

A

K. BRAHMA SURIAH & ANR.

v.

LAKSHMINARAYANA

November 26, 1968

B

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Mysore Village Panchayats and Local Boards Act, 1959—Mysore Panchayat Secretaries' Powers and Duties Rules, 1961, r. 16—Rule providing that complaints and suits on behalf of Panchayat to be filed by Secretary—Private complaint whether can be filed for offence under s. 220 of Act.

C

A private complaint was lodged against the appellants for an offence under s. 220 of the Mysore Village Panchayats and Local Boards Act, 1959. Rule 16 of the Mysore Panchayat Secretaries' Powers and Duties Rules, 1961 provided that the Secretary shall have power to file complaints and suits on behalf of the Panchayat, and to conduct the proceedings on its behalf and on the orders of the Panchayat. On their conviction the appellants went to the High Court and contended that in view of Rule 16 they could not be prosecuted on a private complaint. The High Court decided against them on the view that the said Rule did not preclude persons other than the Secretary from filing a complaint but it only debarred complaints being made by others on behalf of the Panchayat. Against the High Court's judgment appeal by special leave was filed in this Court.

D

HELD: (i) In the presence of r. 16 and for the reasons given by this Court in *K. M. Kanavi's* case which dealt with similar provisions under the Bombay Municipal Borough Act, 1925, it must be held that it was the Secretary of the Panchayat who alone was competent to file the complaint.

E

Section 213(3) of the Mysore Act is analogous to s. 23A(3) of the Bombay Act under which the offence fell in *Kanavi's* case. On a parity of reasoning it could not be suggested that if there had been any contravention of s. 213(3) any voter or member of the public could have filed a complaint in the matter. The other provisions also of the Act which follow, namely, ss. 214 to 219 indicate that it was never contemplated that a complaint for an infringement or contravention of the prohibition contained therein could be lodged before a Magistrate having jurisdiction under s. 233 by any private individual in the presence of specific rule that the Secretary shall have the power to file a complaint on behalf of the Panchayat. Most of these sections *i.e.* ss. 217 and 218 postulate infraction of orders of the Panchayat for which the Panchayat alone would be interested in filing a complaint. Thus the scheme of the Act also supports the view that a complaint could be filed only under r. 16 of the Mysore Panchayat Secretaries' Powers and Duties Rules, 1961 and could not have been filed by a private complaint. [936 H—937 C]

F

G

K. M. Kanavi v. State of Mysore, [1968] 3 S.C.R. 821, followed and applied.

H

(ii) The High Court was not right in saying that all offences committed under the various provisions contained in the Act would be cognizable owing to the general powers conferred on police officer by s. 236 of the Act. The section gives only a limited power to the police

officer to effect arrest if an offence is committed in his presence. The present case moreover did not relate to the powers which a police officer could exercise in respect of an offence under s. 220 of the Act but to the question whether a private complaint could be filed. [937 G—938 C]

Public Prosecutor v. A. V. Ramiah, A.I.R. 1958 A.P. 392 referred to.

(iii) The difficulty felt by the High Court that a Secretary who is subordinate to the Chairman may find it embarrassing to file a complaint against him can hardly be accepted as serious. The Secretary has to act on behalf of the Panchayat and it is the panchayat that would be vitally interested in preventing and stopping any contravention of the provisions of s. 220 of the Act. The Secretary acts on behalf of the Panchayat and the question of his subordination to any one of its office bearers is of no consequence. [938 D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 183 of 1966.

Appeal by special leave from the judgment and order dated March 30, 1966 of the Mysore High Court in Criminal Revision Petition No. 384 of 1965.

R. B. Datar, for the appellants.

The respondent did not appear.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from a judgment of the Mysore High Court in which the only point involved is whether a private complaint could be entertained for the commission of an offence under s. 220 of the Mysore Village Panchayats & Local Boards Act, 1959, hereinafter called the "Act". The appellants who were the Vice-Chairman and the Chairman of the Keladi village panchayat were convicted under the aforesaid section and sentenced to pay a fine of Rs. 50 and Rs. 40 and in default to undergo 7 days and 5 days' simple imprisonment respectively.

