

**Public Prosecutor Vs. Arulswami**

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**SooperKanoon Citation :** [sooperkanoon.com/796990](http://sooperkanoon.com/796990)

**Court :** Chennai

**Decided On :** Dec-03-1963

**Reported in :** AIR1964Mad350; 1964CriLJ167

**Judge :** Kailasam, J.

**Acts :** Madras Village Panchayats Act, 1950 - Sections 106, 127 and 127(1)

**Appeal No. :** Criminal Appeal. No. 72 of 1962

**Appellant :** Public Prosecutor

**Respondent :** Arulswami

**Advocate for Def. :** M.S. Sethu, Adv.

**Advocate for Pet/Ap. :** V.V. Radhakrishnan, Adv.

**Judgement :**

**Kailasam, J.**

1. This is an appeal by the Public Prosecutor against the acquittal of the respondent by the Additional Sessions Judge, Coimbatore, of an offence Under Section 409 I. P: C. The respondent was tried by the Sub-Divisional Magistrate, Tiruppur, for offences of committing breach of trust of a sum of Rs. 2600 and for making false entries in the accounts of the Panchayat Board punishable Under

Sections 409 and 477-A, I, P. C. respectively. The magistrate found the respondent guilty Under Section 409, I. P. C. and sentenced him to R. I. for 6 months. He acquitted the respondent of the offence Under Section 477-A I. P. C. On appeal the learned Sessions Judge acquitted the accused of the offence Under Section 409 I. P. C. also.

2. The case for the prosecution is briefly as follows. The accused was the President of the Panchayat Board, Nerinjipet. P. W. 1 visited the Panchayat Office on 24-3-1960; P. W. 2, the clerk of the Panchayat Office, was in the premises. P. W. 2 produced the account books and cash book. On perusing the accounts, P. W. 1 found that, according to the entries, there ought to have been cash balance of Rs. 2610-23 nP as on 24-3-1961. P. W. 1 asked P. W. 2 to produce the cash balance for verification. P. W. 2 told P. W. 1 that the cash was with the accused. When the accused was sent for, he told P. W. 2 that the officers were coming to check at untimely hours, and that he could not come. P. W. 1 sent a note through his peon to the Divisional Panchayat Officer (P. W. 5) requesting him to go over there. P. W. 5 did not turn up and the accused also did not come. P. W. 1 then went to Erode in the evening. Next morning P. W. 1 received a note, Ex. P. 3, from P. W. 5 instructing him to record a statement from the accused if he refused to produce the cash balance. P. W. 1 then went to the Panchayat Office. He was told that the accused did not come to the office. Therefore he recorded statements from P. W. 2, the Vice-President and another person and made an endorsement that the cash balance was not produced. Then he made a report to P. W. 5. P. W. 5 stated that he received the note of P. W. 1 on 24-3-1960 informing him that the President of the Panchayat Board (Respondent) had defalcated its funds. The witness also spoke to his sending Ex. P. 3 and receiving the report from P. W. 1 (Ex. P. 4). The evidence of P. Ws. 1 and 5 read along with Ex. P. 3 makes it clear that, when P. W. 1 checked the cash balance, it was not produced, and that the accused failed to make his appearance before P. W. 1. P. W. 2 is the clerk of the Panchayat Office. He corroborated the evidence of P. W. 1. He stated that cash balance according to the accounts as on 24-3-1960 was Rs. 2610.23 nP., that when P. W. 1 wanted the cash balance to be produced, P. W. 2 met the accused in his room and informed him about it, that the accused said that he would remit the amount and hand over the receipt, that saying so the accused went away, and

that no receipt was produced by the accused before P. W. 1. The witness corroborated the testimony of P. W. 1 that he came to the office again on 25-3-1960, and obtained a statement from him. P. W. 3 is another member of the Panchayat Board. He stated that neither he nor P. W. 1 nor one Vadichi Gounder took Rs. 2600 from the accused.

3. The accused denied having committed the offence. He stated that at 11 a.m. on 24-3-1960, P. W. 1 came to his office and took a sum of Rs. 2600 in the presence of Vedichi Gounder stating that he would remit the amount into the Treasury, and that coming to know that money had not been remitted into the treasury he sent a telegram.

4. The trial court accepted the evidence of the prosecution witnesses and found that the accused was in sole charge of the cash in the Panchayat office, and that he failed to produce the amount before P. W. 1 on 24-3-1960. The appellate court also agreed with the findings of the trial court and held that the prosecution succeeded in showing that the accused has misappropriated the sum of Rs. 2600.

