

In Re: K. Muniswami Chetti and ors.

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Court : Andhra Pradesh

Decided On : Nov-26-1956

Reported in : 1958CriLJ144

Judge : Krishna Rao, J.

Appellant : In Re: K. Muniswami Chetti and ors.

Judgement :

ORDER

Krishna Rao, J.

1. The question raised in these revision cases relates to the scope of Section 106 of the Madras Village Panchayats Act X of 1850, which is in the following terms:

When the President, executive authority or any member, is accused of any offence alleged to have been 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 of the Government.

In Criminal Revision Case No. 334 of 1955, the petitioner is the ex-president of the panchayat, Lakkanapalli and has been charge-sheeted by the Sub Inspector of police, Byreddipalli for an offence punishable under Section 409, Indian penal Code. The allegation in the charge-sheet is that he was the President of the Panchayat, Lakkanapalli from 16-4-1953 to 6-5-1955 and that between 4-12-53

and 13-5-54 he criminally misappropriated a sum of Rs. 678-6-10 by not remitting it into the treasury.

He was removed from the office of president on 6-5-55 and the charge-sheet was laid against 1958 Cri. L. J. D.F 10 him subsequently on 31-5-55. In Criminal Revision Case No. 335 of 1955, the petitioner was the Vice-President of the same Panchayat during the same period from 16-4-1953 to 6-5-1955. The charge-sheet against him was laid by the same Sub Inspector on 13-6-55, after he was removed from the office of vice President, for an offence punishable under Section 409. Indian Penal Code.

It alleges that he criminally misappropriated without crediting to panchayat funds two sums, namely Rs. 2-0-6 and Re. 1-8-6, which he collected on 28-9-53 and 31-8-53 respectively towards house tax. In Criminal Revision Case Nos. 4 to 7 of 1956. the petitioner is the ex-president of the Panchayat, Tavanampalli, They arise out of four charge-sheets filed against him by the Sub Inspector of Police, Mogili Veokatagiri, one for an offence punishable under Section 477A, Indian Penal Code for falsification of the accounts of the panchayat between 3-7-52 to 15-7-53 and the other three for offences punishable under Section 409, Indian Penal Code for misappropriation during that period of Rs. 110/- of Rs, 250/- and of Rs. 81-9-0 belonging to the panchayat. He was the president of the Panchayat board from 19-3-491 until 15-7-53, when he handed over charge to the next elected president and the charge-sheets were laid against him subsequently on 9-10-54. All the charge-sheets were taken on file by the Magistrates before whom they were laid and all of them; are pending enquiry before the Sub-Divisional' Magistrate, Kuppam.

The respective accused filed petitions raising a preliminary objection that as there was no previous sanction of the Government for prosecuting them, the offences could not be taken cognizance of and they should be discharged. The sub Divisional Magistrate held that no previous sanction of the Government was necessary under Section 106, as the accused did not hold the office of president or vice-president on the dates on which the accusations were made and the Court was asked to take cognizance of the offences. On this ground, he over-ruled the

objection and therefore the accused have come up in revision.

2. It was not disputed before the Magistrate and it was conceded before me that in all these cases the offences are alleged to have been committed by the respective accused while acting or purporting to act in the discharge of their official duty. This is clear from a perusal of the allegations in the charge-sheets and there can be no doubt that the acts complained of were directly concerned with the official duties of the respective accused, in accordance with the principles explained by the Supreme Court in *Amrik Singh v. State Of Pepsu* (S) A.I.R. 1955 S.C. 308 (A).

It is also common ground that except the petitioner in Criminal Revision Case No, 335 of 1955, who continued as a member of the panchayat although he was removed from the office of vice-president, the petitioner in the other cases did not hold any of the offices mentioned in Section 106 at the time when the charge-sheets against them were laid and when the Magistrates took cognizance of the offences. The contention of the learned Counsel for the petitioners is that the question as to whether the accused held the office at, the time of the accusation or at the time when the court took cognizance of the offence is immaterial and that the previous sanction of the Government is necessary in all cases where a president, executive authority or a member of panchayat is alleged as such to have committed an offence.