A private complaint was filed against the appellants alleging that they gave bids at an auction held at the village panchayat and appellant No. 1 purchased a radio belonging to the panchayat for Rs. 35/-. Appellant No. 2 also bid at the same auction for the radio. According to s. 220 of the Act no member or an employee of a panchayat shall directly or indirectly bid for or acquire interest in any movable or immovable property sold at such sale in connection therewith. If any person contravenes this provision he is to be punished, on conviction, with a fine which may extend to Rs. 500/-. Under Rule 16 of the Mysore Panchayat Secretaries' Powers and Duties Rules, 1961 promulgated under the provisions of the Act, only the Secretary of the Panchayat has the power to file a complaint on behalf of the Panchayat. The High Court was of the view that this Rule did not preclude persons

- A other than the Secretary from filing a complaint but it only debarred complaints being made by others on behalf of the Panchayat. Now Rule 16 may be reproduced. :—

B “The Secretary shall have power to file complaints and suits on behalf of the Panchayat and to conduct the proceedings on its behalf under the orders of the Panchayat.”

- C In *K. M. Kanavi v. The State of Mysore*⁽¹⁾ the appellant Kanavi, who was the president of Municipal Borough of Gadag Betgeri had been removed from Presidentship. He refused to hand over the charge of all the papers and property which were in his possession relating to the Borough to the new President in spite of an order made by the Government under s. 23A of the Bombay Municipal Boroughs Act 1925, hereinafter called the “Bombay Act” to that effect. Pursuant to orders made by the Divisional Commissioner and the Deputy Commissioner the new President filed a complaint against Kanavi for an offence punishable under s. 23A(3) of the Bombay Act. The appellant was convicted and sentenced to pay a fine of Rs. 50/-. A question arose whether the complaint filed by the new President was competent as it was not filed in accordance with the procedure laid down in that Act. Section 200 of the Bombay Act provided that the Standing Committee and subject to the provisions of sub-s. (3) the Chief Officer may order proceedings to be taken for the recovery of any penalties and for the punishment of any persons offending against the provisions of the aforesaid Act. This Court was of the opinion that the complaint which had been filed by the new President was for initiating the proceedings for the punishment of Kanavi who had offended against the provisions of sub-s. (2) of s. 23A and as the new President was not the Chief Officer and he had not filed the complaint under any direction made by the Standing Committee the complaint could not be entertained. In that case also the High Court had taken the view that s. 200(1) was only an enabling section which gave the power to the Standing Committee and the Chief Officer to make a direction for taking of proceedings and it could not be held to be exhaustive of the authorities who could make directions for initiation of proceedings. The High Court had taken notice of the fact that there was no provision in that Act forbidding cognizance of offences being taken except on a complaint made under a direction of the Standing Committee or the Chief Officer. This is what was observed by this Court :—

- H “We are unable to accept the interpretation put by the High Court on s. 200(1) of the Act. It is true that there is no specific provision in the Act laying down that

cognizance of an offence under the Act is not to be taken except on a complaint filed in accordance with a direction made under s. 200(1), but the scheme of the Act and the purpose of this provision in s. 200(1) makes it clear that the legislature intended that such proceedings should only be instituted in the manner laid down in that sub-section. The word "may" was used only because the legislature could not have enacted a mandatory provision requiring the Standing Committee or the Chief Officer to make a direction for institution of proceedings in all cases. This word was intended to give a discretion to the Standing Committee or the Chief Officer to make directions for taking proceedings only when they considered it appropriate that such a direction should be made and to avoid compelling the Standing Committee or the Chief Officer to make such directions in all cases. The use of this word "may" cannot be interpreted as laying down that, if a proceeding for punishment of any person for contravention of any of the provisions of the Act is to be instituted, it can be instituted in any manner without complying with the requirements of s. 200(1) of the Act. If the interpretation put by the High Court on this provision is accepted, it would mean that this provision was totally unnecessary, because there would be no need to confer power on the Standing Committee or the Chief Officer to make such directions if such directions could be made or proceedings instituted at the instance of any private individual. We cannot accept the submission that this provision was made in the Act simply by way of abundant caution. In fact, if the provision had been made with such an object in view, there is no reason why the power should have been expressed to be conferred on the Standing Committee and the Chief Officer only and not on the President of the Municipality. We, consequently, hold that, if any proceeding for punishment of any person for contravention of any of the provisions of the Act is to be instituted, it must be instituted in the manner laid down in s. 200(1) of the Act and in that manner only."

