

Appellate Jurisdiction(a)*Criminal Petition No. 410 of 1872.*C. NARA'YANASA'MI A'YYAR.....*Petitioner.*

The Courts of the Head Assistant Magistrate and of the Deputy Magistrate have jurisdiction to try a District Munsif on charges of extortion in the course of the exercise of his judicial functions. The Sessions Judge is a proper person to sanction the prosecution.

By INNES, J.—The rule (laid down in Sec. 8, Reg. VI of 1816) requiring the committal of such cases to the Court of Session, has been impliedly, though not expressly, repealed.

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THIS was a Petition under Section 404 of the Old Criminal Procedure Code, praying the High Court to revise the Proceedings held by the Court of Session of Tellicherry in Criminal Petitions Nos. 9 and 10 of 1872, presented against the sentences passed in Case No. 70 of 1872 on the file of the Acting Head Assistant Magistrate, and Case No. 60 of 1872 on the file of the Deputy Magistrate of South Canara.

O'Sullivan, for the Petitioner.

The *Government Pleader*, in support of the conviction.

The facts of the case and the arguments of Counsel are set forth in the following judgments :

INNES, J.—This is a Petition to the High Court praying that we will call for two records, under Section 405 of the Criminal Procedure Code, and set aside the sentences passed by the Courts of First Instance.

The cases were tried by the Acting Head Assistant Magistrate (Calendar 70) and the Deputy Magistrate (Calendar 60) of South Canara. The accused, a District Munsif of South Canara, was convicted, in each case, on a charge of extortion in the course of the exercise of his judicial functions. On the application of the Petitioner, his appeals from these decisions were transferred by the High Court to Tellicherry, and came on before the Sessions Judge of Tellicherry, who dismissed the appeals.

The grounds upon which the present application is based are that the Courts of the Assistant Magistrate and Deputy Magistrate had no jurisdiction to try the cases.

(a) Present : Innes and Kindersley JJ.

Several points were argued before us which I will take in order.

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First, it was said that the District Munsif under Clause 2, Section 8, Regulation VI of 1816, and Section 23 of Act VII of 1843, was not amenable to any but the Zillah Court for the offences charged.

Clause 2 of Section 8, Regulation VI of 1816, is to the following effect :—" District Munsifs shall also be liable to a criminal prosecution for extortion or other acts of oppression committed by them in the discharge of their duty, and, on conviction before the Court of Circuit, shall be subject to fine and imprisonment proportionate to the circumstances of the case, but no Munsif shall be liable to be prosecuted for want of form or for error in his proceedings or judgments, nor shall any process be issued against a Munsif who may be charged with extortion or any oppressive or unwarranted act of authority, unless the Judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded."

At the date of this Regulation, extortion was already punishable as a misdemeanor under Muhammadan law, and any person charged with this offence was liable to be tried and punished by the Court of Circuit under Clause 7, Section 2, Regulation XV of 1803, the limit of punishment being 195 stripes and 7 years' imprisonment.

The offence being one against the Muhammadan law, which was the general law of the country, this section cannot be said to have created the offence, nor can the offence be said to be an offence against a special or local law. As regards the substantive law the section is merely declaratory, but it embodies rules of procedure applicable to charges of this nature brought against District Munsifs, which have not as yet been expressly repealed. One of these rules is that a District Munsif must in such a case be committed to the Court of Circuit (now the Court of Sessions). Another rule is that before any process is issued, the Judge shall be satisfied by sufficient evidence that the charge is well founded. With regard to the former of these rules, it is necessary to see whe-

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ther the authority of it has been affected by the Code of Criminal Procedure. On the introduction of the Indian Penal Code offences punishable under it (not being offences against special or local laws) had to be dealt with, as has been properly done in these cases, under the Penal Code. The late Code of Criminal Procedure, Section 21, give the several Courts jurisdiction over offences "according to the powers vested in them respectively by this Act," and we find that extortion is an offence punishable by the grades of Magistrates by whom these cases have been tried ; but the question is, whether the words of Section 8 of Regulation VI of 1816, not having been expressly repealed, can stand as an exception to the general law, as promulgated in Section 21 of the late Code of Criminal Procedure. It appears to me that they cannot. The scope of the Act and the words of Section 21 seem to exclude the supposition that any exception in point of procedure in the administration of the general substantive law could have been contemplated, and this appears more clearly if we turn to the Chapter (XI) in which due provision is made for prosecutions in charges against officers in the position of a District Munsif. It seems to me, therefore, necessary to hold that the rule requiring the committal of such cases to the Court of Sessions, has been impliedly, though not expressly, repealed.

