

Subbiah Pillai Vs. Emperor

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Court : Chennai

Decided On : Sep-18-1919

Reported in : 55Ind.Cas.105

Judge : Spencer and ;Krishnan, JJ.

Appellant : Subbiah Pillai

Respondent : Emperor

Judgement :

ORDER

1. We feel no doubt that when the petitioner, who was at the time the acting Village Magistrate of Kuttapanjan, prepared a record relating to a case which was actually pending before him as such Village Magistrate, he did so not in a private capacity but acting as a Judge, and if the making of that record amounts to an offense, sanction is necessary under Section 197, before any Court can take cognizance of the offence of which he is accused in connection with it. The case in Palaniandy Pillai v. Arunachellum Pillai 3 Ind. Cas. 387 : 32 M.p 255 : 4 M.L.T. 473 : 9 Cr. L.J. 89 is distinguishable on the ground that the criminal case in respect of which the Village Magistrate there concerned was alleged to have fabricated a false record was an alleged criminal case which had no existence in fact.

2. Whether a public servant could make a record in an imaginary case otherwise than as such public servant, when it is one of the functions of his office to hear and

dispose of oases, is a question we are not called upon to decide in this case, although we doubt whether Miller, J., was right in observing that a Judge who fabricates a record in which he figures as Judge cannot properly be said to be acting as Judge when he does so.

3. In the present case there was a real case pending before the Village Magistrate, and the only part about it which is alleged to be unreal and false is the judgment and calendar and Muchilika which that Magistrate prepared.

4. We, therefore, hold that the District Magistrate (Mr. MacIver) was wrong in deciding in his proceedings of May 6th, 1918, that no sanction was necessary.

5. The whole proceedings both of the Second Class Magistrate discharging the accused and of the Sessions Judge directing him to be committed for trial are vitiated ab initio and are hereby set aside. We must leave it to the complainant, if he wishes to proceed further with his complaint, to obtain the District Magistrate's sanction as a preliminary to any Court taking cognizance of these offences committed by the petitioner as a Village Magistrate.