

**(1958) 07 AP CK 0002**

**In the Andhra Pradesh High Court**

**Case No :** Criminal Revision Case No. 733 of 1957 and Criminal Revision  
Petition No. 596 of 1957

Konkati Narayana and Others

APPELLANT

Vs

Balakanti Veerayya

RESPONDENT

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**Date of Decision :** 14-07-1958

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 197  
Hyderabad Gram Panchayats Act, 1956 — Section 115, 128, 145  
Penal Code, 1860 (IPC) — Section 21, 52

**Citation :** AIR 1959 AP 27 : (1959) CriLJ 21

**Hon'ble Judges :** Basi Reddi, J

**Bench :** Single Bench

**Advocate :** Tej Rai Kappor, for the Appellant; V.K. Vaidya, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

Basi Reddi, J.—This is a petition to revise the order of the First Class Magistrate, Gadwal, overruling the preliminary objection raised on behalf of the accused-petitioners that the complaint filed against them for an alleged offence of mischief punishable u/s 427, I.P.C., cannot be taken cognizance by the Court except with the previous sanction of the State Government, as provided by Section 197, Cr. P. C.

2. One, Balakanti Veerayya, filed a complaint before the First Class Magistrate, Gadwal, against the 12 petitioners alleging that he had constructed a flight of stairs in front of his house leading up to the terrace after obtaining the requisite permission from the Panchayat of Maldakal village, that the petitioners who were opposed to him, with the bad intention of causing loss and damage to him, and taking advantage of the absence of the inmates of the house, had, on the morning of 17-9-1957, demolished the stairs and thereby caused him a loss of Rs. 100/-, and that they are, therefore, liable for an offence u/s 427, I.P.C. The complainant further alleged that he had strong evidence to substantiate his case.

3. The case of the petitioners is that the complainant had constructed the stairs without the sanction of the Panchayat Committee & that, as the said construction was causing inconvenience to the public, the Panchayat Committee had issued a notice to the complainant to remove the stairs within a specified period and since he had failed to do so, the Panchayat Committee had directed the unauthorised construction to be removed, and the petitioners had removed the obstruction by destroying the stairs in pursuance of the directions given by the Panchayat Committee, and that the act of the petitioners was one done in the discharge of their official duty and, therefore, they are protected by the provisions of Section 197, Cr. P. C. The lower Court overruled this objection; hence this revision.

4. Petitioner No. 1 is the Sarpanch and petitioner No. 3 is the Upa-Sarpanch of the Gram Panchayat. u/s 26 (1) of the Hyderabad Gram Panchayats Act, 1956, they are elected by the members of the Gram Panchayat, and Sub-section (3) provides that every Sarpanch or Upa-Sarpanch shall cease to be as such on the expiry of his term of office as a Panch. It is contended on behalf of petitioners 1 and 3 that, by virtue of Section 145 of the Gram Panchayats Act, they shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, and since they are not removable from their office save by or with the sanction of the State Government, and since the offence complained of was one committed by them while acting or purporting to act in the discharge of their official duty, no Court shall take cognizance of such offence except with the previous sanction of the State Government.

5. It is also contended by the learned Advocate for the petitioners that Section 128 of the Act is a bar to the prosecution of the petitioners inasmuch as the petitioners had acted in good faith.

6. I am clearly of opinion that there is no substance in either of these contentions. As regards the first contention, it is true that petitioners 1 and 3 who are the Sarpanch and the Upa-Sarpanch respectively, are deemed to be public servants by virtue of Section 145 of the Hyderabad Gram Panchayats Act but Section 197, Cr. P. C. does not afford protection to all public servants but only to certain category of public servants, namely, those who are not removable from office save by or with the sanction of a State Government or the Central Government as the case may be. Therefore the question for consideration is, whether the Sarpanch and Upa-Sarpanch of the Gram Panchayat are public servants falling within that category; in other words, are they not removable from their office save by or with the sanction of the State Government? Section 115, which deals with the dissolution of Gram Panchayats, is in the following terms :

115. (1) "If in the opinion of the Government a Gram Panchayat persistently makes default in performing the duties imposed on it under this Act or any other law for the time being in force or exceeds or abuses its power, or a situation exists in which the administration of the Gram Panchayat cannot be carried on in accordance with the provisions of this Act, or the financial stability or credit of

the Gram Panchayat is threatened, it may, by notification published in the official Gazette, direct that the Gram Panchayat may be dissolved and reconstituted. The notification shall specify the time within which the Gram Panchayat shall be reconstituted;

Provided that for the purpose of completing the elections to a Grain Panchayat which has been dissolved, the Government may from time to time extend the time fixed under this sub-section for its reconstitution.

