On the construction which we have adopted of the expression 'tribute' in s. 4 of the Rajasthan Act the petitioner can have no legal or legitimate grievance against the enforcement of the payment made against him. The petition fails and is dismissed. There will be no order as to costs.

Petition dismissed.

KESHAVLAL MOHANLAL SHAH

v.

THE STATE OF BOMBAY

1961

March 17.

(K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Criminal Trial—Magistrate dismissed from service for criminal misconduct—Prosecution of—Cognizance by court—Sanction to prosecute, if necessary—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 197.

The appellant, a Magistrate, was dismissed from service as a result of a departmental enquiry. On a complaint filed by the State Government he was convicted under s. 409 of the Indian Penal Code. The point urged was that the trial Magistrate should not have taken cognizance of the offence without the previous sanction in view of the provisions of s. 197 of the Code of Criminal Procedure.

Held, that no previous sanction was 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 was made or police report was submitted to the Court, i.e., at the time of the taking of cognizance of the offence committed.

S. A. Venkataraman v. *The State,* [1958] S.C.R. 1037, applied.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 127 of 1960.

Appeal by special leave from the judgment and order dated August 4, 1958, of the former High Court at Bombay in Criminal Revision Application No. 728 of 1958.

B. P. Maheshwari, for the appellant.

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Vir Sen Sawhney, *R. H. Dhebar* and *T. M. Sen*, for the respondent.

1961. March 17. The Judgment of the Court was delivered by

RAGHUBAR DAYAL, J.—This appeal, by special leave, is directed against the judgment of the Bombay High Court.

The appellant was a Third Class Magistrate at Sanand in 1951. He received Rs. 200 in cash from Amar Singh Madhav Singh as deposit for security to be released on bail. This amount was not credited in the Criminal Deposit Rojmal and the appellant thereby committed criminal breach of trust with respect to the amount.

The appellant was dismissed from service on April 4, 1953, as a result of a departmental enquiry. On June 9, 1954, a complaint was filed on behalf of the State against the appellant. He was convicted of the offence under s. 409, Indian Penal Code, by the Trial Magistrate. The conviction was confirmed by the Extra Additional Sessions Judge, Ahmedabad. His revision was dismissed by the High Court.

The only point urged in this appeal is that the learned Magistrate should not have taken cognizance of this offence without the previous sanction of the State Government in view of the provisions of s. 197, Code of Criminal Procedure.

It is not disputed that a Court could not have taken cognizance of this offence against the appellant if he had been a Magistrate on June 9, 1954. The appellant was not a Magistrate on June 9, 1954, when the complaint was filed. The question then is whether the provisions of s. 197 of the Code of Criminal Procedure prohibit a Court from taking cognizance of an offence committed by a Magistrate while acting or purporting to act in the discharge of his official duty even when he is no longer a Magistrate on the date the Court takes cognizance. Sub-section (1) of s. 197, Code of Criminal Procedure, reads:

"(1) When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or

when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central 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 employed in connection with the affairs of the Union, of the Central Government; and

(b) in the case of a person employed in connection with the affairs of a State, of the State Government."

There cannot be much scope for the contention that a Court is prohibited from taking cognizance of an offence committed by a Judge while acting or purporting to act in the discharge of his official duty only when that person is a Judge at the time cognizance is taken, as otherwise full effect will not be given to the expression 'any person who is a Judge', in the subsection. Similar expression is not used in describing a Magistrate or a public servant. But it is clear that those two persons should also be 'Magistrate or a public servant' at the time cognizance is taken of an offence committed by them while acting or purporting to act in the discharge of official duty.

In connection with 'public servant' the expression 'who is not removable from his office save by or with the sanction of a State Government or the Central Government' indicates that. It is only when the public servant concerned is in service that the question of his removal from office can arise. If the public servant has ceased to be a public servant, no such question arises. Therefore it seems proper to construe the expression 'when any Magistrate' in the subsection to mean 'when a person who is a Magistrate'.