On the other hand, the contention of the learned Public Prosecutor is that in order that Section 106 may apply, the condition as to the official status of the accused must be satisfied not only when the alleged offence was committed but also when the complaint is made. He concedes that so far as Criminal Revision Case No, 335 of 1955 is concerned, the objection under Section 106 is well founded, as the accused was a member of Panchayat when the charge-sheet was laid. But he urges that in other cases, Section 106 has no application and cannot be called in aid by the two petitioners concerned.

3. There appears to be no direct decision on the precise point raised in regard to the construction of Section 106 of the Madras Village Panchayats Act X of 1950. No doubt there is an observation by Chandra Reddy J. in *Veeraswamy v. Swarna Ramiah* 1955 Andh. LT Cr. 37 (B).

It is difficult to see how a person who ceased to be the President could be said to be a President for purposes of Section 106 of the Act. In fact the section in terms can apply only to a person who is acting as President or Vice-President.' However that was a case in which the accused, Who was the president, of a Panchayat until 17-1-53, failed thereafter to handover some of the properties of the Panchayat to the complainant, who was elected President on that date. He was therefore convicted under Section 116 (3) of the Act. The contention was that the accused an ex-president came within the purview of Section 106, because his failure to deliver the properties of the panchayat was while acting or purporting to act in the discharge of his official duty.

The observation was made in repelling the contention that an ex-president's failure to handover records is an official act. It will be noticed that under Section 21 of the Act, a President is directly elected by the electorate of the Village. He is not like the vice-president elected from among the members. Therefore when he ceases to be the President, he is not a member and does not hold any office pertaining to the panchayat. In these circumstances, as urged by the learned Counsel for the petitioners an ex-president cannot possibly have any official duty and it may be that the observations of Chandra Reddy J. merely meant that a person who ceased to be the president and to have any official duty cannot thereafter be said to be acting or purporting to act in the discharge of his official duty for the purpose of Section 106. As the act complained of was not concerned with official duty, the further question as to whether the section required the accused to have the official status at the time of the complaint did not therefore arise for consideration.

4. The learned Magistrate relied on decisions which construed the analogous provisions of Section 227-A of the Madras Local Boards Act, 1920, Section 197 of the Code of Criminal procedure and Section 6 of the Prevention of Corruption Act, 1947. Section 227-A of the Madras Local Boards Act (XIV of 1920) read thus:

When the president or any member of a local board is accused of any offence alleged to have been 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 of the Provincial Government.

5. In the case of Bakhavathsalu Naidu v. Ramanuja Naidu. A.I.R. 1933 Mad. 326 (C. a President of a Panchayat was prosecuted under Section 208 (3) of the Madras Local Boards Act for failing to handover documents etc., to his successor, Burn J. said:

I cannot accept the argument of Mr. Ethiraj that even if he had ceased to be President, he nevertheless purported to continue to act as the President, and therefore could not be prosecuted without the sanction of the Local Government. It seems to be self evident that a person who has ceased to be President can thenceforth neither act, or purport to act, though he may pretend to act as President.

The point canvassed was limited to whether the act complained of was concerned with official duty as a President and not as a member. As it was negatived, the further question as to the status of the accused at the time of the complaint did not arise. Three more decisions under Section 227-A of the Madras Local Boards Act have been cited before me. In the case of Subbayya v. Venkata Narasayya A.I.R. 1939 Mad. 59a (D), Lakshmanrao J. held that previous sanction of the Government was necessary for the prosecution under Section 208(3) of a vice-president of a panchayat board who was acting as President and declined to handover charge to the newly elected president, as the offence was committed while acting or purporting to act in the discharge of official duty.

