisions of section 432 of the Code of Criminal Procedure I have the honour to refer, for the opinion of the Hon'ble High Court, the following question of law which has arisen in the hearing of the marginally-noted case.

1908  
JULY 7.  
CRIMINAL  
REFERENCE.  
30 C. 927=7  
C. W. N. 750.

“ 2. In this case the defendant has been prosecuted for not making certain sanitary improvements in compliance with a notice served on him in respect of premises No. 54 Cotton Street, which form part of the estate of the late Assaram Burmano, the Administrator General having been appointed administrator of the estate by an order of Court on the death of the executors appointed by the will.

“ 3. The defendant contends that as under the Administrator General's Act as amended by Act V of 1902 that officer is a public servant appointed, paid and removable from his office by the Government of India, he could not be prosecuted without the sanction of that Government under s. 197 of the Code of Criminal Procedure for acts done as such public servant, and he includes therein everything done in the discharge of his official functions, e.g., carrying out sanitary improvements in premises which form part of estates vested in him. He has to do with such premises only in his official capacity as Administrator General.

“ 4. On behalf of the prosecution it is urged that previous sanction under s. 197 of the Code of Criminal Procedure is necessary in those cases in which the offence charged is an offence which can be committed by a public servant only, i.e., cases in which being a public servant is a necessary element in the [929] offence, and this view is supported by the recent decision of the Madras High Court in the case of *The Municipal Commissioners for the City of Madras v. Major Bell* (1) and the Calcutta case of *Nundo Lal Basak v. N. N. Mitter* (2). In these cases the defendants were prosecuted by name. In the present case the defendant is referred to in the application for summons both as Administrator General of Bengal and as administrator to the estate of the late Assaram Burmano. I am not sure if that makes any difference.

“ 5. The question for decision is whether, the Administrator General of Bengal can be prosecuted under the Calcutta Municipal Act without the sanction of the Government for non-compliance with the requirements of the Act in respect of the large number of houses vested in him as Administrator General.”

Mr. Donogh (Babu Dwarka Nath Chakravarti with him) for the Corporation of Calcutta. The question is whether the Administrator General of Bengal, who is a public servant, can be prosecuted under the circumstances of this case without the sanction of the Government of India. He was called upon by the Corporation to carry out certain sanitary improvements in certain premises, of which he was appointed administrator by the Court. This he did not do, and has in consequence been prosecuted. The improvements he was called upon to make would not be made by him in his official capacity as Administrator General, but as his capacity of administrator to the estate of the deceased, and they could have been equally made by anyone else whom the Court might have appointed administrator. The accused is not being prosecuted as the Administrator General of Bengal; the fact of his being the Administrator General is accidental. If your Lordships will refer to the letter of reference, it will show that in the application for summons in this case the accused is referred to both as Administrator General of Bengal and as administrator to the estate of the late Assaram Burmano. No sanction was therefore necessary. Previous sanction under s. 197 of the Criminal Procedure Code is necessary only in those cases in which the offences charged are such as can be committed by a public servant as such, and they are defined in Chapter IX of the Penal Code: *Nando Lal Basak v. N. N. Mitter* (2), *The Municipal Commissioners for the City of Madras v. Major Bell* (1).

(1) (1901) I. L. R. 25 Mad. 15.

(2) (1899) I. L. R. 26 Cal. 852.