Even if the expression be not construed in this form, the section says: 'when any Magistrate.....is accused of any offence'. This indicates that it is only when the accusation is against a Magistrate that the Court will not take cognizance of an offence committed by

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him while acting in the discharge of his official duty, without previous sanction. If a person is not a Magistrate at the time the accusation is made, the Court can take cognizance without previous sanction.

It has been strenuously urged on behalf of the appellant that the expression 'when any Magistrate is accused of any offence' refers to the stage when the accusation is first made against the Magistrate, that is to say, when it is alleged for the first time that the Magistrate has committed such an offence. There seems to be no justification to add the word 'first' and read this expression as 'when any Magistrate is first accused of any offence'. The occasion when such an allegation is made for the first time against a Magistrate is not in connection with the Court's taking cognizance of the offence but will always be either when a complaint is made to a superior officer in the department or to the police. Both these authorities are free to inquire into the accusation. It is only when the departmental enquiry or the police investigation leads to the conclusion that the matter is fit for going to Court that a complaint would be made or a police report would be submitted to the proper Court for taking action against the Magistrate. It is at this stage that the Magistrate would be accused of the offence for the purposes of the Court and therefore it would be then that the Court will see whether the person proceeded against is a Magistrate or not.

This view finds further support from the language of the clauses (a) and (b). The previous sanction, according to these clauses, will be of the Central Government if the Magistrate is employed in connection with the affairs of the Union and of the State Government if he is employed in connection with the affairs of a State. If the person is not employed, no sanction is necessary. Whether the person is so employed or not, is to be seen shortly before the submission of the complaint or police report to the Court. The sanction can be given by the proper authority on a consideration of the allegations and evidence available to establish them and therefore only after the investigation is complete. The submission of the

complaint or police report is expected to follow the grant of sanction within a reasonable time.

A similar question arose in *S. A. Venkataraman* v. *The State* (1) in connection with the interpretation of the provisions of s. 6 of the Prevention of Corruption Act, 1947 (Act II of 1947). Sub-section (1) of that section reads:

"(1) No Court shall take cognizance of an offence punishable under s. 161 or s. 165 of the Indian Penal Code or under sub-section (2) of section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

This Court said at p. 1046:

"The words in s. 6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in s. 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed..... A public servant who has ceased to be a public servant is not a person removable from any office by a competent authority."

The same can be said with respect to the provisions of s. 197 of the Code of Criminal Procedure. We therefore hold that no previous sanction is necessary for a Court to take cognizance of an offence committed

(1) [1958] S.C.R. 1037.

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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. We accordingly dismiss the appeal.

Appeal dismissed.

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March 21.

FAZAL BHAI DHALA

v.

CUSTODIAN-GENERAL OF EVACUEE PROPERTY, DELHI

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Evacuee Property—Meaning of—Malafide transfer—Effect of —Custodian—Interference with questions not before him in appeal —Revisional Jurisdiction—Notice, if essential before exercising jurisdiction—Non-issue of notice, when fatal—Partnership at will —Dissolution of—Assets, if and when vest in Custodian—Indian Partnership Act, 1932 (IX of 1932), s. 43—Government of India Ordinance No. XXVII of 1949, s. 7(1)—Administration of Evacuee Property Act, 1950 (XXXI of 1950), ss. 2(f), 26, 40.

F, the appellant, and A his brother, were partners in a business of hides and skins. On August 10, 1949, A executed a deed of sale in respect of some immoveable properties in Orissa and Madras in favour of F. A deed of dissolution of the partnership was also executed on August 12, 1949, wherein it was *inter alia* stated that the partners had agreed that the said partnership shall stand dissolved as from November 2, 1948.

On receipt of information that A had migrated to Pakistan after transferring his properties to his brother F, the Assistant Custodian of Evacuee Property, issued a notice to F under s. 7(1) of the Ordinance 27 of 1949 in respect of immoveable properties in Orissa including the properties covered by the sale deed and the business in hides and skins and certain immoveable properties standing in the name of the firm.

In reply F contended that he had become the sole proprietor of the business with all assets and liabilities, with effect from November 2, 1948, when the partnership was dissolved