

BOMBAY HIGH COURT

Emperor

Vs

Yesa Nana Didwagh

(John Beaumont, Kt., C.J. Macklin, J.)

18.11.1915

JUDGMENT

John Beaumont, Kt., C.J.

1. This is a reference made by the Additional Sessions Judge of Satara asking us to quash a committal order under Section 215 of the Criminal Procedure Code. Certain persons have been committed by the Magistrate to the Sessions Court of Satara on charges under Sections 419 and 467, read with Sections 109 and 114 of the Indian Penal Code and Section 82, Sub-section (c) and (d), of the Indian Registration Act. The learned Judge takes the view that the prosecution under Section 82 of the Indian Registration Act is incompetent without the sanction of the registration authority under Section 83 of the Act, and for that reason he invites us to quash the committal order. The question whether a sanction to a prosecution under Section 82 of the Indian Registration Act is required under Section 83 has given rise to a difference of opinion amongst certain of the High Courts of India, but this Court does not seem to have expressed any opinion upon the subject.

2. Now reading the Act in the first place, apart from authority, the sections of the Act imposing penalties are Sections 81 and 82. Section 81 imposes a penalty on a registering officer and every person employed in his office for the purpose of the Act commits certain offences, and Section 82 deals with offences committed before a registering officer. The section deals with making a false statement before a registering officer, intentionally delivering to a registering officer a false copy or translation of a document, falsely personating another in any proceeding or inquiry under the Act, and abetment of any of those offences. Then comes Section 83 which provides that : (I) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

I must confess that but for the difference of opinion which has arisen on the construction of the Act, I should have thought that its meaning was perfectly plain. Section 83 deals only with a prosecution for any offence under the Act coming to the knowledge of a registering officer in his official capacity" and provides in effect that where an offence comes to the knowledge of the registering officer in his official capacity, a prosecution may be commenced by or with the permission of the officers mentioned in the section. But the section has no application whatever to cases in which offences are committed under the Act, but those offences do not come to the knowledge of the registering officer. In a majority of cases probably the registering officer does not know whether a document produced before him is a false document or not, or whether a person appearing before him is personating some other person. To those cases Section 83 seems to me in terms to have no application whatever. This view of the section has been taken by the High Court of Calcutta in *Gopi Nath v. Kuldip Singh*¹ and by the High Court of Madras in *Re Nadpithi*². On the other hand the High Court of Allahabad in a series of cases, of which the latest is a full bench decision, *Emperor v. Muhammad Mehdi*³ has taken the view that Section 83 is a prohibitory section, and that it prevents any prosecution under Section 81 or Section 82 without the sanction of the officers specified in Section 83. That view has also been adopted by the Rangoon High Court in *Nga Pan Going v. King-Emperor* (1926) I.L.R. 4 Rang. 437. The learned Judges who take that view have given reasons, as to the cogency of which I am not altogether satisfied, for thinking that the Legislature must have intended that no prosecution should take place under the Indian Registration Act without the sanction of the registration officers. But they have entirely failed to bring conviction to my mind that, if the Legislature ever entertained such an intention, they have given effect to it by Section 83 of the Act. There are a great many enactments which constitute offences, and prohibit any prosecution in respect of those offences without obtaining a certain sanction. One may illustrate Section 195 and the following sections of the Criminal Procedure Code in which the phraseology adopted is that no Court shall take cognisance of certain offences without obtaining a certain sanction. Another illustration is the Indian Stamp Act, Section 70, in which the phraseology is that no prosecution in respect of any offence punishable under the Act shall be instituted without a certain sanction. And again Section 29 of the Arms Act of 1870, where the language provides that where an offence has been committed, no proceeding shall be instituted without previous sanction. Those are clearly prohibitory sections. Section 83 of the Indian Registration Act is not prohibitory, as far as I can see, either in terms or in intention. On the contrary, it is an enabling section and provides that a prosecution for any offence which comes to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of specified registration officers. I am quite unable to construe that section as being of a prohibitory character. In my opinion, therefore, the committal order was correct, and no order will be made on the reference.

Macklin, J.

3. I agree. To my mind there is no cogent reason for not giving to the section the literal meaning of the words used, which is that, when a prosecution for an offence under the Act does come to the knowledge of a registering officer in his official capacity, then he or some one with his permission may start a prosecution. So far as it goes, the Act does not in terms prevent a prosecution from being started by a private person not in an official capacity. What it does do is to enable an official to start a prosecution in his official capacity. But for the enactment of that section I take it that the ordinary rule that any one may set the criminal law in motion would still have applied; but a prosecution for an offence under this Act, even if started by one of the officers named in Section 83 or with his permission, would still have been a prosecution not in an official capacity but in a private capacity. What the section does is to enable the officers named to use their official position for the purpose of prosecution without personal risk, and I do not think that any other interpretation of the section is justified by the words used.

Cases Referred.

1(1885) I.L.R. 11 Cal. 566, F.B.

2(1917) I.L.R. 40 Mad. 880

3(1934) I.L.R. 57 All. 412, F.B