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and Taxation Commissioner has by issuing a circular excluded himself from correctly interpreting the words 'wheat' and its 'flour'. And the petitioner's revision petition is not being heard. In this case, therefore, I am of the opinion that the rule in *Wanchoo's case* (1), applies, and I would, therefore, issue a writ of certiorari quashing the order calling upon the petitioner to pay Sales Tax and would make the rule absolute. The petitioner will have his costs. Counsel fee Rs. 100.

Falshaw, J.

FALSHAW, J.—I agree.

APPELLATE CRIMINAL.

Before Kapur and Dulat, JJ.

THE STATE,—*Appellant.*

versus

GIANI RAM SINGH,—*Respondent.*

1953

May, 4th

Criminal Appeal No. 145 of 1952.

Code of Criminal Procedure (Act V of 1898)—Section 196—Sanction by the Government—Form of—Prosecution without requisite authority—Effect of.

The Chief Secretary wrote a letter to the District Magistrate in the following terms :—

> "I am directed to draw your attention to the enclosed translation of objectionable passages from the booklet * * * and to say that it contains words which promote or attempt to promote feelings of enmity or hatred between, and insult or attempt to insult the religion or religious beliefs of, different classes of India citizens. I am, therefore, to request that proceedings may be initiated against
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> under Section 153-A and 295-A of the Indian Penal Code (Act XLV of 1860) and the result thereof may be reported to Government in due course."

(1) 54 P.L.R. 206

The question arose whether this letter amounted to sanction under section 196 of the Code of Criminal Procedure.

Held, that there is no indication in this letter that the Government had ordered any complaint to be filed or that there was any authority from the Provincial Government for the filing of the complaint. Nor does it show that the Chief Secretary was empowered by the Provincial Government to take action in this behalf. The initiation of prosecution without authority as required by section 196 of the Code of Criminal Procedure should be regarded as completely null and void.

Basdeo Agarwalla v. *King Emperor* (1), relied on; *Dattatraya Moreshwar* v. *The State of Bombay and others* (2), held not applicable.

Appeal from the order of Shri T. C. Sethi, Sessions Judge, Amritsar, dated 10th November, 1951, reversing that of S. Gurbux Singh, Magistrate 1st Class, Amritsar, dated the 31st January, 1951, convicting the appellant.

HAR PARSHAD, Assistant Advocate-General, for Appellant.

DALJIT SINGH, for Respondent.

JUDGMENT.

Kapur, J.

KAPUR, J. This is an appeal brought by the State against an order of acquittal made by Sessions Judge, Tek Chand Sethi, dated the 10th November, 1951.

The respondent, Giani Ram Singh printed and published a book called 'Nehkalank Chandar Ude Bhag Tija' in 1949, and in the complaint which was filed by the District Magistrate of Amritsar, on the 5th of June, 1950, it is stated that one thousand copies of this book were published and that there were words and passages which fall within the mischief of sections 153-A and 295-A of the Indian Penal Code. In paragraph 6 of this petition it is stated—

> "6. That the petitioner has been ordered by the Punjab Government—*vide* letter No. 4085-PE-50/III-1356, dated 5th May

(1) 1945 F.C.R. 93, 98
(2) A.I.R. 1952 S.C. 181.

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1950, (Copy attached) to initiate proceedings against the said accused."

In support of the prosecution nine witnesses were produced by the prosecution and the accused was convicted under section 295-A of the Indian Penal Code, by Mr. Gurbakhsh Singh Chatrath, Magistrate 1st Class, with section 30 Powers, and was given one year's rigorous imprisonment. An appeal was taken to the Sessions Judge, who allowed additional evidence to be taken on the question of sanction of the Government, but relying on Full Bench judgment of the Madras High Court in *F. Varadarajulu Naidu* v. *King-Emperor* (1), he held that the sanction was bad, and also went into the merits of the case and held that as there was no evidence to show that any of the passages were offensive, allowed the appeal and set aside the order of conviction, and the State has come up in appeal to this Court.