It may be mentioned that the expression of the above opinion was based on a consideration of the previous decisions of this Court. Following the ratio of the above decision it would be legitimate to hold that the complaint, in the present case, could be filed under Rule 16 only by the Secretary of the Panchayat and by no one else. It may be pointed out that in the Act s. 213(3) is analogous to s. 23A(3) of the Bombay Act. On a parity of reasoning it could not be suggested that if there had been any

- A contravention of s. 213(3) any voter or member of the public could have filed a complaint in the matter. The other provisions also of the Act which follow, namely ss. 214 to 219 indicate that it was never contemplated that a complaint for infringement or contravention of the prohibition contained therein could be lodged before a magistrate having jurisdiction under s. 233 by any private individual in the presence of a specific rule that the Secretary shall have the power to file a complaint on behalf of the Panchayat. Most of these sections *i.e.* ss. 217 and 218 postulate infraction of orders of the Panchayat for which the Panchayat alone would be interested in filing a complaint. We are satisfied that the scheme of the Act also supports the view which we are taking that a complaint could be filed only under Rule 16 of the Mysore Panchayat Secretaries' Powers and Duties Rules, 1961 and could not have been filed by a private complainant.
- B
- C

- The High Court seems to have relied on s. 236 of the Act which deals with powers of police officers. This section provides that any police officer may arrest any person committing in his presence any offence against any of the provisions of the Act or of any rule, regulation or bye-law made thereunder. The person arrested has to be produced before the nearest magistrate within a period of 24 hours of arrest. The police officer effecting the arrest must give immediate information to the Chairman or the Secretary of the Panchayat of the commission of such offence and give all assistance in the exercise of his lawful authority. The High Court was of the view that under the provisions of this section the police officer could submit a charge sheet under s. 173 of the Criminal Procedure Code after necessary investigation for offences committed under the Act. Chapter II of the Act relates to establishment and constitution of Panchayats. There are certain sections in it which by express words make offences committed under them cognizable but in the same Chapter there are other sections which do not contain any such provision; for instance, ss. 15, 17, 21 and 22 expressly provide that the offences committed under them would be cognizable but ss. 16, 18, 19 and 20 do not contain any such provision. In other words the offences committed under them must be deemed to be not cognizable. Section 23 in the same Chapter says that no court shall take cognizance of an offence punishable under s. 16 or s. 17 or under s. 19(2)(a) unless there is a complaint made by an order of or under authority from the Deputy Commissioner. The High Court was, therefore, not right in saying that all offences committed under the various provisions contained in the Act would be cognizable owing to the general powers conferred on police officers by s. 236. Indeed that section gives only a limited power to the police officer to effect arrest if an offence is committed in his presence. There is authority for the view that this will not make an offence cognizable within the meaning of s. 4(f)
- D
- E
- F
- G
- H

of the Criminal Procedure Code; vide *Public Prosecutor*⁽¹⁾ v. *A. V. Ramiah*. In the absence of any express provision in s. 220 with which we are concerned we doubt whether the offence committed under it would be cognizable and a police officer could carry on investigation in respect of it under Chapter XIV of the Criminal Procedure Code and finally submit a charge sheet under s. 173 of that Code.

It may also be pointed out that in the present case we are not concerned with the powers which a police officer can exercise in respect of an offence committed under s. 220 of the Act. What has to be seen is whether a private person or an individual could file a complaint. In the presence of Rule 16 and for the reasons given in *K. M. Kanavi v. State of Mysore*⁽²⁾ we are of the opinion that it was the Secretary of the Panchayat who alone was competent to file the complaint. It must be remembered that it would be the panchayat that would be largely interested in taking action against any of its members and employees for the contravention of s. 220. The Secretary would, therefore, be entitled to file a complaint on behalf of the panchayat. The difficulty felt by the High Court that a Secretary who is subordinate to the Chairman may find it embarrassing to file a complaint against him can hardly be accepted as a serious hurdle in the way of coming to the conclusion at which we have arrived. The Secretary has to act on behalf of the panchayat and it is the panchayat that would be vitally interested in preventing and stopping any contravention of provisions like s. 220 of the Act. The Secretary acts on behalf of the panchayat and the question of his subordination to any of its office bearers is of no consequence.

In the view we have taken the appeal is allowed and the conviction and sentence imposed on each of the appellants is set aside.

G.C.

Appeal allowed.

(1) A.I.R. 1958 A.P. 392.

(2) [1968] 3 S.C.R. 821.