

In Re: Narayan Janu Mahajan

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Court : Mumbai

Decided On : Aug-22-1930

Reported in : (1930)32BOMLR1493

Judge : Madgavkar and ;Barlee, JJ.

Appeal No. : Criminal Application for Revision No. 227 of 1930

Appellant : In Re: Narayan Janu Mahajan

Judgement :

Madgavkar, J.

1. The question in this application is, whether the complaint of the petitioner against police and the mulki patils of Savde under Sections 323, 504 and 506, Indian Penal Code, cannot proceed without the sanction of Government under Section 197, Criminal Procedure Code, as the District Magistrate has held.

2. The complaint was that the talati and these two patila compelled the petitioner against his will to pay a certain amount for the Taluka Agricultural Association, by means of force, abuse, and intimidation, and it is argued for the petitioner, that the case falls within the ruling of this Court in Narayan v. Yeshwant and Dattaraya v. Annappa : AIR1928 Bom352 and Emperor v. Hanmant : (1929)31BOMLR789 , and sanction was not necessary. It is contended for Government that it is Government which had asked the police and revenue, patils to enrol subscribers

and recover the subscription for this association, and that the ordinary act of abuse committed by them in recovering such a subscription are acts committed by them 'while acting or purporting to act in the discharge of their official duty' within the meaning of Section 197, Criminal Procedure Code.

3. We are unable to uphold the contention for Government. I have indicated my own view in the Full Bench judgment above, to which I was a party, at pages 1044 and 1045. Assuming that Government desired to help this Association and that they asked the village officers to encourage and to collect the subscriptions for them, it is not alleged that Government authorised abuse, intimidation, or force, towards such an object however laudable, Nor can we agree that because the village officers are asked to encourage the Association, therefore, abuse, intimidation or force, or hurt, caused by them for the collection of the subscription are acts purporting or falling in the discharge of their official duties. If officials cannot forget that they are officials, it does not follow that all acts are committed by them in the discharge of their official duties however little they may have to do with the conscientious discharge of these duties. Speaking for myself, I should be reluctant to encourage an extension of the official duties in the direction of abuse or assault or to encourage a notion that officials as such are above the law in respect of offences under Sections 323, 504, and 506, Indian Penal Code, any more than the police in the Full Bench case referred to above. The other argument for Government, I am constrained to say, betrays some confusion of thought. It may be that in the class of persons from which village officers are drawn, certain abusive terms are so common that they are not considered as serious abuse as might even be the case in a higher class, and that they might be considered by the Courts in certain cases to fall within the purview of Section 95, Indian Penal Code. That, however, is a different question which it will be open to the Magistrate to consider when he tries the case. We are not called upon, at this stage, to express our opinion as to what acts, if any, the accused are proved to have committed or what legal offence if any, such acts, if proved, might constitute. The single question which we have to decide is the question of sanction in respect of the petitioner's complaint, in whole or in part, as against the accused salati and the patils. Confining ourselves to that point, on the authority of the Full Bench decision, the view of the District Magistrate that sanction was necessary in the

case of the patils is not, in our opinion, correct in law.

4. For these reasons, we make the rule absolute, set aside the order of the District Magistrate, and direct the trying Magistrate to deal with the complaint against all the accused in accordance with the law.

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