
(1935) 01 MAD CK 0015
In the Madras High Court

Pichai Pillai and Others

APPELLANT

Vs

Balasundara Mudaly and Others

RESPONDENT

Date of Decision : 31-01-1935

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 197

Citation : AIR 1935 Mad 442 : (1935) ILR (Mad) 787 : 157 Ind. Cas. 24 :
(1935) 41 LW 558 : (1935) 68 MLJ 608

Hon'ble Judges : Curgenvan, J

Bench : Division Bench

Judgement

Curgenvan, J.—These five Criminal Revision Petitions relate to prosecutions instituted against Police officers for offences alleged to have

been committed while acting or purporting to act in the discharge of their official duty, and they raise the general question whether the previous

sanction of the Local Government should have been obtained u/s 197 of the Criminal Procedure Code. We have to decide what is the correct

construction to be placed upon the words "any public servant who is not removable from his office save by or with the sanction of a Local

Government or some higher authority.

2. In *Sheik Abdul Kadir Saheb v. Emperor* (1916) 1 M.W.N. 384, Coutts Trotter, J. (after Chief Justice) had to deal with this point in a case in

which the Chairman of a Union Panchayat was prosecuted for the offence of Criminal Breach of Trust. The learned Judge found that

The power of removal was vested in the Local Government by Section 126 of the Madras Local Boards Act and that by Section 160 of the same

Act the Local Government were empowered to delegate this power and in fact by notification had delegated it to the President of the District

Board.

3. Upon this he observes:

Now it is argued in the first place that by that act of delegation on the part of the Government the accused became ipso facto removed from the

category of persons who are not removeable from office without the sanction of the Government of India or the Local Government; because it is

argued that by the act of delegation he becomes removeable by a third authority, namely, the Presidency of the District, Board. To my mind that

argument is unsound and, in my opinion, the delegation by the Local Government of its power to a special officer only means that the Local

Government performs that act itself through the medium of a particular officer as the channel through which it is done; and it is an ordinary case of

qui facit per alium facit per se. It is no doubt done in accordance with the delegation, but nevertheless it remains the act of the Local Government. I

am therefore of opinion that the accused has established that he is within the meaning of this section a public servant not removable from his office

without the sanction of the Local Government.

4. This case was followed by *Bardswell, J.*, in *Narayana v. Emperor* (1934) M.W.N 370. Only one other case directly in point has been cited to

us and it supports the opposite view. In *Emperor v. Jalal-ud-dins* I.L.R.(1925) 48 All. 264 the learned Judges think that the obvious intention of

the language of the section which, as they point out, makes no reference to delegated authority, was to simplify the law-regarding sanction and to

narrow the circle of public servants for whose prosecution sanction was necessary under the previous Code. They confess themselves unable to

follow the judgment of *Coutts Trotter, J.*

5. In several cases in which this question might have been raised it appears to have been taken for granted that the section will not apply to public

servants who are by delegation of powers removable by some authority other than and not superior to the Local Government; see for instance,

Venkayya, In re (1912) 12 M.L.T. 351 *Imperatrix v. Bhagwan Devraj* I.L.R.(1879) 4 Bom. 357 *Venkatesalu Naidu v. Heera-man Chetty* (1898)

2 Weir 226 and *Abboy Naidu v. Kanniappa Chettiar* (1928) 2 Mad. CrL. Case 143.

6. We do not think that the general principle expressed by the phrase *qui facit per alium facit per se* should necessarily be acted upon if it appears

that its application would involve the breach of another legal principle more specifically applying to the case in point. It is an elementary rule in

construing a statute to give due meaning to every part of the language which it employs, and a construction which fails to do this prima facie fails to

give effect to the intention with which the provision was drafted. Sub-section (1) of Section "197, Criminal Procedure Code runs thus:

When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate or when any public servant

who is not removable from his office save by or with the sanction of a Local Government or some higher authority, is accused of any offence

alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such

offence except with the previous sanction of the Local Government.

7. Now, if we adopt the construction accepted by Coutts Trotter, J., the result would be that all servants of Government, as that expression is

commonly understood, will come within the section, because the power to remove them is in every case derived either from the Local Government

or from some higher authority - the Government of India or the Secretary of State. It is true that if the expression " Public Servant" had been used

without any qualification, it would have had to bear the meanings attached to it by Section 21 of the Indian Penal Code, and extended to the

Criminal Procedure Code, by Section 4 of the latter Code; and it would thus have included such persons as jurors, arbitrators and others not

ordinarily comprehended within the term. It may thus be argued that it was the purpose of the framers of the section to exclude "" public servants

of this kind and that the section does so. We do not think that E this accounts for the particularity of the language used. I f the notion of delegation

was present to the minds of the drafters of the section, there was nothing to prevent them from indicating this. Even so, to frame a section on such

lines would have been a very unnatural and a very misleading way of expressing the intention that all Government servants, in the usual acceptation

of that phrase, were to be included. How misleading it would be is shown by the cases we have cited in which the alternative view has been taken

for granted.

8. We think that the section clearly intends to draw a line between public

servants and to provide that only in the case of the higher ranks should the sanction of the Local Government to their prosecution be necessary. This intention appears to us to be so clear from the terms of the section that, while we agree that a protective provision of this nature should be construed as widely as possible, we do not feel called upon to enter into the merits of a policy which thus distinguishes between public servants who may be prosecuted and those who may not be prosecuted without the sanction prescribed. Nor do we think that any valid ground of distinction is to be found in the means adopted to empower the officer beneath the rank of the Local Government to pass an order of removal. Mr. Jayarama Aiyar has endeavoured to distinguish between an act of delegation and an act of empowerment, and between statutory provisions and executive orders. It may be conceded that all such means to achieve the end proposed are nothing more nor less than acts of delegation, and that while so delegating its power the delegating authority does not divest itself of a corresponding power. It is not reasonable to suppose that in framing the section it was intended that any such fine drawn distinctions should be observed, and we conclude accordingly that the expression "" any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority "" will not include public servants whom some lower authority has by law or rule or order been empowered to remove. In the cases now in point admittedly the Police officers are removeable by such authorities - the Police constable involved in Crl. R.C. No. 584 by the District Superintendent of Police and the Sub-Inspectors involved in the other cases by the Deputy Inspector-General of Police.

9. The result is that so far as this point is concerned, the Criminal Revision Petitions fail, and since it is the only point raised in Crl. R.P. Nos. 584, 765, 773 and 829 of 1934 we dismiss these petitions. In Crl. R.P. No. 628 the accused, who is a Sub-Inspector of the Madras City Police, has been convicted under Sections 323 and 355, Indian Penal Code. He has been awarded non-appealable sentences under these sections and we could only interfere if at all in revision. The questions involved are no more than questions of fact and after carefully considering the evidence and the learned third Presidency Magistrate's judgment we are clearly of opinion that

there is-no ground for such interference. We have been asked as
an alternative course to permit a composition of the offences under Sub-section
5(a) of Section 345, Criminal Procedure Code. We do not think
that we ought to exercise this power in the circumstances of the case. The Sub-
Inspector has been convicted of what must for an officer in his
position be regarded as serious offences against a member the public and the
conviction accordingly has an aspect quite other than as it stands
between himself and the complainant. In this case too we must accordingly
dismiss the Revision Petition.