1903  
JULY 7.  
—  
CRIMINAL  
REFERENCE.  
—  
30 G. 927=7  
C. W. N. 750.

Mr. *Camell* (Babu *Surendra Nath Roy* with him) for the Administrator General of Bengal. It is conceded by the prose- [930] cution that the Administrator General is a public servant as understood by s. 197 of the Criminal Procedure Code. The whole question is a matter of construction. There is a conflict of authority, and in that case, sections of the Code must be construed on their plain wording. Acts of which a public servant is accused "as such public servant" include all acts done by him in the discharge of his official functions. If the accused were not the Administrator General, he would be in no way connected with the premises. The offence alleged against him can be alleged against him only in his official capacity. He is accused as a public servant, and is, therefore, entitled to the protection under s. 197 of the Criminal Procedure Code. It is true that on the death of the executors under the will, the Court passed an order appointing the Administrator General of Bengal administrator to this estate, but that was only by way of procedure. On the failure of executors appointed by the will, and on the failure of the next of kin to apply for Letters of Administration, or for the appointment of an administrator, the Administrator General by virtue of his office is entitled to have himself appointed administrator to the estate of the deceased : see s. 16 of the Administrator General's Act (II of 1874). Acts committed or omissions made by the Administrator General in the discharge of his official duties are not accidental to the office, but a necessary consequence of his appointment to that office. In the cases of *In re Gulam Muhammad Sharifuddaulah* (1) and *Sreemanto Chatterjee* (2) it was decided that sanction was necessary before a public servant could be prosecuted for acts done in the discharge of his duties. The decision in *The Municipal Commissioners for the City of Madras v. Major Bell* (3) was based on the omission in s. 197 of the Criminal Procedure Codes of 1882 and 1898 of the second paragraph, which was to be found in the corresponding section of the Code of 1872, viz., s. 466. It was evidently not the intention of the Legislature to limit the application of s. 197 of the present Code. The second paragraph was omitted from the later Codes because it was redundant. S. 197 of the present Code, which differs in wording from s. 466 of the Code of 1872, embodies [931] both the first and second paragraphs of s. 466 of the Code of 1872.

The authorities quoted against the defence are not applicable, as in those cases the proceedings were taken against the individual ; whereas in this case the question submitted to this Court is whether sanction is necessary for the prosecution of the Administrator General in respect of acts performed with reference to estates vested in him as Administrator General. Clearly the accused is charged in his official capacity. The Government of India is responsible for the public acts of public servants done within the scope of their authority, and the object of s. 197 is that a certain formality should be observed for the protection of public servants from groundless prosecutions, namely, that the sanction of the Government be first obtained.

BANERJEE AND HANDLEY, JJ. This is a reference by a Presidency Magistrate, namely, the Municipal Magistrate of Calcutta, under the first part of section 432 of the Code of Criminal Procedure ; and the question upon which our opinion is asked as stated in the 5th paragraph of the letter of reference is " whether the Administrator General of Bengal can

(1) (1886) I. L. R. 9 Mad., 439.

(3) (1901) I. L. R. 25 Mad. 15.

(2) Unreported.

be prosecuted under the Calcutta Municipal Act without the sanction of the Government, for non-compliance with the requirements of the Act in respect of the large number of houses vested in him as Administrator General." Though the question is stated in the manner set out above, in paragraph (2) of the letter of reference is stated a fact which has some bearing upon the question submitted to us for our opinion; and that fact is this,—that the Administrator General has been appointed administrator to the estate to which the house in question appertains, by an order of Court on the death of the executors appointed by the will of the late proprietor. That being then the question submitted for our opinion, the point for consideration is whether the sanction of the Government is necessary for the institution of the prosecution in a case like that contemplated in the reference.

1903  
JULY 7.  
CRIMINAL  
REFERENCE.  
30 C. 927=7  
C. W. N. 750.

Now the provision of law requiring the sanction of Government is that embodied in section 197 of the Code of Criminal Procedure which says that "when any Judge or any public [932] servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence except with the previous sanction of the Government having power to order his removal," &c., &c.; and the question then is reduced to this, namely, whether the party charged with the offences under the Calcutta Municipal Act, III (B. C.) of 1899, is accused as a public servant of the offences charged. The party holds the office of Administrator General of Bengal, and as such he is not removable from his office without the sanction of the Government of India. That is conceded; but the contention of the learned counsel for the Corporation of Calcutta is that the party accused is not accused in this case as the Administrator General of Bengal; that the fact of his being the Administrator General of Bengal is only an accident; and that another person might have been appointed as administrator to the estate of the late Assaram Burmano and placed in charge of the premises in respect of which the offence charged is said to have been committed. And in support of this contention we are referred to the 4th paragraph of the letter of reference in which it is stated that in the present case the defendant is referred to in the application for summons both as Administrator General of Bengal and as administrator to the estate of the late Assaram Burmano.

