

In Re: S.S. Shirke

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Court : Mumbai

Decided On : Jun-22-1931

Reported in : (1931)33BOMLR1177

Judge : S.S. Patkar, Acg. C.J. and ;Murphy, J.

Appeal No. : Criminal Revision Application No. 109 of 1931

Appellant : In Re: S.S. Shirke

Judgement :

Patkar, Ag. C.J.

1. The question arising in this case is whether the accused can be prosecuted under Section 409 of the Indian Penal Code without the sanction of Government under Section, 197 of the Criminal Procedure Code.

The accused is the administrative officer of a school-board appointed under Section 9(1) of the Bombay Primary Education Act, (Bom. Act IV of 1923), Section 197 of the Criminal Procedure Code relates to a public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority. It is not disputed that the accused is a public servant. Under Section 9(8) of the Bombay Primary Education Act, (Bom. Act IV of 1923), the school board administrative officer shall not, save with the previous sanction of the Government, be removable from office, reduced or suspended, unless by the votes of at least two thirds of the whole number of councilors. It would, therefore,

follow that he can be removed from his office without the previous sanction of the Government when there is a clear majority of two-thirds of its members.

2. Reliance has been placed on behalf of the applicant on the case of *Ramnarayan Sarora v. Parswanath Sen* ILR (1928) Cal 227. That case relates to a chairman, who, under Section 24 of the Bengal Municipal Act, III of 1884, is removable from office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose. But the removal, under the section, of the chairman from his office is by Section 59 of the Act subject to the approval of the Local Government. No such approval of the Local Government is necessary in the case of the present accused if two-thirds of the whole number of the councilors have voted for his removal. The accused, therefore, is not a public servant, who is not removable from his office save by or with the sanction of the Local Government, when he can be removed by the local authority by the votes of at least two-thirds of the whole number of councilors. We, therefore, think that Section 197 does not apply to the present case. Rule must, therefore, be discharged.