

In Re: Piranu Nadathi and Two ors.

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Court : Chennai

Decided On : Jan-11-1917

Reported in : AIR1918Mad439; (1917)ILR40Mad880

Judge : Ayling and ;Napier, JJ.

Appellant : In Re: Piranu Nadathi and Two ors.

Judgement :

Ayling, J.

1. This is a reference by the Assistant Sessions Judge, Tinnevely, recommending that the commitment of certain accused for offences falling under Section 82 of the Indian Registration Act should be quashed under Section 215, Criminal Procedure Code, as bad in law. No permission was obtained for the prosecution in this case from any of the officers mentioned in Section 83 of the Registration Act, and in the view of the Assistant Sessions Judge this fact is fatal to the institution of the case.

2. It has been held by a Full Bench of the Calcutta High Court in Gopinath v. Kuldip Singh I.L.R. (1885) Cal 566 that no sanction is necessary before the institution by a private person of a charge under Section 82 of the Registration Act, and it may be inferred from the judgment of this Court in Queen-Empress v. Vythilinga I.L.R. (1888) Mad. 500 that the learned Judges were inclined to take the same view. The wording of Section 83 is far from clear, but on a consideration of the section, the cases quoted before us and the arguments on both sides, I am

inclined to take the same view. One cannot but be pressed by the marked difference between the wording of Section 83 of the Registration Act and that of the corresponding sections in various other Acts which unequivocally and in the clearest terms lay down that previous sanction or permission is required for the institution of proceedings--vide, Section 70 of the Stamp Act, Section 72(a) of the Post Office Act, Section 36 of the Income-tax Act and Section 29 of the Arms Act. Had it been the intention of the legislature to bar prosecution for offence under the Registration Act by private persons without sanction or permission of the Registration authorities, it is difficult to see why the intention could not have been expressed in the same way so as to put the matter beyond doubt. Our attention has, moreover, been drawn to the corresponding section, Section 95 of Act XX of 1866 which runs thus:

A prosecution for any offence under this Act coming to the knowledge of a Registering officer in his official capacity may be instituted by the Registrar-General, the Branch Registrar-General, the Registrar or (with the sanction of the Registrar to whom he is subordinate) the Sub-Registrar in whose territories, district or sub-district, as the case may be, the offence has been committed. All prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate or Subordinate Magistrate of the First Class; and all fines imposed under this Act may be recovered in the manner prescribed in Section 61 of the Code of Criminal Procedure.

3. It seems to me that the intention of this section was merely to prevent official prosecutions for offences under the Act being instituted by an officer below a certain grade. Even a Sub-Registrar had to get the sanction of the Registrar to whom he is subordinate. I do not see anything in this section to suggest that it is intended to bar private prosecutions and I should be loath to infer that the changes introduced in Act III of 1877 were intended to extend the operation of the section to such prosecutions. Mr. Venkataramayya invites our attention to the words 'with the permission of' in the later Act, But the natural effect of these words is simply to enable, for instance, the Sub-Registrar to depute a clerk to lay a complaint of an offence instead of going to the Magistrate's Court himself for that purpose as he would have to do under the older Act. The words which occur in all the Acts:

an offence coming to the knowledge of a Registering officer

admittedly tend against the view put forward by the Assistant Sessions Judge. I am inclined to hold that permission of the Registration officers is not a preliminary requisite for the institution of proceedings by a private person for offences under the Registration Act and that the committal in this case may stand.

Napier, J.

4. I agree with my learned brother in his judgment for the reasons given by him but will add a few observations of my own because I also agree with him that the question is one on which it is possible to arrive at a different conclusion, as will be seen from the decisions of the Calcutta High Court: Now the section is Section 83 of the Registration Act. It is admitted before us that the language of this section is not clear. Speaking for myself, I am inclined to think that it should be paraphrased in this way: 'When an offence under this Act comes to the knowledge of a Registering officer in his official capacity, he may commence a prosecution, etc.' 'The persons who are authorized to prosecute are as follows'...

and they may, in addition, give permission to some Other person to prosecute.

