

(1932) 08 MAD CK 0001
In the Madras High Court

Erranki Venkatasubba Rao

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 26-08-1932

Acts Referred:

Citation : AIR 1933 Mad 270

Hon'ble Judges : Bardswell, J

Bench : Division Bench

Judgement

Bardswell, J.—The Stationary Sub-Magistrate, Kovvur, has held that Section 197, Criminal P. C, does not apply to the case of the

petitioner (accused 3) as he was the karnam. His order cannot be supported on this ground, as though the petitioner was the karnam, he was also

acting the as Village Magistrate at the time when he is alleged to have committed the offence. What then has to be seen is whether the offence

imputed to him by the prosecution can be in any way attributed to or connected with his office as Village Magistrate. It is not necessary in this

particular case to put the matter more meticulously or to balance carefully the various rulings which have been called to my notice on the rather

vexed subject of how and when Section 197 applies, as it is clear to me that the offence is not one for a prosecution for which a sanction is

required under that section. He is charged by the police with having dishonestly received or retained stolen property u/s 411, I.P.C. That offence

cannot be taken even as the perversion of an act that he could do in his official capacity, and the mere fact that he was acting as Village Magistrate

at the time when he is alleged to have committed it will not give him the benefit of the section. I do not see how Section 2, Regn. 11 of 1816, to

which I have been referred, has any bearing on the point.

2. It is true that, according to the charge sheet, accused 5 has said that he gave stolen property to the petitioner because the petitioner had

threatened to report against him. It is not clear however whether this statement by accused 5, which appears to have been made to the police, is

one that is admissible u/s 27, Evidence Act, or whether there is any evidence that would justify a charge of an offence u/s 161, I.P.C. And any way

he is not charged with the offence of taking a bribe. Even now were he charged by the police with having received a bribe it is a question whether

his retention of the bribe, when the bribe consisted of stolen property, cannot be said to be an act done purporting to be done in his official

capacity. I need not however deal with this point now. As things stand I must hold that the petitioner is not accused of any offence for which a

sanction u/s 197 is necessary. Of course, if it is made to appear in the course of the hearing that the petitioner has committed an offence to which

Section 197 applies, and no distinct and independent offence, then he must have the benefit of that section. The petition is dismissed.