in Indian Iron and Steel Company Limited versus The Officer on Special Duty (Central Circle), Punjab (1). "It has been repeatedly held that a writ should not be.....employed to serve the adjudication of a disputed right for which such proceedings afford a remedy equally adequate and complete." These observations fully apply to the present case. The dispute raised in these petitions on the merits of the business carried on by the petitionrs is not so clear cut that I should decide the present dispute in the interest of justice. The controversy raised should be determined under the Punjab General Sales Tax Act, 1948 in accordance with law. I; therefore, refrain from deciding the nature of the transactions carried on by the petitioning firms.

The result is that both these petitions fail and I dismiss them with costs. Counsel fee Rs. 100 in each case.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, J.

TARA CHAND VERMA,—*Petitioner.*

versus

THE STATE,—*Respondent*

Criminal Revision No. 1069 of 1960.

Code of Criminal Procedure (V of 1898)—Section 198 (3) (b) *and* (c)—*Sanction to prosecute for defaming Deputy Minister granted in the name of the Governor and signed by the Secretary to Council of Ministers—Whether valid—Minister—Whether includes Deputy Minister.*

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(1) (1959) 10 Sales Tax Cases 150,

1961

Jan., 13th.

Held, that the difference in the forms of sanctions required in sub-section (3) (b) and (c) of section 198-B of the Code of Criminal Procedure, 1898, was deliberately introduced, and that when the Secretary to the Council of Ministers was made the sanctioning authority in sub-section (3) (b), it was intended that the sanction should be granted in exercise of his individual judgment and not under the direction of the Governor, acting either independently or on the advice of his Ministers. In practice, the distinction may be more apparent than real, but it was not intended to be so since the idea underlying the distinction between the sanctions under sub-sections 3(b) and (c) appears to be to provide for some semblance, at any rate, of independent judgment on the question whether a particular case is a fit one for invoking the special provisions of this section instead of leaving the defamed person to pursue his remedy by way of a private complaint. The idea appears to be that if a Minister is defamed, it should be left to a responsible civil servant to decide whether the special procedure should be sanctioned, and if a civil servant is defamed, it is left to the Government, i.e., the Governor acting on the advice of his Council of Ministers, to decide whether the case is a fit one for sanction. The sanction granted by the Governor but signed by the Secretary to the Council of Minister to prosecute a person for defaming a Deputy Minister is not a valid sanction as it was not given in the exercise of the independent judgment of the Secretary to the Council of Ministers.

Held, that under section 198-B of the Code of Criminal Procedure, 1898, the term 'Minister' must be construed as including 'Deputy Minister'.

Petitioner under Section 439 of the Criminal Procedure Code for revision of the order of Shri Sant Ram Garg, Sessions Judge, Ambala, dated 11th July, 1960, summoning the petitioner for 27th July, 1960 and ordering the public prosecutor to file the list of the prosecution witnesses.

RUP CHAND, ADVOCATE, for the Petitioner.

A. C. HOSHIARPURI, ADVOCATE, for the Advocate-General for the Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J.—This revision petition has been filed by Tara Chand, who is the editor, printer and publisher of an Urdu Weekly called 'Shola' published at Ambala Cantt. In the issue dated the 16th of December, 1959, under the heading "Scandal of the American milk powder in Punjab" there appeared an article in which serious imputations were made against Shri Benarsi Das Gupta, Deputy Minister of Food and Supplies in the Punjab Government.

In consequence of this, a complaint was filed by the Public Prosecutor, Ambala, in the Court of the Sessions Judge under sections 500 and 501, Indian Penal Code, on the 15th of June, 1960. This step was taken under the provisions of section 198-B of the Code of Criminal Procedure. The relevant provisions of this section read—

> "198-B. (1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (Act 45 of 1860) (other than the offence of defamation by spoken words) is alleged to have been committed against the President or the Vice-President or the Governor of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.

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(2) * * * * *

(3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction;

(a) in the case of the President or the Vice-President or the Governor of a State of any Secretary to the Government authorised by him in this behalf;

(b) in the case of a Minister of the Central Government or of the State Government, of the Secretary to the Council of Ministers, if any, or of any secretary to the Government authorised in this behalf by the Government concerned;

(c) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned;

(4) No Court of Session shall take cognizance of an offence under sub-section (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed."