It is further argued on behalf of the Corporation of Calcutta that section 197 of the Code of Criminal Procedure is limited in its application to that class of offences which are defined in Chapter IX of the Indian Penal Code, and which can be committed only by a public servant as such; and in support of this view the case of *Nanda Lal Basak v. N. N. Mitter* (1) is relied upon, and also the case of *The Municipal Commissioners for the City of Madras v. Major Bell* (2).

On the other hand, the learned counsel for the opposite party argues that we must take the words of section 197 as they are, and that those words, taken as they are, would cover a case like the present, where a public servant, namely, the Administrator [933] General of Bengal, who is not removable from his office without the sanction of the Government of India, is accused of an offence not in his private capacity in which he has no concern with the premises in respect of which the offence charged is said to have been committed,

(1) (1899) I. L. R. 26 Cal. 852.

(2) (1901) I. L. R. 25 Mad. 15.

1903  
JULY 7.  
CRIMINAL  
REFERENCE.

30 C. 927=7  
C. W. N. 750

but in his official capacity as Administrator General of Bengal in which capacity alone he has any concern with the said premises; and in support of this contention *In re Gulam Muhammad Sharifuddaulah* (1) is cited.

After considering the arguments on both sides, the conclusion we come to is this, that section 197 of the Code of Criminal Procedure is not applicable to a case like the present, and that the sanction of the Government is not necessary for the institution of the prosecution such as the letter of reference contemplates. It is true, the party charged with the offence in this case holds the office of Administrator General of Bengal; but it is only an accident that the holder of that office is in charge of the premises in question. The capacity in which he is charged is his capacity as administrator to the estate of the late Assaram Burmano, a capacity which might have belonged to him even though he had not been the Administrator General of Bengal, for the Court might in certain events have appointed any other person than the Administrator General as administrator to the estate of the late Assaram Burmano; and the Administrator General of Bengal is in charge of the premises in question not by virtue of his office but by virtue of his appointment by the Court as administrator to the estate of the late Assaram Burmano. The requirement of section 197, that the party charged should be accused as a public servant of any offence, is, therefore, in our opinion not satisfied in this case. The view we take is in accordance with that taken in the case of *Nando Lal Basak v. N. N. Mitter* (2).

It is unnecessary for us in this case to express any opinion as to whether section 197 of the Code of Criminal Procedure is absolutely limited to the offences defined in Chapter IX of the Indian Penal Code. All we decide now is that in a case like the present, one of the requirements of the section, namely, the one we have referred to above, that the party charged is accused as a public servant [934] of the offence with which he is charged, has not been satisfied, and that the section, therefore, does not apply to this case.

The reference will be returned with the expression of our opinion embodied in the foregoing observation.

20 C. 934(=7 C. W. N. 806.)

ORIGINAL CIVIL.

KADAMBINI DASSI v. KUMUDINI DASSI.\*

[15th July, 1903.]

*Practice—Evidence on commission—Oaths Act (X of 1873) s. 13—Foreign Territory—Civil Procedure Code (Act XIV of 1882) ss. 387—399.*

A commission was issued by the High Court to take the evidence of a witness in Chandernagore (French territory) s. 387 of the Civil Procedure Code; and the provisions of the Code, so far as they applied, were complied with:—

*Held*, that the commission was rightly issued and executed under ss. 387 and 399 of the Code.

\* Original Suit No. 11 of 1902.

(1) (1886) I. L. R. 9 Mad. 439.

(2) (1899) I. L. R. 26 Cal. 852.