

Data Ram v. Ved Parkash Chopra (Jindra Lal, J.)

(43) As pointed out by my learned brother Sandhwalia, J., this section is not happily worded and on that account some difficulty is being experienced in applying the same. The language of this section as it stands, however, does not warrant the argument raised on behalf of the respondent that before the presumption contained in section 10 of the Opium Act can be availed of, the prosecution must establish the actual or exclusive possession of the accused. Since under section 9 of the Opium Act, mere possession constitutes an offence, section 10 becomes otiose if it is held that before resort can be had to it the prosecution must prove that the accused was in exclusive or conscious possession of the opium. Section 10 of the opium Act, in my opinion, implies that a person who is in any way concerned with opium that forms the subject matter of prosecution or has otherwise dealt with it in any manner so as to render him accountable for it will be presumed to have committed an offence under section 9 of the opium Act unless he can "account satisfactorily" for it. The liability to account will arise only when the accused is in some manner found to be concerned with the opium or has dealt with it.

R.N.M.

REVISIONAL CRIMINAL

Before Jindra Lal, J.

DATA RAM,—Petitioner

versus

VED PARKASH CHOPRA,—Respondent.

Criminal Revision No. 75-R of 1968

May 1, 1969

Criminal Procedure Code (V of 1898)—Section 197—Penal Code (XLV of 1860)—Section 19—Punjab Co-operative Societies Act (XXV of 1961)—Section 84—Election to a Managing Committee of a co-operative society—Returning Officer appointed for scrutinising nomination papers of the candidate to such election—Such officer—Whether a 'Judge'—Sanction for his prosecution—Whether necessary—Offence committed by a magistrate in the discharge of his official duties—Such magistrate ceasing to be so at the time of taking cognizance of the offence—Court—Whether can take cognizance of the offence without sanction.

Held. that a Returning Officer appointed by the Registrar of co-operative societies for scrutinising the nomination papers in connection with the election of the Managing Committee of a co-operative society, to be held under the Punjab Co-operative Societies Act, 1961, is not a 'Judge' as defined

in section 19 of Indian Penal Code. Section 197, Code of Criminal Procedure does not protect him if he commits any offence while scrutinising the nomination papers. The functions which he performs at that time are neither in civil nor in criminal proceedings. He also does not give a definitive judgment in the matter. All that is required is that he should look at the nomination papers and see that a candidate is not subject to any disqualification for election. No sanction for his prosecution for committing any offence while acting as Returning Officer is, therefore, required.

(Paras 1, 6 and 10)

Held, that no previous sanction under section 197, Criminal Procedure Code, is necessary for a Court to take cognizance of an offence committed by a magistrate while acting or purporting to act in the discharge of his official duty if he had ceased to be magistrate at the time the complaint is made or police report is submitted to the Court, i.e., at the time of the taking of cognizance of the offence committed. (Para 11)

Case reported under section 438 of the Code of Criminal Procedure by Shri J. S. Mander, Additional Sessions Judge, Ambala on 21st March, 1968 for revision of the order of Shri B. L. Gupta, Judicial Magistrate First Class, Jagadhri, dated 22nd November, 1967 rejecting the application, dated 21st October, 1967 filed by the accused for discharge and dismissal of the complaint filed against him under section 500 and 166, I.P.C., and ordering that the case will proceed on merits.

G. S. GREWAL WITH P. S. MANN, ADVOCATES, for the Petitioner.

C. L. LAKHANPAL ADVOCATE, MUNISHWAR PURI ADVOCATE FOR ADVOCATE-GENERAL, HARYANA, for the Respondent.

ORDER

This case has been reported by the learned Additional Sessions Judge, Ambala, with a recommendation that the order dated 22nd of November, 1967, passed by the Judicial Magistrate, First Class, Jagadhri, in case No. 183/2 of 1967, be quashed and a complaint filed by the present respondent, Shri Ved Parkash Chopra, Advocate, Jagadhri, be dismissed.