Then, as to the question whether the latter part of Section 8 of Regulation VI of 1816 controls the procedure in regard to giving sanction—The words are "nor shall any process be issued against a Munsif charged with extortion or any oppressive or unwarranted act of authority, unless the Judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded." The words "the Judge" appear to mean the Judge of the Court of Circuit previously mentioned, and the language seems to amount to a direction of the law prohibiting, if it is still in force, the entertaining of charges against District Munsifs hastily and without a sufficient enquiry. The violation of this direction by the Magistrate or other officer proceeding with the case, however culpable, would not, I conceive, vitiate the trial, and looking to the comprehensive scope of Section 167,

Criminal Procedure Code, it seems very doubtful whether that section does not amount to an implied repeal of the provisions of this part of Section 8, Regulation VI of 1816.

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It was further contended that, assuming the case to be cognizable by the Magistracy, the sanction of Government was necessary under Section 167 of the Code of Criminal Procedure. The section only requires the sanction alternatively of the Local Government, or of some officer empowered by the Local Government, or of some Court or other authority to which such Judge or other public servant is *subordinate*, and whose power so to sanction or direct such prosecution, the Local Government shall not think fit to limit or reserve.

I agree with the opinion expressed by Holloway, J., as reported in p. 58, Vol. VII, High Court Reports, in which Kindersley, J., concurred, as to the interpretation of this section. The power of sanction resides in the Zillah Judge, unless it has been limited or reserved by the Local Government. It has not been so limited or reserved. He has, therefore, the power to give sanction for the prosecution of his subordinates.

Another point urged, with reference to Calendar Case 60, was that the suit in which the offence is said to have been committed by the District Munsif as Judge was a Small Cause Suit, and that, as Judge of a Small Cause Court, he is not subordinate to the Zillah Judge but to the High Court.

The cases at pages 18 and 191, Vol. VI, High Court Reports, were quoted as directly bearing out this contention.

The case at p. 18 is one in which the Zillah Court was held incompetent to transfer Small Cause Court Suits from the Munsif's to the Principal Sadr Amín's Court for the purpose of being tried by him as Small Cause Court Judge.

That at p. 191 was a decision upon the question whether the Zillah Courts could sanction a prosecution for forgery which had been committed in a suit on the Small Cause side of a Principal Sadr Amín's Court. In both these cases the view taken is that the Principal Sadr Amín presided over two Courts, one with ordinary and the other with a Special Small Cause jurisdiction, as, to exercise the latter jurisdiction, a

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Principal Sadr Amín requires to be specially vested by the Government with the necessary powers, which are not inherent in his functions as Principal Sadr Amín. As in the exercise of these powers the Principal Sadr Amín's Court is not required to make returns to any but the High Court, it was held that the Principal Sadr Amín's Court, as a Small Cause Court, was not subordinate to the Zillah Court within the meaning of Section 6 of the Civil Procedure Code and Section 170 of the Criminal Procedure Code.

For the application of these sections the *Court* must be subordinate; and the use of the word *Court* in Section 170 of the Criminal Procedure Code may be noticed as a distinction between that section and Section 167, in which the word used is '*Judge*.'