(2) Before publishing a notification under Sub-section (1) the Government shall communicate to the Gram Panchayat concerned the grounds on which they propose to do so, fix a reasonable period for the Gram Panchayat to show cause against the proposal and consider the explanations and objections, if any, of such Gram Panchayat.

(3) Upon publication of such notification all Panchas including Sarpanch and Upa-Sarpanch, shall forthwith be Seemed to have vacated their office as such.

(4) When a Gram Panchayat is dissolved, the District Beard, until the date of reconstitution thereof and a reconstituted Gram Panchayat thereafter, shall be entitled to all the assets and be subject to all the liabilities of the Gram Panchayat as on the date of dissolution and on the date of reconstitution.

(5) During any interval between the dissolution and the reconstitution of a Gram Panchayat under Sub-section (1), all or any of the powers of the Gram Panchayat may be exercised and discharged, as far as may be, by the District Board or by such person as may be appointed by it; and such person shall, if the District Board so directs, receive his remuneration."

7. Thus the section provides for the dissolution of a Gram Panchayat in the event of mal-administration, and in such a contingency the Government may, by a notification published in the Official Gazette, direct that the Gram Panchayat be dissolved and reconstituted. Sub-section (3) enacts that upon publication of such notification, all Panchas including Sarpanch and Upa-Sarpanch shall forthwith be deemed to have vacated their office as such. Assuming that this procedure tantamounts to the removal of the Sarpanch and Upa-Sarpanch from their respective offices, this is not the only method by which they can be removed from office. In this context Section 28 of the Act has to be noticed. The section reads thus :

28. (1) "A motion of no-confidence may be moved by any Panch after giving such notice as may be prescribed against the Sarpanch and Upa-Sarpanch.

(2) If the motion against the Sarpanch is carried by a majority of not less than two-thirds of the total number of Panchas or if the motion against the Upa-Sarpanch is carried by a majority of the total number of Panchas, the Sarpanch or the Upa-Sarpanch, as the case may be, shall, within three days of the passing of the motion, resign his office by submitting his resignation to the Gram Panchayat and thereupon his office shall be deemed to be vacant.

(3) If the Sarpanch or the Upa-Sarpanch, as the case may be, against whom the motion of no-confidence has been carried, does not resign his office within the period specified in Sub-section (2), he shall be removed from his office by the Collector or the competent officer.

(4) Notwithstanding anything contained in this Act or rules made thereunder, a Sarpanch or an Upa-Sarpanch shall not preside over a meeting in which A motion of no-confidence is discussed against him but he shall have right to speak and otherwise to take part in the proceedings of the Gram Panchayat."

8. It will be observed that, on a motion of no-confidence passed against a Sarpanch or an Upa-Sarpanch in the manner prescribed by the section, he shall, within three days of the passing of the motion, submit his resignation to the Gram Panchayat and thereupon his office shall be deemed to be vacant Sub-section (3) says that if, in such circumstances the Sarpanch or the Upa-Sarpanch does not resign his office within the specified period, he shall be removed from his office by the Collector or the competed officer. Thus, the Act itself envisages an alternative mode by which a Sarpanch or an Upa-Sarpanch can be removed from his office; and such removal is not by the State Government but by the Collector or the competent officer.

9. Moreover, to attract the protection conferred by Section 197, Cr. P. C., the public servant concerned must be, as laid down by Clause (b) of Sub-section (1) of Section 197, Cr. P.C., a person employed in connection with the affairs of a State. It cannot be said that a Sarpanch or an Upa-Sarpanch is a person "employed" in connection with the affairs of a State. As already noticed, the Sarpanch and Upa-Sarpanch are elected by the Gram Panchayat. They hold their office by election and not by employment. In this view also, petitioners 1 and 3 are not entitled to the protection u/s 197, Cr. P.C. It follows that a Sarpanch or an Upa-Sarpanch is not a public servant not removable from his office save by or with the sanction of the State Government; nor is he a person employed in connection with the officers of the State.

10. As regards the second contention, namely that the petitioners had acted in good faith and consequently Section 128 of the Hyderabad Gram Panchayat's Act is a bar to a criminal prosecution, all that need be said at this stage is that there is a clear and specific allegation in the complaint that the petitioners had acted with the evil intention of causing loss and damage and had highhandedly destroyed the flight of stairs put up by the complainant. Section 128 provides :

"No suit or other legal proceedings shall lie against the Sarpanch, Upa-Sarpanch, or a Panch or any Officer, servant of Gram Panchayat or any person acting under its direction, in respect of anything done in good faith under this Act or any rule made there under"

11. Whether the act complained of was done in good faith or not, can he ascertained only after evidence is taken in the case. The objection based on Section 128 is premature.

12. In the result, the revision petition fails and is dismissed.