Similarly in In Re Subramania Mudali A.I.R. 1940 Mad. 297 (E) Pandrang Rao J. held that sanction was necessary for the prosecution under Section 208 (2) and (3) of a member of a panchayat, who was appointed temporary president and continued to exercise the functions of a temporary president and failed to hand over one pie being the panchayat funds to the newly elected president. The reasoning of the learned Judge was:

The acts or omissions alleged against the petitioner in this case were with reference to something intimately related to his position as a member of the panchayat board or as some time temporary president of the Board.

In both these decisions also, the question canvassed was whether the act complained of was an official act. No point seems to have been raised as to the official status of the accused at the time of the complaint and perhaps did not arise as he continued as a member of the panchayat. The decision of Horwill, J., in *In Re Chengiah Chetty* A.I.R. 1942 Mad. 745 (2) (P) relates to the case of a superseded panchayat and proceeded on the ground that the accused, who failed to handover the records, had no official duty at the time and could not have acted or purported to have acted in the discharge of his official duty. Thus in all these cases, the decisions turned on the questions whether the initial condition as to whether the act complained of was an official act was satisfied.

The further question as to whether the action embodied a further condition as to the official status of the accused at the time of the complaint was not raised nor considered.

6. Turning to Section 197 of the Criminal Procedure Code, Sub-section (1) thereof reads thus:

When any person who is a Judge within the meaning of Section 19 Of the Indian Penal Code, or when any Magistrate, Or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been 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

a) in the case of a person employed in connection with tile affA.I.R.s of the Union of the Central Government; and

b) in the case of a person employed in connection with the affairs of a State of the State Government.

As the verb 'is' in the present tense Is found in the clauses 'who is a judge' and 'who is not removable from his office', it has been held in a number of decisions that the status of 'Judge', 'Magistrate' and 'Public Servant' mentioned in the Sub-

section refers to the status of the accused at the time of the initiation of the prosecution and that if the accused does not enjoy that status at the present time no sanction under Section 197 is required. Instances of such decisions are: *Su-Raj Narain v. Emperor*. A.I.R. 1938 All, 513 (G);, *Prosad Chandra v. Emperor* A.I.R. 1943 Cal 527 (H)i, *Emperor v. P.A. Joshi* A.I.R. 1948 Bom, 248 (i) and *State v. Guruchaian Singh* .

In Section 6 of the Prevention of Corruption Act, 1947, there are similar adjectival clauses containing the words 'who is' and therefore the protection afforded by that section also has been held to cover only persons who are public servants on the date of the prosecution: See *Karri Dhyani Singh v. State* : AIR1953 All470 and *State of Bombay v. Vishwakant* : AIR1954 Bom109 It is rightly contended on behalf of the petitioners that these decisions ought not to guide us in the constructions of Section 106 of the Madras Village Panchayats Act, 1950, the language of which is not in pari materia.

7. However, in the case of *State Government v. Hifazul Rahman* A.I.R. 1952 Nag Vi (M), a Division Bench of the Nagpur High Court construed the words 'when any public servant..... is accused of any offence' in Section 197 (1) of the Criminal Procedure Code, apart from and independently of the clause 'who is not removable' etc. The learned Judges held that these words must necessarily be construed as meaning that the person accused is a public servant at the time of the accusation.

The contention that the protection given by the section would be illusory if it were open to people to wait until the public servant ceases to hold office and that the section would afford no protection to persons on the verge of retirement was repelled on the ground that the language used by the legislature is not susceptible of a different interpretation. The reasoning in this decision is In point to the construction of the clause 'when the president, vice-president, executive authority or any member is accused of any offence' in Section 106.

8. A plain reading of Section 106 shows that there are two conditions precedent to the prohibition thereunder, viz., (1) that the accused is the president, executive authority or a member of a panchayat, and (2) that the offence is alleged to have

been committed by him while acting or purporting to act in the discharge of his official duty. The Court is ordinarily expected to determine at the time it first takes cognizance of the offence whether these conditions exist.