(2) The facts on which this recommendation has been made have been set out very clearly by the learned Additional Sessions Judge and need not be set out fully. In brief the petitioner, Shri Data Ram, Inspector, Co-operative Societies, Sargarcane, Model Town, Yamunanagar, was appointed a Returning Officer by the Registrar, Co-operative Societies, Haryana, to scrutinize the nomination papers in connection with the election of the Managing Committee of the Naharpur Cane Growers' Co-operative Society Limited, Naharpur, to be held under the Punjab Co-operative Societies Act,

1961. The scrutiny was being held on the 23rd of August, 1967, and Madan Lal, one of the candidates, being keen to get the nomination paper of the other candidate Dosti rejected, engaged the respondent, Shri Ved Parkash Chopra, as his counsel. Dosti had produced a witness and the respondent-counsel had started cross-examining him when the petitioner was called out by somebody and on returning to the room where the scrutiny was being held he declined permission to the respondent to participate claiming that there was no provision for a lawyer to represent a candidate. The petitioner is alleged to have told the respondent that he did not know his job and was misleading the petitioner. He also tore away the statement of Doom Singh which had been reduced into writing. The respondent made a complaint before the learned Magistrate under sections 166 and 500, Indian Penal Code, against the present petitioner who raised an objection that in view of want of sanction under section 197, Criminal Procedure Code, and also in view of section 84 of the Punjab Co-operative Societies Act, the complaint must be dismissed. The learned Magistrate did not agree with this contention of the petitioner and held that there was no ground for dismissing the complaint on the objections raised. The petitioner went up in revision and the only ground on which recommendation is made for the acceptance of this revision is that when the incident took place the petitioner was acting as a Judge within the meaning of section 19, Indian Penal Code, and a Court could not take cognizance of the complaint in view of section 197, Criminal Procedure Code. The learned Additional Sessions Judge relied upon *S. C. Abboy Naidu v. Kanniappa Chettiar* (1), in support of his view.

(3) Section 197, Criminal Procedure Code, *inter alia* provides for protection to any person who is a 'Judge' within the meaning of section 19 of the Indian Penal Code when he 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 and it is provided that no Court shall take cognizance of such an offence.

(4) Section 19, Indian Penal Code, provides that the word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person, who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive.

(1) A.I.R. 1929 Madras 175.

(5) It is difficult, in view of the definition of the word 'Judge' in section 19, Indian Penal Code, to hold that the petitioner when he was scrutinizing the nomination papers, was acting as a Judge.

(6) It is possible to hold that in the wider sense of the word, the petitioner might have been acting in legal proceeding, if by legal proceeding is meant performing functions under the authority of some law. It is not, however, possible to hold that the functions which the petitioner was performing at the relevant time were in either civil or criminal proceeding. Nor is it possible to hold that he was to give a definitive judgment in the matter.

(7) Learned counsel for the respondent-complainant has taken me through the provisions of the Punjab Co-operative Societies Act, 1961, and the Rules made thereunder.

(8) Section 26 of the Act lays down that the members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be elected so unless he is a shareholder of the society. Rule 23 of the Punjab Co-operative Societies Rules, 1963, provide that the members of the committee of a co-operative society shall be elected in accordance with the rules set out in Appendix 'C'. Rule 25 lays down certain disqualifications for membership of the committee. Rule 2 of Appendix 'C' provides that no person shall be eligible for election as a member of the committee if he is subject to any disqualification mentioned in rule 25. Rule 3(5) of Appendix 'C' provides that "the nomination papers shall be scrutinized by the Returning Officer on the date specified for the purpose. The list of the validly nominated candidates for election shall be announced, where necessary zone-wise, four days before the general meeting is held. The Registrar may by general or special order grant exemption from this sub-rule to any co-operative society or any class of co-operative societies."

(9) In view of these provisions, it has been urged by the learned counsel for the respondent that there is no procedure prescribed for holding an inquiry, hearing arguments, taking evidence on oath or giving a definitive judgment. All that is required is that the Returning Officer should look at the nomination papers and see that the candidate is not subject to any disqualification mentioned in rule 25. The words "proceedings" and "judgment" are not defined either in the Indian Penal Code or in the Criminal Procedure Code but section 2(9) of the Civil Procedure Code defines "judgment" as the statement given by the Judge of the grounds of a decree or order.

