

L. D. Kataria v. K. N. Kutty (Koshal, J.)

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deed had come to be devolved on the successful pre-emptor. In that view of the matter, I have no hesitation in holding that the successful pre-emptors in this case have to be substituted for the plaintiffs and continue the suit from the stage it had reached when the application under Order 22, rule 10, of the Code was filed.

(9) For the aforesaid reasons, I accept this revision, set aside the order of the lower appellate Court and restore that of the trial Court. Parties will appear in the trial Court on 30th August, 1971. Records will be sent back immediately. No order as to costs.

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K.S.K.

REVISIONAL CRIMINAL

Before A. D. Koshal and Bhopinder Singh Dhillon, JJ.

L. D. KATARIA.—*Petitioner.*

*versus*

K. N. KUTTY.—*Respondent.*

Criminal Revision No. 51-M of 1970.

August 3, 1971.

*Code of Criminal Procedure (V of 1898)—Section 197—Member of Indian Administrative Service appointed as Managing Director of a State Government Corporation—Offence alleged to have been committed by such Managing Director while acting in the discharge of his official duty—Sanction for prosecution under section 197—Whether necessary.*

*Held*, that when a member of the Indian Administrative Service is appointed as Managing Director of a State Government Corporation and an offence is alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, sanction to prosecute him under section 197 of the Code of Criminal Procedure for the alleged offence is not necessary. While holding the office of the Managing Director of the Corporation he is no doubt a public servant as envisaged by clause Twelfth of section 21 of the Indian Penal Code being in the service or pay of a Government Company as defined in section 617 of the Companies Act; but all public servants cannot be given the benefit of the provisions of sub-section (1) of section 197 which deals only with one kind of public servants, namely, those public servants who are not removable from their office save by or with the sanction of a State Government or the Central Government. It is true

that the Managing Director continues to be an Indian Administrative Service Officer all through and such an officer is not removable from his office except by the Central Government but it is not as a member of that service that he holds the office of the Managing Director of the Corporation. On the contrary that office is held by him under an order of the Governor passed under the Articles of Association of the Corporation. Under these Articles the Managing Director of the Corporation holds his office at the pleasure of the Governor who has the power to remove him from office "at any time in his absolute discretion". If the Governor considers that a person holding the office of the Managing Director shall be removed therefrom, he does not have to obtain the sanction of or consult either the State Government or the Central Government, and an order passed by him on his own removing the person from the office would be valid and final. Hence the Managing Director of the Corporation cannot be considered to be a public servant of the type envisaged by section 197 of the Code. (Paras 6 and 7.)

*Case referred by Hon'ble Mr. Justice Bhopinder Singh Dhillon on 19th April, 1971 to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice A. D. Koshal, & Hon'ble Mr. Justice Bhopinder Singh Dhillon on 3rd August, 1971.*

*Petition under Section 439 and 561-A Cr. P. C. and Article 227 of the Constitution of India praying that in the absence of sanction from Haryana Government as well as from the Central Government, the Judicial Magistrate could not take cognizance of the complaint ab-initio, and as the complaint does not disclose the commission of any offence in as much as he was entitled in law to give a confidential report, the entire proceedings be quashed.*

D. D. Jain, and A. C. Jain, Advocates, for the petitioner.

M. L. Nanda, Advocate, for the respondent.

### ORDER DATED 3RD AUGUST, 1971

Koshal, J.—(1) This is a petition under sections 439 and 561-A of the Code of Criminal Procedure for revision of the order dated the 4th of August, 1970, of Shri G.S. Bhatti, Judicial Magistrate 1st Class. Chandigarh, dismissing the application of the petitioner wherein a prayer had been made that cognizance of the offence under sections 469 and 500 of the Indian Penal Code which were the subject-matter of a complaint dated the 3rd of March, 1970, presented by the respondent to the learned Magistrate against the petitioner, should not be taken for the reason that no sanction as envisaged by section 197 of the Code of Criminal Procedure had been accorded by the Central Government.

