

(1955) 12 MAD CK 0009
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

R. Palikondaperumal Pillai

RESPONDENT

Date of Decision : 08-12-1955

Acts Referred:

Citation : (1957) CriLJ 260 : (1956) 69 LW 287

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Judgement

Somasundaram, J.—This is an appeal by the State against the acquittal of the respondent by the Sub-Divisional Magistrate, Koilpatti. The

case arose out of a complaint preferred against the respondent by the Deputy Registrar of Co-operative Societies, Tirunelveli, for an offence u/s

52 (a) read with Section 55 of the Madras Co-operative Societies Act for furnishing false information by the respondent in his capacity as

secretary of the Co-operative Marketing Society, Sankarankoll.

2. u/s 56 (3) of the Madras Co-operative Societies Act, no prosecution shall be instituted under the Act without the previous sanction of the

Registrar. "Registrar" is defined in Section 2 (g) of the Act as meaning "a person appointed to perform the duties of a Registrar of Co-operative

Societies under this Act." u/s 3 of the Act, "the State Government may appoint a person to be Registrar of Co-operative Societies for the State of

Madras or any portion of it and may, by general or special order, confer on any other persons all or any of the powers of a Registrar under this

Act.

By a notification dated 23rd August 1954, in G. O. No. Ms. 1142, the Government conferred on Deputy Registrars all the powers of a Registrar

under the Act except those referred to under Sections 43, 44, 131 (5) and 57. According to this notification, undoubtedly, the powers, if any, u/s

56 must be deemed to have been conferred on the Deputy Registrar.

He, therefore, gave sanction and himself filed a complaint before the court. The lower court has held that the Deputy Registrar is entitled to give

sanction, but he cannot himself file a complaint. It is on that ground that the lower Court has acquitted the respondent,

3. In appeal, the learned Public Prosecutor contends that since the Government has conferred all the powers of a Registrar on the Deputy

Registrar, except the powers under Sections 43, 44, 51 (9) and 57, the Deputy Registrar must be deemed to be a Registrar within the meaning of

that term and therefore he could himself give sanction and file the complaint,

Prima facie", this argument appears to be quite correct. But it is pointed out by Mr. Kailasam, appearing for the respondent, that there is only one

Registrar appointed under the Act and he is the person referred to in Section 2 (g) of the Act, u/s 3. though the Government may, by general or

special order, confer all the powers of a Registrar, he still does not become a Registrar within the meaning of that expression in 8. 2 (g). Section 3

simply states that the Government may appoint a person to be Registrar of Co-operative Societies, for the Presidency of Madras, or any portion

of it and may, by general or special order, confer on any other persons, all or any of the powers of a Registrar. If any other person is included in

the definition of Registrar, such as the Registrar means a person appointed to perform the duties of a Registrar of Co-operative Societies under this

Act and any other person or persons on whom powers are conferred, then certainly he will be a Registrar within the meaning of that expression.

But the Legislature not having said so, under the definition of "Registrar", the person or persons on whom the Government confers those powers no

doubt has the powers of a Registrar, but he does not become the Registrar himself within the meaning of the expression in Section 2 (g). Though

by the G. O. the Deputy Registrar has got all the powers excepting those mentioned in the sections mentioned above and therefore has all the

powers u/s 56 also still he does not become a Registrar and therefore under 01. (3) the sanction that has got to be given must be by the Registrar

and not by the Deputy Registrar although all the powers may be conferred on

him.

The lower court is wrong in holding that the Deputy Registrar has power to give sanction. The order of acquittal can be upheld only for the reason

that the sanction of the Registrar has not been obtained.

4. But the lower court has further held that the Deputy Registrar cannot himself file a complaint if he gives sanction. There is no warrant for this

proposition. There is no impediment for the Registrar when he gives sanction to file a complaint himself. It is true that the Registrar when he

accords sanction for prosecution has to give notice to the party against whom prosecution is to be launched and then after hearing him has to give

the sanction.

He then acts, no doubt, in a quasi-judicial capacity but that does not mean that when he himself gives sanction he cannot file a complaint to the

court. There is a confusion in the conception that when a Judge gives sanction he cannot file a complaint on the ground that the Judge himself

cannot be the complainant & the complainant cannot himself hear the case. This is not a case where a party after filing the complaint is hearing the

case himself.

The case relied on by Mr. Kailasam in - " Dr. V. Ramakamath and Others Vs. The Surgeon General with the Government of Madras, , has no

application to this case. There the election of certain members was questioned by the defeated members and the sitting of the very elected

members whose elections were questioned alone with the other members to decide the petition of the defeated candidates will amount to the

interested person himself hearing the case, because the very election of those seven members was sought to be questioned and certainly they

cannot hear the petition filed by the other members who were questioning the very election of those members.

That was opposed to all principles of natural Justice and that is what was held in that case. That case has no application to the facts of the present

case.

5. The learned Public Prosecutor brought to my notice the decision of the Supreme Court in - Rameshwar Bhartia Vs. The State of Assam, ,

where their Lordships have held that a sanctioning authority is not disabled u/s 556, Cri. P. C., while trying a case initiated as a result of the

sanction. When a sanctioning authority can itself hear the case, I do not see any reason why the sanctioning authority cannot file a complaint.

The decision of the lower court on this point is no doubt wrong, but as the Deputy Registrar cannot himself give sanction and the complaint can

only be filed with the sanction of the Registrar, which is lacking in this case, the acquittal is justified on that ground.

6. The appeal is therefore dismissed for the reasons mentioned above. But this does not preclude the Registrar giving sanction and prosecuting the respondent again after giving sanction.