

In Re: Alexander George Gray

In Re: Alexander George Gray

SooperKanoon Citation : sooperkanoon.com/342915

Court : Mumbai

Decided On : Dec-13-1933

Reported in : AIR1934Bom183; (1934)36BOMLR320

Judge : John Beaumont, Kt., C.J. and ;Barlee, J.

Appeal No. : Criminal Application For Revision No. 330 of 1933

Appellant : In Re: Alexander George Gray

Judgement :

Beaumont, Kt., C.J.

1. This is an application in revision against an order of the Chief Presidency Magistrate in which he held that he had no power to take cognizance of an offence under Section 120B of the Indian Penal Code, since consent in writing had not been obtained under Section 196A of the Criminal Procedure Code. The complaint was originally presented to the Officiating Chief Presidency Magistrate on September 2, 1933. He made an order that summons should be issued against the three accused under Sections 421, 422 and 120B of the Indian Penal Code. Subsequently the complaint came before the Chief Presidency Magistrate after his return to duty, and he held that he had no power to take cognizance of the complaint under Section 120B. Two points were raised before him, first that the officiating Chief Presidency Magistrate had no power under Section 196A of the Criminal Procedure Code to grant the consent, and, alternatively, that, if he had

the power, he had not, in fact, given the consent required by that section. The learned Chief Presidency Magistrate was of opinion that, on the construction of Section 196A, the officiating Chief Presidency Magistrate had power to give the requisite consent without being empowered in this behalf by the Local Government, but that in fact he had not given such consent.

2. Section 196A provides that no Court shall take cognizance of the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code except with certain sanctions. Sub-section (2), which is the material one in this case, provides that cognizance shall not be taken 'unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government, has, by order in writing, consented to the initiation of the proceedings'. The point of construction which arises on that section is whether the words 'empowered in this behalf by the Local Government' govern only 'District Magistrate' or govern also 'Chief Presidency Magistrate'. It is admitted that the Local Government has not in fact conferred any powers under that section upon the Chief Presidency Magistrate. The learned Chief Presidency Magistrate was of opinion that the words 'empowered in this behalf by the Local Government' govern only the words 'District Magistrate,' and that a Chief Presidency Magistrate or an officiating Chief Presidency Magistrate has power to consent conferred upon him directly by the section. Now grammatically, I think, the words can be read either way, and we must endeavour to ascertain from the language of the section and the surrounding circumstances what was the real object of the legislature. If the power to consent to the initiation of proceedings had been vested under the section in a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government, I think there would have been a good deal of force in the contention that the words 'empowered in this behalf by the Local Government' govern only 'District Magistrate,' because there is only one Chief Presidency Magistrate in a Presidency, and there are a good many District Magistrates varying in point of seniority, and possibly, to some extent, in capacity, and there might be good reason for differentiation between them. But that is not what the section provides. The section confers the power of consenting, in the first instance, unquestionably upon the Local Government. Then come the words, 'or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the

Local Government'. It seems to me very unlikely that the Legislature intended to confer this right of consenting upon two competing authorities, upon the Local Government, and at the same time, upon the Chief Presidency Magistrate. I think that what the section does is to confer the power on the Local Government, but to enable the Local Government to delegate that power, if they so think fit, to a Chief Presidency Magistrate or to a District Magistrate. If the Local Government do not exercise their power of delegation, then they alone can give consent under the section; and as they have not empowered the Chief Presidency Magistrate, it seems to me-that the Chief Presidency Magistrate has no power to give consent. I have assumed that the officiating Chief Presidency Magistrate had the same powers as the Chief Presidency Magistrate. That being so, it is not necessary for us to consider the further question whether the order which was made on September 2, 1933, in fact amounted to a consent under Section 196A. We, therefore, make no order on the application.

Barlee, J.

3. I agree. Owing to the absence of an article before the words 'District Magistrate,' I have a slight prejudice in favour of the view that the words 'empowered in this behalf by the Local Government' qualify the whole sentence beginning with ' a Chief Presidency Magistrate or District Magistrate' and not merely the words 'District Magistrate'. As the matter is not free from doubt, we are justified in considering the substance of the section, to find out the probable intention of the legislature, and if we do so, I feel clear that it is much more likely that the legislature intended to class Chief Presidency Magistrates with District Magistrates, rather than put the Chief Presidency Magistrate in a class with the Local Government and differentiate him from a District Magistrate. The Chief Presidency Magistrate has the same position in a presidency town as the District Magistrate has in the district, and usually in the course of the Code they are classed together. This view seems to gain support from the wording of the next Section 196B, where District Magistrates and Chief Presidency Magistrates are mentioned together and empowered to do certain acts in connection with complaints under the two preceding sections. I, therefore, agree with the order made by His Lordship the Chief Justice.