(2) The facts leading to the petition are not in dispute and may be shortly stated. The petitioner is a member of the Indian Administrative Service, earmarked to serve the Haryana State. From the 16th of September, 1968, to the 1st of April, 1970, he held the office of the Managing Director of the Haryana Agro-Industries Corporation (Private) Limited (hereinafter referred to as the Corporation), which is a "Government Corporation" as defined in section 617 of the Companies Act, 1956. Shri K. N. Kutty, respondent held the post of the Secretary of the Corporation from the 19th of October, 1967, to the 29th of May, 1969, when his services were terminated on account of the abolition of his post. He challenged the order of the termination of his services in a civil suit which is still pending. It was thereafter that the complaint above mentioned was filed by the respondent alleging that the petitioner had recorded confidential remarks with regard to the work and conduct of the respondent on or about the 30th of May, 1969, when the respondent was given a good chit, but that more than 5 months later, i.e., on the 12th of November, 1969, another confidential report was substituted by the petitioner for those remarks, the report being derogatory to the respondent. This report, according to the respondent, was circulated by the petitioner to various Corporations so that the respondent had suffered in reputation.

(3) It was on the 29th of April, 1970, that the petitioner made an application to the learned Magistrate contending that the complaint was liable to be dismissed on account of want of sanction as envisaged by the provisions of sub-section (1) of section 197 of the Code of Criminal Procedure which runs thus:

"197. (1) When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government, 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—

- (a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in the case of a person employed in connection with the affairs of a State, of the State Government.”

(4) The learned Magistrate held in the impugned order that the offences complained of could not be said to have any reasonable connection with the discharge by the petitioner of his official duties so that the same could not be said to “have been committed by him while acting or purporting to act in the discharge of his official duty.” In this view of the matter he dismissed the application presented by the petitioner although he was further of the opinion that the petitioner while holding the office of the Managing Director of the Corporation was a person employed in connection with the affairs of the Haryana State.

(5) The petition originally came up for hearing, before my learned brother Dhillon, J., at whose instance it was referred for disposal to a larger Bench in view of the importance of the question involved.

(6) This petition must fail for the simple reason that the petitioner is not a person to whose case the provisions of section 197 above quoted are attracted. While holding the office of the Managing Director of the Corporation he was no doubt a public servant as envisaged by clause Twelfth of section 21 of the Indian Penal Code being in the service or pay of a Government Company as defined in section 617 of the Companies Act; but then all public servants cannot be given the benefit of the provisions of sub-section (1) of section 197 which deals only with one kind of public servants, namely, those public servants who are not removable from their office **save by or with the sanction of a State Government or the Central Government.** It is true that the petitioner continued to be an Indian Administrative Service Officer all through and such an officer is not removable from his office except by the Central Government but it was not in his capacity as a member of that Service that he held the office of the Managing Director of the Corporation. On the contrary that office was held by him under an order of the Governor passed under article 100 of the Articles of Association of the Corporation of which articles 98, 99 and the relevant portion of article 100 may be set out herewith advantage :

“98. (a) The Governor shall, from time to time, determine the number of Directors of the Company which shall be not less than two and not more than nine.

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(b) The Directors shall not be required to hold any qualification shares.”

“99. (a) The *ex-officio* Directors shall be appointed by the Governor and shall be paid such salary and or allowance as the Governor may from time to time determine. Subject to the provisions of section 314 of the Act, such reasonable additional remuneration as may be fixed by the Governor may be paid to any one or more of the Directors for extra or special services rendered by him or them or otherwise;

(b) The Governor may from time to time appoint Chairman of the Board of Directors and determine the period for which he is to hold his office;

(c) The Governor shall have power to remove any *ex-officio*, Director including the Chairman, if any, and the Managing Director from office at any time in his absolute discretion;

(d) The Governor shall have the right to fill any vacancy in the office of the *ex-officio* Directors caused by removal, resignation, death or otherwise.”

