

1932

Present : Garvin S.P.J.

SUPRAMANIAM v. GANAPATHIPILLAI

APPLICATION FOR A WRIT OF QUO WARRANTO re THE ELECTION OF
CHAIRMAN, VILLAGE COMMITTEE, KARAITIVU

Writ of quo warranto—Village Committee—Conviction of attempt to cheat—Fraud—Disqualification of member—Village Communities Ordinance, No. 9 of 1924, s. 18.

Where a person is convicted of an attempt to cheat, he is not disqualified to be a member of a Village Committee under section 18 of the Village Communities Ordinance.

THIS was an application for a writ of *quo warranto* against the respondent who was elected to the office of Chairman of the Village Committee of Karaitivu. It was alleged that the respondent was convicted on March 23, 1918, by the High Court of Keddah of the offence of attempting to cheat the Government of Keddah, and that he was thereby disqualified to be a member of the Village Committee under section 18 of the Village Communities Ordinance.

B. F. de Silva (with him *Gnanapragasam*), for petitioner.—The respondent has been convicted of an attempt to cheat. Hence he is barred by section 18 sub-section (e) of Ordinance No. 9 of 1924. "Attempt to cheat" involves an element of "fraud". Fraud is not defined in Code. Supreme Court has held the conviction is serious (*In re Ganapathipillai*). Infamous crime is not necessarily one involving immorality only.

H. V. Perera, for respondent.—The conviction is by the Court of Keddah, which is a foreign country. A conviction by a foreign Court is not contemplated by the Village Communities Ordinance, No. 9 of 1924. The offence of attempt to cheat is not an infamous crime. An infamous crime is an offence involving moral turpitude. An attempt to cheat is not a "fraud" within the meaning of sections 18 and 24.

M. W. H. de Silva, Acting D. S.-G. (with him *Basnayake, C.C.*), for the Crown.—The offence of attempt to cheat is not a fraud or infamous crime. An infamous crime is an offence involving moral turpitude (*vide Silva v. Banda*), and does not include an offence involving fraud.

Every offence involving a fraudulent intention is not a fraud. Fraud in this section is a completed act of fraud. Definition of fraud in *Strouds' Judicial Dictionary* cited.

November 8, 1932. GARVIN S.P.J.—

This is an application for a writ of *quo warranto* to Sangarapillai Ganapathipillai who was, on July 8 last, elected to the office of Chairman of the Village Committee for the Karaitivu subdivision. It is alleged that the respondent, Sangarapillai Ganapathipillai, was convicted on March 23, 1918 by the High Court of Keddah of the offence of attempting to cheat the Government of Keddah. This is admitted by the respondent.

A Village Committee is elected by the inhabitants of the subdivision, and, in accordance with the provisions of section 16, the Committee elects one of their number to be Chairman.

If therefore a person is disqualified to be a member of the Committee, he is disqualified to be Chairman of that Committee.

Section 18 prescribes the qualifications required of Committee men. The material portion of the section referred to is as follows:—

A person shall be disqualified to be elected or to be a member of any committee—

- (e) If he has been convicted of theft, fraud, forgery, perjury, or of any infamous crime.

If the application is to succeed, the petitioner must show that the respondent has been convicted of one or more of the crimes specified.

The conviction proved against the respondent was not of theft, forgery, perjury, or of any infamous crime. Of the classes of crimes specified there only remains that of "fraud". Can it be said that a conviction of an attempt to cheat is a conviction of "fraud" within the meaning of this section? There is no crime or offence made punishable in Ceylon which is called or known as fraud. Our criminal law is codified and nothing is an offence which is not declared to be so in the Penal Code or any other Statute. There is no offence known as "fraud" in any Statute and there are no such things as Common law offences known to our law. It would seem however that in England Common law offences were well known, and among them the offence of cheat or fraud. This offence involved the idea of dishonestly depriving another of property. In *The King v. Hamilton*¹ the prisoner was convicted of forgery of certain account particulars with intent to conceal a fraud and the question arose whether he was liable to hard labour under the provisions of 14 & 15 Vict. c. 100, s. 29, by which persons convicted of certain offences were made punishable with hard labour, among them being "any cheat or fraud". It was held that inasmuch as there was no allegation that the prisoner obtained money or other property by means of the forgery with which he was charged he could not be said to have been convicted of a cheat or fraud punishable at Common law.

There are many instances of offences made punishable under our law of which a dishonest or fraudulent intention is an essential element, but they would not be "frauds" within the meaning of the English Common law offence of "fraud" unless the offender deprived another of property.

¹ (1901) 1 K. B. 740.

Cheating is one of the offences which involves a dishonest or fraudulent intention but it is not essential, though it is frequently involved in the act, that a person shall be deprived of property—it is sufficient that the person deceived shall have been induced to do or omit to do anything which he would not have done or omitted to do had he not been so deceived or so long as the act or omission caused or is liable to cause damage or harm to that person in body, mind, reputation, or property or damage or loss to the Government.

A person convicted of cheating as it is known to our law may or may not have committed the offence of “fraud”. Whether he did will depend on whether he has by his deception dishonestly deprived another of property.

Since the term fraud as it appears in section 18 (e) must be given a meaning, it seems to me that it may only legitimately be interpreted to include such offences as would, had they been committed in England, been punishable as “frauds” under the Common law.

All that is alleged against the respondent is that he attempted to cheat the Government of Keddah. He did not, whatever his intention may have been, deprive that Government of any money or other property. It cannot therefore be said that he has been convicted of “fraud” though it may have been his intention to defraud.

The Legislature has attached the disqualification to persons convicted of “theft, fraud, forgery, or of any infamous crime”. It has not said that a person shall be disqualified if he has been convicted of attempting to commit theft, fraud, forgery, or of attempting to commit any infamous crime.

The respondent has not therefore been shown to have been convicted of an offence which under section 18 (e) of the Village Communities Ordinance, No. 9 of 1924, disqualifies him to be elected to be a member of a Village Committee or the Chairman of such a Committee.

It was urged by counsel for the respondent that the convictions contemplated by section 18 were convictions had in a Court in Ceylon. The Ordinance provides for the regulation of the affairs of villages in Ceylon and the provision which has reference to the matter under consideration contemplates and applies to persons who belong to the indigenous peoples of the Island and are inhabitants of a village. It does not seem at all likely that the Legislature contemplated convictions outside Ceylon or intended to attach a disqualification to convictions other than convictions by the Courts of Ceylon.

But it is unnecessary to consider this aspect of the question since I am clearly of the opinion that the Legislature has only disqualified persons convicted of the offences specified in 18 (e) and has not thought fit to attach the same disqualification to persons convicted of attempts to commit any of such offences.

The application for a writ is refused, with costs to the respondent.

Application refused.