In the present case, as I have said, the complaint was instituted by the Public Prosecutor just within the period of limitation prescribed under sub-section (4) and I now reproduce the sanction under which the complaint was filed. It reads—

"Whereas the Governor of Punjab is satisfied that on the 16th December, 1959, Shri Tara Chand Verma, then working as editor, printer and publisher of the

Shola and Urdu weekly of Ambala Cantt., had edited, printed and published in the issue of the Shola, dated 16th December, 1959, a report captioned, "Punjab Men Amriki Dudh Ke Safuf Ka Scandal—Punjab Sarkar Ke Ek Deputy Wazir Ki Karamat—Dinon men Lakh Pati Ban Jane Ka Nuskha," containing statements defamatory of Shri Benarsi Das Gupta, Deputy Minister, Punjab, in respect of his conduct in the discharge of his public functions and "which he knew or had reasons to believe to be defamatory ;

And Whereas the report mentioned above discloses that the said Shri Tara Chand Verma has committed an offence punishable under sections 500 and 501 of the Indian Penal Code; Now, therefore as required by section 189-B of the Code of Criminal Procedure, 1898, the Governor of Punjab is pleased to sanction the prosecution of the said Shri Tara Chand Verma under sections 500 and 501 of the Indian Penal Code."

Then follow the signature of Mr. E. N. Mangatrai, Secretary to the Council of Ministers, Punjab, and the date, 11th June, 1960.

On the 11th of July, 1960, the learned Sessions Judge passed an order to the effect that he had persued the complaint and that the accused should be summoned for the 27th of July, 1960, by which date the list of the prosecution witnesses was to be filed by the Public Prosecutor.

In the present petition, the legality of this order is challenged on the ground that it contravenes the provisions of section 204(I-A), Code of

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Criminal Procedure, which provides that no summons or warrants should be ordered against the accused under sub-section (1) until a list of the prosecution witnesses has been filed, but apart, from this, the filing of the complaint as a whole is challenged on the ground that there is no valid sanction.

The sanction set out above is headed "Order under section 198-B of the Criminal Procedure Code," and it does not specify under which item under sub-section (3) it was intended to fall, but it is to be presumed that it was intended to fall under sub-section 3(b) in which case the power to sanction the filing of the complaint is given to the Secretary to the Council of Ministers, where such an official exists, and there seems to be no doubt about the fact that Mr. E.N. Mangatrai, as well as being the Chief Secretary has been duly appointed as Secretary to the Council of Ministers. On the other hand, although the sanction in this case has been signed by him as Secretary to the Council of Ministers, the form of sanction itself is clearly in the form of sanction by the Government, which would be applicable in a case governed by sub-section (3) (c), i.e., defamation of a public servant in connection with the affairs of the State.

I do not think that, there can be any doubt that the difference in the forms of sanction required in sub-sections (3) (b) and (c) was deliberately introduced, and that when the Secretary to the Council of Ministers was made the sanctioning authoriy in sub-section (3)(b), it was intended that the sanction should be granted in exercise of his individual judgment and not under the direction of the Governor, acting either independently or on the advice of his Ministers. In practice, the distinction may be more apparent than real, but I do not think it was intended to be so since the idea

underlying the distinction between the sanctions under sub-sections 3(b) and (c) appears to be to provide for some semblance, at any rate, of independent judgment on the question whether a particular case is a fit one for invoking the special provisions of this section instead of leaving the defamed person to pursue his remedy by way of a private complaint. The idea appears to be that if a Minister is defamed, it should be left to a responsible civil servant to decide whether the special procedure should be sanctioned, and if a civil servant is defamed, it is left to the Government i.e., the Governor acting on the advice of his Council of Ministers, to decide whether the case is a fit one for sanction.

This view has already ben expressed by Raman Nayar and Vaidialingam JJ., in *R. Sankar* v. *State* (1). In that case, the appellant was the editor, printer and publisher of a journal and the conduct of a Minister was impugned in an article with the result that the appellant was prosecuted and convicted under sections 500 and 501, Indian Penal Code, on account of a complaint filed under section 198-B of the Code.

