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K. CH. PRASAD
v.
SMT. J.VANALATHA DEVI AND ORS.

FEBRUARY 10, 1987

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[G.L. OZA AND M.M. DUTT, JJ]

Criminal Procedure Code, 1973—s. 197—Applicable only when public servant not removable from office save by or with sanction of Government—Officer of nationalised bank—Though 'public servant' sanction not necessary.

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Indian Penal Code, 1860—ss. 120(b), 467 & 471—Officer of nationalised bank—Prosecution for offences—Sanction under s. 197 Crl. P.C.—Whether necessary.

On a complaint being filed under s. 120(b) read with ss.467 and
D **471 of the Indian Penal Code, the Metropolitan Magistrate summoned the appellant and thereafter rejected his objection about the maintainability of his prosecution for want of sanction under s. 197 of the Criminal Procedure Code, holding that s. 197 does not apply because the appellant is an officer who is removable from his office by a competent authority and no sanction of the Government is necessary. This view**
E **was affirmed by the High Court.**

In the appeal to this Court, on behalf of the appellant it was contended: (i) that after the nationalisation of the Department of the appellant he will fall within the definition of public servant and, therefore, s. 197 will be attracted and (ii) that although the competent autho-
F **rity who can remove the appellant from service is not the Government, but it has been empowered under the regulations framed under the Act of Parliament with the approval and sanction of the Central Government and, therefore, the view taken by the Courts below is not correct.**

Dismissing the Appeal,

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HELD: It is clear that s. 197 of the Criminal Procedure Code is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. [219B]

H **In the instant case, it is not disputed that the appellant is not**

holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that appellant is a public servant still provisions of s. 197 are not attracted at all. Therefore, the view taken by the Courts below could not be said to be erroneous. [219D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 829 of 1985.

From the Judgment and order dated 28.11.1983 of the Andhra Pradesh High Court in Crl. Revn. Case/Petn. No. 290 of 1983.

R. Venkataramani and R. Ayyam Perumal for the Appellant.

A. Subba Rao for the Respondents.

The Judgment of the Court was delivered by,

OZA, J. This appeal has been filed by the appellant after obtaining leave from this Court against an order passed by the High Court of Andhra Pradesh dated 28.11.1983 wherein the High Court rejected a Revision Petition filed by the appellant.

Against the appellant a complaint was filed in the Court of Metropolitan Magistrate, Hyderabad under Section 120(b) read with Sections 467 and 471 of the Indian Penal Code. After summons were issued the appellant raised objection about the maintainability of this prosecution for want of sanction under Section 197 of the Criminal Procedure Code. The objection was rejected by the Metropolitan Magistrate, Hyderabad and against the order of the Metropolitan Magistrate a Revision Petition was filed in the High Court which has been rejected by the impugned order passed by the Andhra Pradesh High Court.

The learned Metropolitan Magistrate held that Section 197 is attracted only when a public servant is not removable from his office save by or with the sanction of the Government. The appellant is an officer who is removable from his office by a competent authority and no sanction of the Government is necessary. Consequently Section 197 in terms does not apply. This view was affirmed by the High Court of Andhra Pradesh.

It was contended by the learned counsel that after nationalisa-

A tion as the banks are nationalised the appellant will fall within the definition of public servant and therefore Section 197 will be attracted. It was also contended that although the appellant is removable by an authority which is not Government but the authority has been empowered under the regulations and these regulations have been framed with the sanction of the Government and under these circumstances B therefore the view taken by the Courts below is not correct.

Section 197 of the Code of Criminal Procedure reads:

"When any person who is or was a Judge or Magistrate or a Public servant not removable from his office save by or with the C sanction of the 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 who is employed or, as the case may D be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence emp- E loyed, in connection with the affairs of a State, or the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his F official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of G public order as may be specified therein, wherever thay may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

(4) The Central Government or the State Government as the H case may be, may determine the person by whom, the manner in

which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

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It is very clear from this provision that this Section is attracted only in cases where the public servant is such who is not removable from his office save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all.

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It was contended by the learned counsel that the competent authority who can remove the appellant from service derives his power under regulations and these regulations ultimately derive their authority from the Act of Parliament and therefore it was contended that the regulations are framed with the approval of the Central Government but it does not mean that the appellant cannot be removed from his service by anyone except the Government or with the sanction of the Government. Under these circumstances on plain reading of Section 197 the view taken by the Courts below could not be said to be erroneous. We therefore see no reason to entertain this appeal. It is therefore dismissed.

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A.P.J. Appeal dismissed.