BOMBAY HIGH COURT

Emperor

Vs

P.A. Joshi

(Sen and Gajendragadkar, JJ.)

08.08.1947

JUDGMENT

Sen, J.

1. This is a reference from the Sessions Judge of Nasik, who has submitted theproceedings in criminal case No. 192 of 1946 in the Court of the City Magistrate, First Class, Nasik, wherein one P.A. Joshi is being tried for offences punishable under Sections 465 and 477 of the Indian Penal Code". The accused made an application to the District Magistrate that the proceedings should be dropped as the previous sanction of the Governor of Bombay Was necessary under the provisions of Section 197 of the Criminal Procedure Code for his prosecution, and as such sanction had not been obtained in this case. The learned Magistrate rejected the application on April 8, 1946. The accused the reupon filed a criminal revision application in the Court of the Sessions Judge of Nasik and again contended that on the facts of this case the previous sanction of the Governor of Bombay under Section 197 of the Criminal Procedure Code was necessary. A few material facts bearing on this question may be stated. The complainant alleged that the accused, who was the Chief Officer of the Nasik Municipality, was appointed the Returning Officer by the Collector in the triennial Municipal ejections in 1945, that on October 27, 1945, he (the complainant) being a candidate for election presented his nomination paper to the accused, and that thereupon the accused made an endorsement on the said paper and said that it was accepted. Two days afterwards, that is, on October 29, 1945, the accused sent for the complainant and told him that his nomination paper was rejected, but on his appealing to the Collector to get the order of rejection cancelled he was successful and his nomination paper was accepted. The complaint of the complainant consisted in an allegation that the accused had fraudulently cancelled the order previously made by him of accepting the nomination paper and had substituted an order of rejection for the order validly made before. The complaint was, therefore, that offences punishable under Sections 465 and 477 had been committed by the accused. This complaint was filed after the election was over, at which election the complainant was successful

in being elected. The learned Sessions Judge raised two points for determination, namely, whether the accused was a public servant within the meaning of Section 19 of the Indian Penal Code, and whether the alleged act was committed while the accused was acting or purporting to act in the discharge of his official duties, and he answered both these points in affirmative. Accordingly he has sent the papers in this case to us for making an appropriate order, namely, that the prosecution is invalid for the want of the requisite sanction.

2. The provisions of Section 197 of the Criminal Procedure Code, so far as they are material to this case, read thus:

> When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, is accused of any offence alleged to have 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, in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his individual judgment.

3. The expression 'Judge' has been thus defined in Section 19 of the Indian Penal Code:The word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment." The learned Judge has held that the accused was a Judge as defined in Section 19 of the Indian Penal Code. He has not regarded this case as analogous to the case of *Queen-Empress v. Tulja*[2] where it was held that the Sub-Registrar was not a Judge and therefore not a 'Court' within the meaning of Section 195 of the Code of Criminal Procedure. He has followed *Sarvothama Rao v. Chairman Municipal Council, Saidapet*[1] and Abboy Naidu v. Kanniappa , and come to the conclusion that the accused, at the date on which he is alleged to have committed the offence in question, was a Judge. Various arguments have been addressed to us on the interpretation of different parts of the definition of the word 'Judge' in Section 19 of the Indian Penal Code, namely, on the interpretation of the expressions 'legal proceedings, civil or criminal', 'judgment' and 'definitive judgment', and different authorities bearing on these questions as well as on the interpretation of analogous provisions of the Criminal Procedure Code and the Indian Penal Code have also been relied on, for instance, cases relating to the interpretation of the expression 'judicial proceeding' used in Section 4(m) of the Criminal Procedure Code and the words ' Court of Justice ' Used in Section 20 of the Indian Penal Code. It seems to us, however, possible to decide the matter before us on a much narrower basis, and that arises out of the expression used in Section 197 of

the Criminal Procedure Code,'who is a Judge'.

4. Mr. Kotwal on behalf of the complaint has urged that the use of the expression 'is' here indicates that the person who is accused must be a Judge at the date of the accusation of the offence, and that whereas in this case he had ceased at such date to hold the office in which he could possibly be said, under the provisions of Section 19 of the Indian Penal Code, to hold a position of a Judge, the protection afforded to him under Section 197 of the Criminal Procedure Code will cease to apply. Prima facie on looking at the language used in the section its itself the argument seems to us to be right, and we find that two High Courts, those of Calcutta and Allahabad, have come to the same conclusion in *Prasad Chandra Banerji v. Emperor*[3] and *Emperor v. Suraj NarainChaube*[4] In the first of these two oases the importance of the word 'is' is pointed out, and it has been observed (p. 116):If it was intended that the protection was to extend not only to a person, who was still in office at the time when the prosecution was to be launched, but also to a person who was not in office at that time, but was in office when the offence charged was said to have been committed, the language of the section would, we think, have been very different.

5. In Emperor v. Suraj Narain Chaube the same question arose, and it was held that where the accused person was not a public servant at the time when he was accused of the offence no sanction of the Local Government was necessary, as at the date of such accusation he had ceased to be such public servant. We think that the language used in Section 197 is so clear that no authority on the point is necessary, but we have been referred to the decision of a single Judge of the Nagpur High Court in In re S.Y. Patil [1937] A.I.R. Nag. 293(Supra) where it was held that the protection conferred by Section 197 would be largely illusory if it were open to people to wait until the public servant had ceased to hold that position and then lodge their complaint, for generally there was no question of limitation in criminal proceedings. It was, therefore, held that the protection was intended even for public servants or Judges who had ceased to be such public servants or Judges at the date of the accusation but who had been such public servants or Judges when the offence alleged was committed. We are not impressed by this argument. For the language of the section seems to us too clear to admit of any doubt as to the interpretation which appears to us to be correct being the right interpretation. One argument used in In re S.Y. Patil was that the amendment of Section 197 made in 1923 was made with the object of widening the protection given to judicial and other public servants. There is nothing to suggest that such was the intention of the Legislature in making the amendment; and, even if that were the intention, we must be guided in interpreting the section by the language used therein and would hold that such intention was not achieved.

6. That being our view, we must hold that in this case no sanction was required under Section

197 of the Criminal Procedure Code. The reference is, therefore, rejected.

Cases Referred.

1(1928) I.L.R. 47 Mad. 585
2(1887) I.L.R. 12 Bom. 36
3[1944] I Cal. 113
4[1938] All. 776