The constitution of a Munsif's Court as a Small Cause Court, at present, differs from that of a Principal Sadr Amín. As a District Munsif, his Court is subordinate to that of the Zillah Court, and by virtue of his very appointment as a District Munsif, he is vested with jurisdiction to exercise Small Cause powers. All that Section 167 requires is that the Court giving sanction should be one to which the Judge charged with the offence is subordinate, and it is difficult to see how the modification of some of a District Munsif's powers can operate without special provision to that effect to remove him in the exercise of those powers from subordination to the Zillah Court. When the Courts of the District Munsifs were first created, their decisions were to be final in certain cases, some of which included decisions in suits for land within a certain limit of value. By Regulation V of 1825, these final powers were somewhat abridged, all decisions in suits for land being made appealable, but decisions in suits for other real property within 20 Rupees value, and in suits for personal property up to 20 Rupees value continued final. The effect of the Small Cause Court jurisdiction, as regards District Munsifs, was merely to extend the final jurisdiction to 50 Rupees in such suits for money or personal property as were Small Cause Court Suits, and to introduce a more simple procedure in regard to them. It does not appear that the

Act which, once for all, conferred those powers on District Munsifs as District Munsifs, in any respect modified their general subordination as Judges to the Zillah Court.

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Then with regard to the question of sanction.

1. Was sanction given in each case ?
2. Was it in time, assuming it to be essential that sanction should precede the earliest proceedings in the trial ?

Owing to a formal sanction not having been in each case placed upon the record, we have had great difficulty in arriving at a satisfactory conclusion on these points.

It now, however, appears that No. 60 on the file of the Deputy Magistrate is No. 64 B on the file of the Magistrate, and that the complaint in that case was received by the Magistrate on the 5th September. Sanction to proceed with this case was accorded by the letter of the Sessions Judge of the 23rd September, and the first proceeding was held on 12th October. The sanction, therefore, was in time, if in terms it was sufficient. It is impossible to say, taking the language of the letter of the Sessions Judge, that the sanction, however general, is not in terms a compliance with the law. The Sessions Judge had already sanctioned the prosecution of the District Munsif in other similar cases, and had, therefore, sufficient before him to enable him to determine upon the propriety of extending sanction to other cases. I think the sanction was in terms sufficient. In Case No. 70 before the Head Assistant Magistrate (which is 60 B, file 101, of the Magistrate's file) the complaint was preferred on the 3rd September, and the complainant was examined on the 4th: sanction to prosecute was conveyed on the 5th September, and the first proceeding was held on the 20th September before the Head Assistant Magistrate. The examination of the complainant is not, I think, such an entertaining of the complaint as is intended by the section. The complaint must be understood before sanction to entertain it can be sought, and it is often necessary to examine the complainant before the complaint can be understood. I think, therefore, that sanction in this case also was given, and that it was given in time.

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I would dismiss the Petition.

KINDERSLEY, J. :—In these cases I concur generally in the judgment of Mr. Justice Innes. The offences of which the District Munsif was convicted were not charged under any special or local law, but under the Indian Penal Code ; and, therefore, the procedure upon the trial of such charges was properly regulated by the Code of Criminal Procedure, and the sanction requisite for the trial of such charges is laid down in Section 167 of the same Code. I am unable to conclude that in respect of charges made under the Penal Code against a District Munsif, the Legislature intended that the sanction should be regulated both by the Code of Criminal Procedure, and also by the old Regulation. The more recent legislation covering the same ground must, I think, be taken to supersede the old procedure in respect of offences against the Penal Code, and other offences to which the Code of Criminal Procedure applies.

I am also of opinion that the Civil and Sessions Judge was a proper person to give the sanction. Whatever may be the powers of a District Munsif as a Judge of Small Causes, I have no doubt that, personally, he is subordinate to the Civil and Sessions Judge of the district. His appointment depends on the recommendation of the Civil Judge, and he may be suspended by the same authority, and all correspondence regarding the leave, retirement, removal, or dismissal of a District Munsif, passes through the Judge's hands. I am, therefore, clearly of opinion that, personally, the District Munsif was subordinate to the Civil Judge, and a prosecution of this kind is a personal matter not affecting jurisdiction. The great difficulty in this case has been to arrive at the facts as regarded the sanction. But, upon the last return of the Judge of Tellicherry, I agree that the sanction was given in both cases in time. I also agree that the general terms of the sanction in the letter of the 23rd September are sufficient.

I therefore agree that this Petition ought to be dismissed.

Petition dismissed.