In the complaint no doubt the particulars of the letter which was received by the District Magistrate are given, but only a copy of this letter was placed on the record which is marked Exhibit P.A. and is in the following terms—

> "I am directed to draw your attention to the enclosed translation of objectionable passages from the booklet *** and to say that it contains words which promote or attempt to promote feelings of enmity or hatred between, and insult or attempt to insult the religion or religious beliefs of, different classes of Indian citizens. I am, therefore, to request that proceedings may be initiated against
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> under Section 153-A and 295-A of the Indian Penal Code, (Act XLV of 1860),

(1) I.L.R. 42 Mad. 885

> and the result thereof may be reported to Government in due course."

Copy of this letter with enclosures in original were sent to the Senior Superintendent of Police, Amritsar, by the District Magistrate and the Senior Superintendent of Police sent it on for compliance to the Inspector City. This letter does not show that the complaint was to be made by the order of or under the authority of the Provincial Government or some officer empowered by the Provincial Government in that behalf. All that it shows is that the Chief Secretary of the Punjab Government drew the attention of the District Magistrate to the objectionable passages and requested him that proceedings may be taken against the respondent. There is no indication in this letter that the matter was considered by the Government or that the Government at any stage authorised the institution of the proceedings and what was placed before the Court was a copy of this letter.

Section 196 of the Code of Criminal Procedure provides—

> "No Court shall take cognizance of any offence punishable * * * 153-A * * * * or section 295-A * * * unless upon complaint made by order of or under authority from the Provincial Government or some officer empowered by the Provincial Government in this behalf."

In my opinion, there is no indication in this letter that the Government had ordered any complaint to be filed or that there was any authority from the Provincial Government for the filing of the complaint. Nor does it show that the Chief Secretary was empowered by the Provincial Government to take action in this behalf.

The Assistant Advocate-General appearing for the State submitted that it was not necessary

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that the letter should show on the face of it that the complaint had been filed under the orders of or under authority from the State Government, but this letter sufficiently indicates both. He has drawn our attention to a judgment of their Lordships of the Supreme Court in *Dattatraya Moreshwar* v. *The State of Bombay and others* (1), where it was held—

> "When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

and on the authority of this submits that it was not necessary that the orders should have been in the name of the Governor as required by Article 166 of the Constitution of India. But, in my opinion, the rule laid down in *Dattatraya Moreshwar's case* (1), has no application to the facts of this case, because the letter, a copy of which was placed before the Magistrate, did not purport to give the requisite authority as required by section 196 of the Code of Criminal Procedure, and if the authority was not there, then the initiation of prosecution should be regarded as completely null and void as was held in *Basdeo Agarwalla* v. *King-Emperor* (2).

It was then submitted that the additional evidence which was taken in the Sessions Court supplied that lacuna in regard to the validity of the authority to prosecute. In the first place, the provisions of the Code are not meant for

(1) A.I.R. 1952 S.C. 181
(2) 1945 F.C.R. 93, 98

giving an opportunity to the prosecution to fill up the gaps against an accused person, and, secondly, in this particular case the evidence does not, in my opinion, seem to be sufficient to give validity to a document which otherwise was not sufficient for proper compliance with section 196 of the Code of Criminal Procedure.

I do not think it necessary to go into the merits of the case and would, therefore, dismiss this appeal.

DULAT, J.—I agree.

REVISIONAL CRIMINAL.

Before Falshaw and Kapur, JJ.

PURAN MAL,—*Convict-Petitioner*,

versus

THE STATE,—*Respondent*.

1953

May, 4th

Criminal Revision No. 523 of 1952.

Prevention of Corruption Act (II of 1947)—Section 5 as amended by Section 4 of the Prevention of Corruption (Second Amendment) Act (LIX of 1952)—Whether retroactive—Conviction before the Amending Act—Not valid—. Amending Act coming into force during the pendency of appeal—Whether conviction can be sustained—Interpretation of Statutes—Statute, whether retroactive or prospective only—Rule to determine.

The petitioner, a public servant, was convicted of an offence under section 409, Indian Penal Code which was illegal as section 409, Indian Penal Code, had been repealed *protanto* by section 5 of the Prevention of Corruption Act, 1947. On 12th August, 1952, the Prevention of Corruption (Second Amendment) Act, was enacted, section 4 of which provided that the provisions of section 5 of the Prevention of Corruption Act, 1947, "shall be in addition to, and not in derogation of any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him." The petitioner had been convicted by the Magistrate on 31st March, 1952, and the appellate court maintained the conviction but reduced the sentence on 14th May, 1952. The question arose whether the Amending Act (LIX of 1952) was retroactive