

**State of Rajasthan Vs. Onkardas**

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**Court :** Rajasthan

**Decided On :** Feb-05-1960

**Reported in :** AIR1960Raj247; 1960CriLJ1375

**Judge :** Jagat Narayan, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 197; Indian Penal Code (IPC) - Sections 420 and 468

**Appeal No. :** Criminal Revn. No. 60 of 1959

**Appellant :** State of Rajasthan

**Respondent :** Onkardas

**Advocate for Pet/Ap. :** B.C. Chatterji, Asst. Govt. Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

Jagat Narayan, J.

1. This is a revision application by the State against an order of the Sub-Divisional Magistrate, Pokaran, dated 13-8-1958 holding that Onkar-das respondent could not be prosecuted without the sanction of the Government under Section 197 Cr. P. C. The respondent did not appear in spite of notice.

2. The respondent was the Chairman of the Pokaran Municipal Board upto 4-7-1956. A challan was submitted by the police in the court of the S. D. M. Pokaran on 7-7-58 under Ss. 420 and 468 I. P. C. in which it was alleged that a journey from Pokaran to Jaipur for which the respondent drew travelling allowance in his capacity as Chairman of the Pokaran Municipal Board was in fact undertaken for his private purpose.

Two contentions were raised before me on behalf of the State. The first contention is that it cannot be said that the offences of cheating or forgery were committed in the discharge or purport to discharge of public duties and so Section 197 Cr. P. C. is not attracted. The words used in that section are:

'When any person ..... 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 ..... in the case of a person employed in connection with the affairs of a State, of the State Government'.

What is the proper interpretation to be put on the above words was explained by their Lordships of the Supreme Court in Amrik Singh v. State of Pepsu, (S) AIR 1955 SC 509 and Matajog Dobey v. H. C. Bhari, (S) AIR 1956 SC 44. In my opinion the sub- mission of the T. A. Bill and the drawing of the travelling allowance are acts which are directly concerned with the respondent's official duties, while he was Chairman of the Municipal

Board Pokaran. In this view of the matter the first contention raised on behalf of the State has no force.

3. The second contention is that the protection under Section 197 Cr. P. C. is only available to a person who is a public servant if he continues to hold that office on the date on which the Court takes cognizance of the case. This point was not raised on behalf of the State before the learned Sessions Judge. There was a conflict of opinion on the question whether the word 'is' in the phrase 'who is not removable from his office save by or with the sanction of a State Government' refers to the date on which the alleged offence was committed or the date on which the court takes cognizance of the case.

In Suganchand v. Narain Das, AIR 1932 Sind 177 and In re, S. Y. Patil, AIR 1937 Nag 293 it was held that the word refers to the date on which the alleged offence was committed. In a subsequent decision of the Nagpur High Court namely M. P. State v. Hafizul Rahman, AIR 1952 Nag 12 it was held that the word referred to the date on which the court takes cognizance of the case and that the protection under Section 197 Cr. P. C. is not available to a public servant who has ceased to hold office on the date on which cognizance of the offence is taken.

The same view was taken by the Allahabad High Court in Ram Dhyani Singh v. State, AIR 1953 All 470 and by the Bombay High Court in State of Bombay v. Vishwakant Shrikant, AIR 1954 Bom 109.

4. A similar question arose in connection with 'the interpretation of Section 6 of the Prevention of Corruption Act which runs as follows:

'No Court shall take cognizance of an offence punishable under Section 161 ..... or under sub-Section (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction --

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government or some higher authority of the Central Government.

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from the office save with the sanction of the State Government or some higher authority of the State Government.

(c) in the case of any other person, of the authority competent to remove him from his office'.

Their Lordships of the Supreme Court held in S. A. Venkataraman v. The State, AIR 1958 SC 107 that where the accused has ceased to be a public servant at the time the Court takes cognizance of the offence alleged to have been committed by him as public servant, the provisions of Section 6 do not apply and the prosecution against him is not vitiated by the lack of a previous sanction by a competent authority.

5. I am accordingly of the view that the protection under Section 197 Cr. P. C. is only available if the person concerned continues to hold the public office on the date on which cognizance of the offence is taken.

6. The respondent ceased to be Chairman of the Pokaran Municipal Board on 4-7-1956. He was no longer holding that office when the challan was presented in the court of the learned S. D. M. on 7-7-58. No sanction under Section 197 Cr. P. C. was therefore required.

7. I accordingly allowed the application and set aside the order of the learned Magistrate dated 13-8-58 holding that the respondent could not be prosecuted without the sanction of Government under Section 197 Cr. P.'C.

8. Let the record be returned immediately so that the trial of the respondent on the charges under Sections 420 and 468 I. P. C. may be proceeded with.