

## **PRIVY COUNCIL**

Phanindra Chandra Neogy

Vs.

King

P.C.A.No.27 of 1948

(Lords Simonds, Morton of Henryton and Reid JJ.)

21.10.1948

### **JUDGMENT**

#### **LORD SIMONDS J.**

1. This appeal is brought by special leave from a judgment of the High Court of Judicature at Fort William in Bengal dismissing the appeal of the appellant, Phanindra. Chandra Neogy, from the conviction and sentence passed on him by the Chief Magistrate, Calcutta, on 10th April 1946.

2. The conviction was for an offence under section 161, Penal Code and the sentence was one of twelve months rigorous imprisonment. It is convenient to set out the charge which was in these terms :

"That you Phanindra Chandra Neogy, on or about 10th day of September 1945, in the Town of Calcutta being a public servant to wit, a Railway servant and an inspector in the office of the Regional Controller of Priorities accepted from one Sohanlal a gratification other than your legal remuneration to wit, the sum of Rs. 500 only as a motive or reward for showing favour to the said Sohanlal in the exercise of your official functions relating to an application by the said Sohanlal for being allowed two wagons, one from Allahabad and another from Benares and thereby you the said Phanindra Chandra Neogy committed an offence punishable under section 161, Penal Code and within my cognizance."

3. The single ground upon which the petition for special leave to appeal was based was that, no sanction for the prosecution of the appellant having been obtained either under section 270, Government of India Act, 1935, or under section 197, Criminal PC the Chief Magistrate had no jurisdiction to try or convict him, and it was upon this ground that special leave to appeal was granted, for similar leave had been given in

*Gill v. The King*, a case then pending, in which the same question (together with other questions) was raised.

4. In January 1948, this Board heard, and in February 1948, delivered judgment in *Gill v. The King*,<sup>1</sup>. now reported in LR In the course of that judgment their Lordships thought it proper to express their view upon the scope of Section 197 Criminal PC. Having observed that they found it impossible for any relevant purpose to differentiate between section 270, Government of India Act and section 197, Criminal PC they proceeded as follows:

"A public servant can only be said to act or purport to act in the discharge of his official duty, if the act is such as to lie within the scope of his official duty. Thus a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be, whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office."

Applying this reasoning to the case of Gill, a public servant, who had been charged together with one, Lahiri, with being a party to a criminal conspiracy to cheat the Government, whereby offences under section 120B read with section 420, Penal Code were alleged to have been committed and had also been charged with offences under Section 161 of the Code, their Lordships held that no sanction under section 197, Criminal PC was necessary.

5. In face of this judgment the present appeal appeared to have little chance of success. It was nevertheless argued fully by counsel and their Lordships have had the opportunity of reconsidering the whole question. They cannot accede to the suggestion of counsel that that part of the judgment which has been cited is to be regarded as obiter dictum. The scope of Section 197 and its applicability to Gill's case, (75 IA 41 : AIR 1948 PC 128) were put in the forefront of the written case he presented to the Board and it was the first of his formal reasons that the sanction, for which that section provides, ought to have been, but was not, given. The question was argued at length by the respondent's if not by the appellant's counsel and their Lordships treated it as a matter which required their deliberation and decision. In such circumstances it is irrelevant that a judgment upon other points raised in the case might have rendered such a decision unnecessary.

6. Their Lordships then have before them a decision upon facts which in no material respect differ from those of the present case. Even so, it is, as they recognise, competent for them humbly to tender advice to His Majesty inconsistent with the previous decision, though it can only be in the most exceptional circumstances that such a course should be taken; see *Re: Payment of Compensation to Civil Servants under Article 10 of Agreement for a Treaty between Great Britain and Ireland*, reported in 1929 A. C. at p. 242, and the cases there cited. Recognising the possibility, they have heard full argument and, having done so, see no reason to doubt the validity of the reasoning or the correctness of the conclusion in Gill's case, (75 IA 41 : AIR 1948 PC 128) and they do not think it necessary to repeat what was said there. Learned counsel for the appellant in the present case laid stress upon what he described as a long line of authority in favour of the view that, where the offence charged is an act which would not be an offence unless committed by a public servant, sanction under Section 197 is necessary. Their Lordships without scrutinising the authorities, which do not appear entirely to support this view, would observe that it is the words of a 197 as amended in 1928 and nothing else that must be considered, and that they can see no justification for reading the section as if the words "which under the Criminal Procedure Code is an offence only if committed by a public servant" were inserted in the appropriate place. It is neither with all such offences nor only with such offences that Section 197 deals. On the contrary according to its plain words it deals with offences alleged to have been committed by a public servant "while acting or purporting to act in the discharge of his official duty." To these words a meaning was ascribed in Gill's case, (75 IA 41 : A. I. B. (35) 1948 PC 128) to which their Lordships after reconsideration adhere. It has not been disputed that if Section 197 is so construed, no sanction was necessary for the prosecution of the appellant. Their Lordships have therefore humbly advised His Majesty that this appeal must be dismissed.

Appeal dismissed.

Cases Referred.

1. 75 IA at p. 41 : ( AIR 1948 PC 128).