“100. (a) (i) For the conduct and management of the business of the Company in general subject to the control and supervision of the Board of Directors, the Governor may empower the Chairman nominated under Article 99(b) to exercise the functions of the Managing Director or appoint, subject to the approval of State Government, one of the Directors to be the Managing Director who will be the Chief Executive Officer of the Company. The Governor may also appoint one or more of the Directors to be an Executive Director or Executive Directors. The functions, duties and responsibilities of an Executive Director shall be such as may be determined by the Governor from time to time on the recommendation of the Board of Directors.”

(7) It is quite clear that the Managing Director of the Corporation holds his office at the pleasure of the Governor who has the

power to remove him from office "at any time in his absolute discretion". If the Governor considers that a person holding the office of the Managing Director shall be removed therefrom, he does not have to obtain the sanction of or consult either the State Government or the Central Government, and an order passed by him on his own removing the person from the office would be valid and final. And if that be so, the Managing Director of the Corporation cannot be considered to be a public servant of the type envisaged by section 197.

(8) Mr. Jain, however, contends that even while performing the functions of the Managing Director of the Corporation the petitioner continued to enjoy the membership of the Indian Administrative Service from which membership he was not removable except by the Central Government and that, therefore, the provisions of section 197 would cover his case. The contention is wholly untenable. We are here concerned only with that office held by the petitioner in carrying out the duties pertaining to which he is alleged to have committed the offence complained of. That office was only one, namely, that of the Managing Director of the Corporation and from that office, as already held, he was removable by the Governor in his absolute discretion. That office has nothing at all to do with the membership of the petitioner of the Indian Administrative Service. Even if he had not been a member of that Service, or of any Service for that matter, he could have been appointed a Director and also a Managing Director by the Governor under the Articles of Association above set out. The office of the Managing Director alone, therefore, has to be taken into consideration while deciding the question as to whether the provisions of section 197 would apply to him which must accordingly be answered in the negative.

(9) Mr. Jain has relied upon **Girdharilal and others v. Lalchand and others**, A.I.R. 1970 Raj. 145, which, however, is of no help to him. That was a case arising from a complaint against a Municipal Commissioner who is admittedly a public servant removal from office by the State Government. That case is, therefore, clearly distinguishable.

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(1) A.I.R. 1970 Raj. 145.

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(10) In the above view of the matter it is not necessary for us to decide if the offences complained of are also of the type mentioned in section 197 which has been held inapplicable to the case of the petitioner by reason of the fact that he was removable from the office of the Managing Director (the office with which we are here concerned) by the Governor in his absolute discretion and not by or with the sanction of a State Government or the Central Government.

(11) In the result the petition is dismissed.

DHILLON, J.—I agree.

K.S.K.

REVISIONAL CIVIL

*Before Harbans Singh, C.J.*

SHIV KUMAR.—*Petitioner.*

*versus*

MOOL CHAID, etc.,—*Respondents.*

Civil Revision No. 555 of 1971

August 4, 1971.

*Hindu Law—Joint Hindu Family holding property—Karta of the family trying to alienate such property without legal necessity—Other coparceners—Whether can prevent such alienation by bringing a suit for injunction.*

*Held*, that if an act of the Karta of a Joint Hindu family is illegal, according to the law by which he is governed, and if the coparceners come to know of the contemplated act, they should be in a position to prevent him from doing it and thus save an innocent alienee from further litigation. It cannot possibly be the law that they must wait till the transaction is complete and then take steps to get back the property. Hence when the property is a Joint Hindu family property and the proposed alienation by the Karta is not for the benefit of the family or for legal necessity, any of the coparceners can prevent such an illegal act by bringing a suit for injunction. (Paras 8 and 12.)

*Petition under Section 44 of Act IX of 1919, & S. 115, of Civil Procedure Code, for revision of the order of Shri T. P. Garg, Senior Sub Judge (with*