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(10) In Stroud's Judicial Dictionary, Third Edition, Volume 2 'judgment' is said to be the sentence of the law pronounced by the Court upon the matter contained in the record and the decision must be one obtained in an action. Volume I of the same dictionary defines 'action' as meaning a litigation in a civil Court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Court. It would mean, therefore, that any order passed by an officer in proceeding under any law is not a judgment as contemplated by section 19 of the Indian Penal Code. To give it a different meaning would mean that any officer who is deciding any matter which he is enjoined by law to decide would be a judge as defined in section 19, Indian Penal Code, and would enjoy all the protection contemplated by section 197, Criminal Procedure Code. It must, therefore, be held that the petitioner could not be considered to be a judge as defined by section 19, Indian Penal Code, and section 197, Criminal Procedure Code, would not protect him.

(11) It was further urged by the learned counsel for the respondent that a judge is protected under section 197, Criminal Procedure Code, only as long as he is a judge because after he ceases to be a judge, the protection is not available to him. For this proposition he relied upon *Keshavlal Mohanlal Shah v. State of Bombay* (2), where it was held that no previous sanction under section 197, Criminal Procedure Code, is necessary for a Court to take cognizance of an offence committed by a Magistrate while acting or purporting to act in the discharge of his official duty if he had ceased to be a Magistrate at the time the complaint is made or police report is submitted to the Court, i.e., at the time of the taking of cognizance of the offence committed." It is urged, therefore, that when the complaint was made by the respondent before the Magistrate, the petitioner had already given his decision and was no longer acting as a judge. There appears to be merit also in this last point urged on behalf of the respondent.

(12) It remains now to deal with the ruling relied upon by the learned counsel for the petitioner on the basis of which recommendation has been made by the learned Additional Sessions Judge. The learned Judge who decided the case *S. C. Abboy Naidu v. Kanniappa Chettiar* (1), confining himself to section 19 of the Indian Penal Code held that legal proceedings are proceedings in which a judgment may or must be given, a judgment being not an arbitrary

(2) A.I.R. 1961 S.C. 1395.

decision but a decision arrived at judicially. The learned Judge further held that in his opinion 'legal proceeding' means a proceeding regulated or prescribed by law in which a judicial decision may or must be given. It is difficult to see how this decision by a Returning Officer whose duty was to scrutinize nomination papers under the Punjab Co-operative Societies Act, 1961, can be called judgment in a civil proceeding or a judicial decision as commonly understood. Consequently, I decline to accept the recommendation of the learned Additional Sessions Judge and dismiss this revision.

R.N.M.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Prem Chand Jain, J.

SARWAN SINGH AND OTHERS,—Appellants.

versus

DHAN KAUR AND ANOTHER,—Respondents.

Letters Patent Appeal No. 281 of 1966

May 7, 1969

Hindu Succession Act (XXX of 1956)—Section 18—Succession to an intestate male leaving full-sisters and half-brothers—Full-sisters—Whether exclude half-brothers—Nature of relationship between brothers and sisters—Whether the same.

Held, that section 18 of the Hindu Succession Act, 1956 is a substantial reproduction of the rule of Hindu Law whereby relations of the full blood are preferred to those of the half blood and lays down a rule of general applicability to heirs, male and female alike. The applicability of this rule of preference is of course conditioned by the words 'if the nature of relationship is the same in every other respect'. The nature of relationship of the heirs with the intestate has to be taken into consideration. For the purpose of preference the Act makes no distinction between a son and a daughter and the nature of the relationship of the both with the father or the mother is that of a child. Thus the nature of relationship of brothers and sisters, being the children of the father of the intestate, is the same. The nature of relationship is to be reckoned in terms of degrees of ascent or descent or both. The section speaks of the nature of relationship being the same and not the relationship being the same. The meaning of the words 'nature of relationship' must be found in the sense in which they best harmonise with the scheme. The brothers and sisters fall in entry No. II of Clause II of the schedule and the nature of relationship of both must be taken to be the same, being the children of the father of the intestate. All that is meant by saying that the 'nature of relationship should be the