Therefore both these conditions must be satisfied at the time when a criminal Court takes cognizance of the offence in the exercise of its original Jurisdiction under Section 190 of the Criminal Procedure Code. The point of time is when the complaint or police report or information is received by the Magistrate. It must be at that time that the accused has to hold the status of the president, executive authority or a member of a Panchayat in order to satisfy the first condition.

The learned Counsel argued that the prohibition under Section 106 is directed at the offence and has no relation at all to the status of the accused. If so, one would except the wording of the section to have been, 'no Court shall take cognizance of any offence alleged to have been committed by the president, executive authority or any member while acting or purporting to act in the discharge of his official duty except with the previous sanction of the Government.' Thus the language of the section does not support the view that the prohibition relates only to the character of the offence complained of, which would require the official status for the accused only at the time of the commission of the offence.

9. The learned Counsel urged that the manifest object of the section is to protect the president, executive authority and the members of panchayats from frivolous and vexatious complaints in respect of their official acts, by providing the safeguard of previous sanction by the Government and that this object would be defeated if it is limited to the period during which the president, the executive authority or the member holds office. It was pointed out that so far as the president and the members are concerned, their maximum term of office is 3 years under Section 21 of the Act and that they are removable under Section 47 before the expiry of their term by the Inspector of Local Boards and Municipal Councils, who is an authority inferior to the State Government.

So far as the executive authority of panchayats are concerned, it was pointed out that they are often senior clerks from other offices, who are liable to be reverted, and thereby cease at any time to hold the post of executive authority. It was

argued that the section would therefore have little content, if they are protected from frivolous and vexatious complaints in respect of their official acts only during their actual term of office as president or executive authority or members.

But it is a fundamental rule of construction that the object of a section has to be gathered as far as possible from its language. Section 106 may well be based on the view that the Government which is the ultimate authority in the State for the supervision of the administration of panchayats, should be apprised as early as possible of any delinquencies by the presidents, executive authorities or members in order that it may take remedial action in the public interest without delay.

The general law provides safeguards against frivolous and vexatious complaints, such as in Section 250, Criminal Procedure Code. These safeguards may be presumed to be sufficient for office holders of panchayats also, unless the legislature says otherwise, expressly or by necessary implication. It does not appear reasonable to construe the object of the section as the setting up of a parallel executive tribunal to determine whether an offence has been committed, before adjudication by the ordinary tribunals in the State.

The effect of the section is to restrict the citizens' right of access to criminal Courts under the general law. It must therefore be strictly construed and the protection afforded by it ought not to be extended beyond what is warranted under the terms of the section. As it is only a procedural provision, it cannot be deemed to confer on presidents, executive authorities and members of panchayats a vested right of previous sanction by the Government as a condition precedent to their prosecution.

In my judgment, therefore, the accused must hold the office of president, executive authority or member of a panchayat at the time the Court is invited to take cognizance of the offence in order to be entitled to the benefit of Section 106. Criminal Revision Case No. 334 of 1955 and Nos. 4 to 7 of 1955 are accordingly dismissed.

10. As regards Criminal Revision Case No. 835 of 1955 another ground given by the Magistrate for holding the petitioner is that Section 106 does not specifically

mention about vice-presidents of panchayats. But under Section 22 of the Act, a vice-president has to be elected by the panchayat from among its members. While holding the office and discharging the functions of a vice-president, he continues to be a member of the panchayat.

The official acts of a vice-president therefore come within the purview of acts in the discharge of his official duty as a member of the panchayat. This was the principle of the reasoning in *Md. Rafiq v. Emperor* A.I.R. 1930 Lah 147 (N) & *Emperor v. Hiralal Das* A.I.R. 1939 Cal 636 (O) and the position is not disputed by the learned Public prosecutor. It is also conceded that the petitioner was a member of a panchayat when the Magistrate took cognizance of the offence with which he was charge-sheeted and that there was no previous sanction of the Government for his prosecution.

The revision petition is therefore allowed and there will be an order discharging the accused in C.C. No. 69 of 1955 on the file of the Sub., Divisional Magistrate, Kuppam.

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