

Kailashnarain Vs. State

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Court : Madhya Pradesh

Decided On : Nov-24-1959

Reported in : AIR1960MP291; 1960CriLJ1220

Judge : Abdul Hakim Khan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197; Madhya Bharat Municipalities Act, 1954 - Sections 16

Appeal No. : Criminal Revn. No. 130 of 1959

Appellant : Kailashnarain

Respondent : State

Advocate for Def. : P.L. Dubey, Addl. Govt. Adv.

Advocate for Pet/Ap. : Inamdar, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Abdul Hakim Khan, J.

1. The facts giving rise to this revision are that the applicant was the President of Second Class Municipality, Khilchipur, After the term of Municipality was over, he

sought re-election and was elected a councillor of the Khilchipur Municipality. At present the accused is a councillor of the Khilchipur Municipality and is not its President. The Police filed a Challan against him under Section 409 Indian Penal Code for the offence of criminal breach of trust alleged to be committed by him while he was President of the Municipality, The applicant raised the objection that according to Section 42 of the Municipalities Act (Act No. 1 of 1954) he was a public servant and that having regard to the provisions of Section 197 of the Criminal Procedure Code, the court was not competent to take cognizance of the offence without the previous sanction of Government. The trial Court overruled that objection on the ground that his term of office as President had been over and the offence being in respect of an act when he was President, no sanction under Section 197 Cr. P. Code was necessary. The trial Court relied upon a decision of the Supreme Court reported in S. A. Ven-kataraman v. State, AIR 1958 SC 107. It is against this decision that the present revision is filed.

2. The object of Section 197 Cr. P. Code is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed while acting or purporting to act as public servant, It is not every public servant that the section protects. It clearly draws a line between public servants and public servants and provides that only in the case of higher ranks, sanction of Government is necessary for prosecution. It affords protection to such public servants only who are removable either by State Government or the Central Government. In the present case according to Section 16 of the M. B. Municipalities Act of 1954, a councillor (and the applicant was and is a councillor) is removable by the Inspector General of Municipalities. It is therefore obvious that his case does not attract the application of Section 197 of the Criminal Procedure Code.

3. Mr. Inarndar, learned counsel, for the applicant has argued that according to Section 16(1) (A) of the Municipalities Act, the Inspector General can remove him only after the Government has given its opinion to the effect that the continuance of a councillor was not desirable either in the interest of the public or the Municipality. He contends that the opinion of the Government being a condition precedent, in effect it is the Government that removes him and that, therefore, the

applicant is a person removable only by the State Government. But one should make distinction between the authority empowered to remove a person and the condition under which he is removable. It is obvious that in the case of Municipality other than the City Municipality (it is admitted that Khilchipur Municipality is not a City Municipality), it is the Inspector General who is empowered to remove a councillor.

4. Again we find that according to Section 16 (1) (B), if the councillors pass a resolution, supported by at least two-third of the total majority of them, against a councillor, the Inspector General of Municipalities has been given the power to remove such a person. In this instance no opinion of the Government is at all necessary. As I have said earlier, I repeat again, that there is a clear distinction between the powers given to an authority to remove a person and the conditions under which he shall be removed. I hold that the Inspector General of Municipalities can remove the applicant and therefore no sanction of the Government is at all necessary, and that the Magistrate is competent to take cognizance of the case without sanction.

5. In view, of what as I have said above, it is unnecessary to consider whether after the termination of his term of office as the President, the applicant still continues to be a public servant by reason of the fact that he was re-elected a councillor.

6. For reasons stated above, I disallow therevision.