5. The finding that the accused was in charge of the cash of the Panchayat Board and that he did not hand over the cash balance of Rs. 2600 is correct, and there is no reason to differ from it. The evidence of P. W. 1 is that, when he asked for the cash balance according to the accounts, the clerk, P. W. 2, was not able to produce it and the accused did not make his appearance. The evidence of P. W. 1 is corroborated by that of P. W. 2. There can be no doubt that P. W. 1 sent a note to P. W. 5, his superior officer, and Ex. P. 3 received from P. W. 5, clearly refers to the inability of the accused to produce the cash balance as found in the account books. P. W. 3 who according to the accused was present when he paid the money to P. W. 1 entirely denied the case of the accused. On the evidence I agree with the concurrent finding of the courts below, that the accused was in sole charge of the cash' of the Panchayat Office and that he was unable, to produce the cash balance before P. W. 1.

6. The learned Sessions Judge acquitted the accused relying on the decision in *Satyanarayana v. Narayanaswami* : AIR 1961 AP18 holding that the Government alone is authorised to grant sanction Under Section 106 of the Madras Village

Panchayats Act, and that the sanction accorded by the Collector is not valid. The Andhra High Court held that the derogation contemplated Under Section 127(1) of the Act related to the; powers exercisable as such in Sections 28, 42, 48 and 49 of the Act in regard to a Panchayat or Panchayats, which were of a purely administrative character and involved no judicial or quasi-judicial decision to be taken, and that it was not competent for the Government to delegate its powers and duties of giving sanction Under Section 106 of the Act to either the Inspector General of Local Administration or to any other authority, officer or person by virtue of Section 127 (1) of the Act. Delegation of powers Under Section 127 is in the following terms:

'(1). The Government may, by notification, authorise any authority, officer or person to exercise in any local area, in regard 'to any Panchayat or any class of Panchayats or all panchayats in that area, any of the powers vested in them by this Act except the power to make rules; and may in like manner withdraw such authority.....'

7. Under Section 106, power is conferred on the Government to accord sanction for prosecuting the President, executive authority or any member who 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. Section 127 (1) enables the Government to authorise any officer to exercise any of the powers vested in them, except the power to make rules. The power Under Section 106 is one of the powers referred to under 5. 127. I am unable to find any restriction in the power of delegation conferred by the Government. Therefore, I find myself unable to agree with the decision of the Andhra High Court holding that the Government can only delegate powers of purely administrative character not involving judicial or quasi-judicial decision. The conclusion arrived at by the learned Sessions Judge that the sanction accorded by the Collector is not valid one, cannot be accepted.

8 It is admitted that the sanction by the Collector was accorded on 21-12-1960 and cognizance of the offence was taken by the court on 7-1-1961 The respondent ceased to be President of the Panchayat Board on 27-8-1960. On the dates when the sanction was accorded and the offence was taken cognizance of, the

respondent was not holding the office as the President of the Panchayat Board. It has been held by the Supreme Court in Venkatarama v. State, 1958 Mad WN Cri. SC 27: : 1958 CriLJ254 that sanction is not necessary in the case of a person who had ceased to hold office. The learned Session judge was of the view that, even though the respondent was removed from the office of President, he continued to be a member of the Panchayat Board, and, relying on the decision in Chimanbhai v. Jashbhai : AIR1961 Guj57 held that, as the respondent still continued to be a member of the Panchayat Board and was still holding a public office, sanction was necessary. Section 106 provides that no court shall take cognizance of an offence except with the previous sanction of the Government when the offence is 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. The offence alleged to have been committed by the respondent was on 25-3-1960, and he ceased to be President on 27-8-1960. The act complained of was not done by the respondent as a member and therefore the sanction contemplated is for the act done by him as President. The protection afforded Under Section 106 is not, therefore, available to him as a member. The learned Sessions Judge is in error in holding that, as the respondent continued to be a member, sanction was necessary. Even if it is held that sanction is necessary, valid sanction had been accorded by the Collector of Coimbatore. The acquittal of the respondent is purely on the question of law holding that sanction is necessary and that sanction given by the Collector is not valid. As the question of law fails, the order of the learned Sessions Judge cannot be up held.

9. In the result the order of acquittal is set aside and the conviction and sentence passed by the trial court are restored. The sentence passed in this appeal will run concurrently with the sentence passed in C. A. 380 of 1961.