If the language had been in that form, I should have very little doubt that it was simply permissive and giving power to the officers of the department. But it has been urged before us, that the words 'a prosecution for any offence may be commenced' are analogous to proceedings provided in Bankruptcy and other Acts in which the words 'may be commenced' and 'may be instituted' have been held to be directory and exclude the right of any person other than the person mentioned in the Act. As there is this ambiguity in the section we are permitted, under the authority of the House of Lords and the Privy Council, to examine the history of the provision and I therefore turn to the provision in the Old Act of 1866; here we find the language is simpler and is as follows:.....

A prosecution for any offence coming to the knowledge of a Registering officer in his official capacity may be instituted by the Registrar-General, the Branch Registrar-General, the Registrar or, (with the sanction of the Registrar to whom he

is subordinate) the Sub-Registrar.

5. Now it is somewhat curious that there is no reported decision of any prosecution under this Act Mr. Venkatramayya argues that under this Act there was no power in any private person to lay a complaint of an offence under the Act, his argument being that as the Act created the offence and as it designates the persons who are entitled to institute proceedings so the right to institute must be confined to those persons. And he relies on the analogies of various other Acts to which he has drawn our attention. Those Acts have been referred to in the judgment of my learned brother and I will not recapitulate them. But there are two distinctions between those Acts and this. Those Acts create offences which do not primarily affect or injure any private person. They are offences against laws passed by Government either for protection of the public or are financial provisions. For instance the public is not in the slightest degree interested in the recovery of stamp duty or offences against Stamp Acts. The second point to be considered is this, that in all those Acts, if I am not mistaken, the form of the section is prohibitory. I will take the Stamp Act as an example; Section 70:

No prosecution in respect of any offence punishable under this Act shall be instituted without the sanction;

and I think the language is in the same form in every one of the other Acts. It is argued by Mr. Venkataramayya that the provisions of Section 82 creating offences, are also provisions dealing with offences against public servants and that, on the face of them, they do not purport to affect either the public or any particular person; and that he is entitled to rely on the analogy of Section 195(1)(a), Criminal Procedure Code, where sanction of the public servant is required for contempt of his lawful authority. But I think, on examining the section a little more closely, it becomes apparent that although the false statement [I am taking Clause (a)] has been recorded before an officer and therefore in one sense it is an offence against that officer, still it is recorded under sections of the Act which exists for the protection of a private person and is therefore really a portion of an offence against the private person. I would only mention Sections 34 and 74 of the Registration Act. Section 34 provides that no document shall be registered

unless the person executing it appears before the Registering officer and the Registering officer shall thereupon enquire into certain matters to 'satisfy himself as to the identity', etc., etc. Section 74 provides that where a denial is made before a Registrar he shall, as soon as conveniently, enquire whether the document has been executed or whether the requirements of the law for the time being in force have been complied with.

6. It follows therefore that these enquiries into these false statements made are entirely for the benefit of a particular person who may be injured or otherwise affected by the registration of the document and it seems to me that one cannot treat these sections as being in the same class as sections which impose penalties for offences in contempt of the authority of public servants or offences against Government. That being so, I see no reason why a private person should not be allowed to lay a complaint of an offence under the Act. There is no doubt that the private person is more seriously injured by the action of an offender who not only forges a document but endeavours to give it higher authority by registering it and therefore he is put in a more dangerous position by this action. I can see no reason why he should not be entitled to institute the proceedings on which higher penalties are provided for the offence. My learned brother has referred to the Full Bench decision in *Gopinath v. Kuldip Singh* I.L.R. (1885) Cal. 566. It is quite true that there are decisions the other way. They are *Queen-Empress v. Batesar Mandal* I.L.R. (1884) Cal. 604, *Hussain Khan v. Emperor* (1916) 14 A.L.J. 412 and *Emperor v. Jiwan* I.L.R. (1915) All. 107. I cannot but express my regret that we have not the advantage of the reasoning of the learned Judges in those cases and so we are compelled to treat this matter as a case of first impression. I admit that I have had great difficulty in arriving at a conclusion; but I have come to a conclusion which is in agreement with my learned brother's decision and I have thought it necessary to give my additional reasons somewhat at length so that when this matter comes before this Court on another occasion the Court may have whatever assistance will be offered to it by the reasons which we have given.