

**In Re: Ganapathi Goundan**

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**SooperKanoon Citation :** [sooperkanoon.com/775608](http://sooperkanoon.com/775608)

**Court :** Chennai

**Decided On :** Nov-23-1931

**Reported in :** (1932)62MLJ223

**Appellant :** In Re: Ganapathi Goundan

**Judgement :**

ORDER

**Wallace, J.**

1. Petitioner seeks to have quashed the order of the Sub-Magistrate, Palladam, committing him for trial to the Sessions Court, Coimbatore, for offences under Sections 330, 343 and 348, Indian Penal Code. Petitioner is a Village Magistrate and contends that the commitment is invalid for want of sanction under Section 197(1), Criminal Procedure Code. The allegation is that on a complaint put in to him by D.W. 6, brother of a woman called Ramakkal, wife of P.W. 2, petitioner sent for P.Ws. 1, 2 and 3 at different times, had them brought by the village menials to the chavadi and shut them up there, and while they were there also tortured P.W. 1 and P.W. 2 by pushing needles under their finger nails in order to extort a confession of the murder. As a matter of fact, the woman had not been murdered and turned up later safe and sound. It is urged that as the Village Munsif has authority to arrest and confine suspected murderers, the alleged offences were committed by him 'while acting or purporting to act in the discharge of his official duty'.

2. The exact import of the phrase and of the vaguer phrase which stood in its place prior to the amendment of 1923 has been the subject of numerous decisions. My own view is that the phrase in the amended section means 'doing or purporting to do the sort of act which the law or rules framed under the law allow him to do by virtue of his office.' It is only in respect of acts done under colour of his office that a Village Munsif is entitled to and is given protection under the section. In this view there is no difficulty in deciding the case so far as the allegation of wrongful confinement is concerned. Confinement of a person on suspicion that he has committed a murder is permitted to the Village Munsif by Section 13 of the Madras Village Police Regulation XI of 1816. So that such confinement is the sort of act which the law will in certain circumstances permit. In a case then where the circumstances do not in law justify the confinement, the Village Munsif would nevertheless be purporting to do an act which is permitted by virtue of his office and Section 197 would apply. The charge under Sections 343 and 348 involves the charge of wrongful confinement and there fore will require previous sanction, under Section 197. But where the act is not the sort of act which the Village Munsif is permitted by the law to do, I do not see how it can be contended that in committing it he is acting or purporting to act in the discharge of his official duty. It cannot be contended that his official duty permits him to do anything of the nature of causing hurt or applying torture to persons confined by him lawfully or under pretext of law. I would, therefore, be prepared to hold that in the matter of the alleged offence under Section 330, no sanction is required.

3. It is argued for petitioner that my view is opposed to the latest ruling of a Bench of this Court in *Gangaraju v. Venki* I.L.R. (1928) 52 M. 602 : 57 M.L.J. 31 and that that ruling is to be interpreted as laying down that, when the Village Munsif has started out on an official act and so long as he is continuing to carry out that act, anything and everything he does in connection with that act is done or purports to be done in his official capacity. So that, as I put it to petitioner's learned counsel, if the Village Munsif by virtue of his office, puts a woman in confinement and then commits rape on or adultery with her, or murders her, he is doing those things while acting or purporting to act in his official capacity. I do not think the Bench intended to lay down any such proposition.

4. It is a sound rule that no judgment is to be pressed further than was necessary for the facts of the case with which it was dealing. The offence alleged in the case of *Gangaraju v. Venki* I.L.R. (1928) 52 M. 602 : 57 M.L.J. 31 was wrongful confinement, an act which, as I have already noted, might be, and in that was, a clear case of the Village Munsif purporting to act in his official capacity. My attention was specially called to the words of the learned Judges at p. 608 'we hold that, if the offence alleged was committed by the public servant, while he was actually engaged in or purported to be engaged in the discharge of his official duty, sanction is required,' and to the dissent of the learned Judges to the ruling of Curgenven, J., in *Sivarmakrishna Aiyar v. Seshappa Naidu* I.L.R. (1928) 52 M. 347 : 36 M.L.J. 263. I do not imagine that the learned Judges intended to lay down that for any act whatsoever amounting to an offence done by the Village Munsif during the time when he was discharging or purporting to discharge his official duty, whether it had any connection with his official duty or not, sanction would be required for his prosecution. It must, as I have said, be an act which has some connection, other than accidental or temporary, with what he is doing or purporting to do in the exercise of his official duty, i.e., be the sort of act which he is empowered to do by virtue of his office. In this view of the Bench decision in *Gangaraju v. Venki* I.L.R. (1928) 52 M. 602 : 57 M.L.J. 31 I do not see any necessity to refer the matter to a Full Bench. My view is in accordance with that of Jackson, J., in *Kamisetty Raja Rao v. Ramaswamy* I.L.R. (1927) 50 M 754 : 52 M.L.J. 647 I hold therefore; that sanction is necessary for the prosecution of the offences under Section 343 or Section 348, but not for that under Section 330. I therefore quash the commitment for offences under Sections 343 and 348. The trial will proceed for the offence under Section 330.