In the appeal, the learned Judges, although they were of the opinion that the conviction of the appellant was fully justified on the merits of the case, set aside the conviction and sentence on the ground that there was no valid sanction under section 198-B of the Code. The sanction in that case, but for five words which appeared immediately above the signature of the Secretary to the Council of Ministers, would

(1) A.I.R. 1959 Kerala 100.

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appear to have been one under sub-section (3) (b) since it read—

> "Sanction is accorded to the Public Prosecutor, Trivandrum, under sub-section (3) of section 198-B of the Code of Criminal Procedure, 1898, to make a complaint against Shri K. Karthikeyan, Editor, Printer and Publisher of the Newspaper 'Pothujanam' before the Court of Session, Trivendrum, for the offences punishable under sections 500 and 501, of the Indian Penal Code, for having published a news item in its issue dated 21st August, 1957, under the caption (words in Malayalam omitted), and also the reply of the correspondent under the caption (words in Malayalam omitted) and the editorial in the issue dated 23rd August, 1957, which are highly defamatory of the Minister for Law in respect of his conduct in the discharge of his public functions.
>
> (By order of the Governor)."

On this account alone, the learned Judges held that the sanction was not given in the exercise of the independent judgment of the Secretary to the Council of Ministers and that, therefore, it was not a valid sanction and consequently the trial was without jurisdiction. Their reasons were much the same as I have set out above and I am in entire agreement with them.

The question also arose whether the term 'Minister' in section 198-B included 'Deputy Minister'. As a matter of fact, when the case was first argued before me, neither I nor the learned

counsel engaged in the case appeared to have looked at the provisions of sub-section (4) or realised the effect thereof, and in the circumstances I merely intended, while holding the present sanction to be invalid, to suggest that the proceedings should be started a fresh on the basis of the sanction in the proper form, but when I was considering my order I realized on persuing sub-section (4) that this would have the effect of quashing the proceedings altogether, since a fresh complaint based on the proper sanction would by now have become barred by time. In these circumstances, I invited a fresh argument and apparently, there was some idea on the part of the counsel for the State of arguing that under sub-section (3), the term 'Minister' did not include 'Deputy Minister.' At the fresh hearing, however, this contention was abandoned, and in my opinion rightly.

The sanction as a whole is clearly intended to cover all the three branches of the administration, namely, the Constitutional heads both of the Union and of the States, the Ministers of the Union and of the States, and finally the civil servants employed in connection with the affairs of the Union and the States, and it would certainly be most extraordinary if a Deputy Minister were to be excluded from its scope. The term 'Ministers' does not appear to be defined anywhere and in fact Deputy Ministers are not mentioned either in the Constitution or the Criminal Procedure Code or even in the Rules of Business compiled by the Punjab Government. In the circumstances, I should have no hesitation in holding that under section 198-B, the term 'Minister' must be construed as including 'Deputy Minister'. This view appears to derive some confirmation from a series of notifications issued by the Punjab Government after the General Elections in 1957, when the present ministry was being formed and in

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particular a notification in Gazette Extraordinary dated the 30th of April, 1957. The heading of this notification reads—

> "In partial modification of notification Nos. 3001-PI(C)-57/6300, 3002-PI(C)-57/6301, dated the 9th April, 1957, 3035-PI(C)-57/6450, dated the 10th April, 1957, and 3059/PI(C)57/6718, dated the 16th April, 1957, the Governor of Punjab on the advice of the Chief Minister has been pleased to appoint the following persons to be the other Ministers :—
>
> CABINET MINISTERS
>
> (1) Shri Mohan Lal.
> (2) Giani Kartar Singh.
> (3) Shri Gian Singh Rarewala.
> (4) Shri Amar Nath Vidyalankar.
> (5) Shri Gurbanta Singh.
> (6) Shri Birendra Singh.
> (7) Shri Suraj Mal.
>
> DEPUTY MINISTERS
>
> (1) Shri Yashwant Rai.
> (2) Shrimati Parkash Kaur.
> (3) Shri Yash Pal.
> (4) Shri Dalbir Singh.
> (5) Shri Benarsi Dass.
> (6) Bakshi Partap Singh.

In the circumstances, I am of the opinion that the learned Sessions Judge had no jurisdiction to take cognizance of the complaint filed on the basis of the sanction dated the 11th of June, 1960, and I accordingly quash the proceedings.

B.R.T.