

Privy Council Appeal No. 33 of 1948

T. A. Menon - - - - - *Appellant*

v.

The King - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT
FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 7TH NOVEMBER, 1949

Present at the Hearing:

LORD MACDERMOTT
LORD REID
SIR JOHN BEAUMONT

[*Delivered by LORD REID*]

In 1934 the appellant was appointed to the Indian Civil Service. During 1943 he was employed as Additional District Magistrate at Midnapore and while so employed he was concerned in the investigation of a charge of bribery against Dr. Panda a sub assistant surgeon of the Bengal Nagpur Railway. While the case against Dr. Panda was still under investigation the appellant was transferred from Midnapore and he went to Calcutta where he stayed for a time. It was alleged that on 20th December, 1943, while in Calcutta he received a bribe from Dr. Panda and he was suspended. On 6th July, 1945, the following Order was made by the Governor of Bengal :

“In exercise of the powers conferred by Sub-section (1) (b) and Sub-section (2) of Section 197 of the Code of Criminal Procedure (Act V of 1898) the Governor is pleased to accord sanction to the prosecution of Mr. T. A. Menon of the Indian Civil Service under suspension in respect of

- (a) an offence under Section 161 of the Indian Penal Code.
- (b) an offence under Section 165 of the Indian Penal Code.
- (c) an offence under Section 420 of the Indian Penal Code.
- (d) an offence under Section 120B of the Indian Penal Code read with Section 161 of the Indian Penal Code.
- (e) an offence under Section 120B of the Indian Penal Code read with Section 165 of the Indian Penal Code.
- (f) an offence under Section 120B of the Indian Penal Code read with Section 420 of the Indian Penal Code.
- (g) Any other offence or offences as may be found to have been committed by him,

and to direct that the trial of the case should be held in the Court of the Chief Presidency Magistrate, Calcutta.”

Immediately thereafter proceedings were instituted against the appellant in the Court of the Chief Presidency Magistrate who took cognisance of the case. The appellant objected to the jurisdiction of this Court but before anything further was done an order was made by the Legislative Department of the Government of India as follows :

“In exercise of the powers conferred by Sub-section (1) of Section 5 of the Criminal Law Amendment Ordinance of 1943 (XXIX of 1943) the Central Government is pleased to allot for trial to the First Tribunal with Headquarters at Calcutta the case specified in the Schedule hereto annexed.”

Included in the Schedule were the names of the appellant and his Clerk N. C. Menon and the offences charged against each, among those charged against the appellant being an offence under Section 161 of the Indian Penal Code.

After further procedure a charge was framed against the appellant in the following terms :

“That you on or about the 20th day of December, 1943, at Jhowtolla Road, Calcutta being a Public Servant as a member of Indian Civil Service accepted from Dr. S. N. Panda a sum of Rs. 500 as gratification other than legal remuneration as a motive for showing favour in the exercise of your official functions to the said Dr. S. N. Panda in the matter of hushing up a case of alleged bribery against the said Dr. S. N. Panda or for rendering or attempting to render services to the said Dr. Panda by getting the said case hushed up with such public servant or servants as may be concerned in the proceedings against the said Dr. Panda and thereby committed an offence punishable under Section 161 of the Indian Penal Code and within the cognisance of this Tribunal and we hereby direct that you be tried by the said Court on the said charge.

Dated this 5th day of January, 1946.”

The appellant and his clerk were tried by the Tribunal and on 25th April, 1946, both were convicted and sentenced. The appellant appealed against this conviction to the High Court at Fort William : on 14th February, 1947, his appeal was dismissed. On 3rd July, 1947, the appellant was by Order in Council granted special leave to appeal to His Majesty in Council. The terms of this Order are important because they limit the grounds on which the appellant is entitled to base his appeal. The Report of the Judicial Committee which was approved by the Order in Council and is quoted there begins by narrating the procedure in the case and proceeds: “that the petitioner” (now the appellant) “submits that the trial by the Tribunal was invalid by reason of the fact that the sanction granted by the Governor was a sanction for the prosecution of the petitioner in the Court of the Chief Presidency Magistrate and not by the Tribunal.”

There followed the report in these terms :

“Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the High Court of Judicature at Fort William in Bengal dated the 14th day of February, 1947, but that the Appeal ought to be limited to the question of law in regard to the sanction given under Section 197 of the Code of Criminal Procedure 1898.”

This report was made before the decision in *Gill v. The King*, 1948, 75 Indian Appeals 41. Before that decision it was not certain that sanction under Section 197 (1) of the Code of Criminal Procedure was not necessary before a public servant to whom that section applies could be prosecuted for an offence against Section 161 of the Indian Penal Code.

The first argument which Counsel for the appellant sought to present in this appeal may be summarised thus: *Gill's* case shows that sanction was not required in this case, so it was *ultra vires* of the Governor to give sanction and equally *ultra vires* to direct in what court the trial should be held. Without the latter direction the case could never have come before the Chief Presidency Magistrate, and if it was not properly before him it cannot properly have been transferred to the Special Tribunal. Therefore that Tribunal had no jurisdiction and the appeal should succeed on that ground. No doubt the argument does bring in a question about the Governor's sanction, but it certainly does not raise "the question of law in regard to the sanction" to which the Order in Council refers. That question is set out in the Order in Council and is whether the trial by the Tribunal was invalid by reason of the fact that the sanction granted was a sanction for prosecution in the Court of the Chief Presidency Magistrate and not by the Tribunal, which is a very different matter. Their Lordships therefore cannot entertain this argument.

The other argument submitted was in different form. It was that this case was incapable of transfer from the Court of the Chief Presidency Magistrate by allotment to a Special Tribunal under Section 5 of the Criminal Law Amendment Ordinance 1943, because that section does not apply to a case when a Governor has already specified the Court before which the trial is to be held. But there is no ground for any such argument unless the specification of the Court by the Governor was a valid specification. A Governor cannot specify a Court under Section 197 (2) of the Code of Criminal Procedure unless he has given a sanction under Section 197 (1). He has no power to specify a Court in any other case. *Gill's* case makes it clear that no sanction was necessary in this case and in Their Lordships' judgment a Governor cannot acquire power to specify a Court in a case to which Section 197 (1) does not apply by coupling the specification with an unnecessary sanction. As the sanction in this case was unnecessary the specification of a Court could not have the effect which the appellant seeks to attribute to it and therefore the argument must fail. Their Lordships do not find it necessary to consider whether in a case where a sanction is necessary it would be competent to transfer the case from the Court specified by the Governor to a Special Tribunal.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed.

In the Privy Council

T. A. MENON

v.

THE KING

DELIVERED BY LORD REID

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