

1948

Present : Nagalingam J.

GALAPATHY, Appellant, and MARTIN, Respondent.

S. C. 490—M. C. Tangalla, 86.

Urban Councils Ordinance—Councillor having contract with Council—Penalty—Disqualification from sitting—Ordinance No. 61 of 1939, s. 238.

Where a person has been convicted under section 238 of the Urban Councils Ordinance, No. 61 of 1939, on a charge of having been concerned in a contract with the Council it is competent for the Magistrate in passing sentence to make a declaration that he is disqualified from sitting in Council. This is one of the penalties imposed by the section.

A PPEAL from a judgment of the Magistrate, Tangalla.

H. V. Perera, K.C., with S. W. Walpita, for accused¹. appellant.

D. S. Jayawickreme, for complainant, respondent.

Cur. adv. vult.

October 5, 1948. NAGALINGAM J.—

The accused-appellant who was at the relevant dates the Vice-Chairman of the Urban Council of Tangalla was prosecuted with having committed an offence punishable under section 238 of the Urban Councils Ordinance, No. 61 of 1939, in that directly or indirectly he had been concerned or had a financial interest in a contract with the Council and was found guilty of the offence. The learned Magistrate passed sentence on the accused in the following terms:—"The penalty fixed by section 238 (2) is a fine not exceeding Rs. 500 and disqualification from sitting in Council. I impose that penalty". There is very clear and convincing evidence which leaves no room for argument that the charge against the accused is conclusively established. The conviction in these circumstances has therefore not been challenged.

The point, however, has been taken on behalf of the accused that it was not competent to the learned Magistrate in passing sentence to make a declaration that he was disqualified from sitting in Council. It has been urged that the disqualification attaches to a member who is concerned or has a financial interest in any contract with the Council irrespective of the question whether he is found guilty or not of being so concerned or having a financial interest and no declaration is therefore necessary or required by the section. It is true that the words of the section, "If any member is concerned or has any financial interest in any contract made with the Council, he shall be guilty of an offence punishable with a fine not exceeding Rs. 500 and shall be disqualified from sitting as a member of the Council" are capable of a metaphysical interpretation, namely, that directly a member is so concerned or has a financial interest he finds himself in a state or condition of having committed that offence and becomes liable to punishment by having a sentence of fine imposed on him and also becomes disqualified from sitting as a member. But I do not think that the words are used here in that sense. The words must be interpreted in their legal sense and would and can then only mean that the person becomes liable to punishment by having a sentence of fine imposed on him, and also becomes disqualified from sitting as a member on his being found guilty of doing the prohibited act by a competent tribunal.

If one followed the phraseology of the Penal Code, this section would run as follows: "Whoever being a member of an Urban Council is concerned or has any financial interest in any contract with the Council, he shall be punished with a fine not exceeding Rs. 500 and shall be disqualified from sitting as a member of the Council". Read in this way, it is clear that the penalty is two-fold comprising firstly a fine and secondly a disqualification from sitting as a member. I do not think that the language employed in section 238 was intended to have a different effect. The disqualification from sitting as a member is a consequence that may flow out of and follow upon a conviction by a competent tribunal and not otherwise. I do not think it would be possible to prosecute a member for sitting while disqualified by reason

of his having been concerned in or having had a financial interest in any contract with the Council without the member first being convicted under section 238 of the Ordinance.

Now, if a Magistrate after convicting a member under section 238 of the Ordinance only imposes a fine, but does not declare him to be disqualified from sitting as a member, it may very well be argued, and argued successfully, that the disqualification does not attach to the member, for it may be said that while the Legislature may have intended to make the disqualification an imperative one, where the Magistrate does not impose the disqualification even though erroneously, the disqualification does not in fact attach; the position would be analogous to a case where the law prescribes that a jail sentence should be imposed in addition to a fine and the sentence imposed is a fine only; in such a case it is unquestionable that the prisoner cannot be said to have suffered imprisonment. In the present case similarly it cannot be contended that without an order of the Magistrate to that effect the accused had become disqualified; furthermore, a declaration of disqualification by the Magistrate would also have a large bearing on the question whether the member acted knowingly in sitting as a member after he became disqualified—an essential requirement of section 29 of the Ordinance. Apart from a disqualification following on a conviction, disqualification can also attach independently of any conviction whatsoever, as for instance, where a member after election ceases to have the qualification required by section 8 of the Ordinance; but we are not dealing with this class of disqualification here.

Without making an attempt at an exhaustive classification, the punishment imposed by a Legislature may be grouped under the following heads :—

- (a) Infliction of personal injury, *e.g.*, corporal punishment;
- (b) Deprivation of property, *e.g.*, a fine or forfeiture of property;
- (c) Deprivation of personal liberty, *e.g.*, imprisonment;
- (d) Deprivation of civic rights, *e.g.*, disqualification from acting in a civic office.

In the present case, there can be little doubt that the Legislature intended to impose penalties which fall under categories (b) and (d) above, and where penalties are prescribed for an offence, it is the duty of the tribunal to impose the appropriate punishment. I am therefore of the view that the learned Magistrate acted properly in declaring the accused disqualified from sitting as a member.

The appeal therefore fails and is dismissed. I think this is a fit case where the complainant should be paid his expenses for carrying on this prosecution which he has undertaken as a public duty. I would, therefore, direct that out of the fine recovered the costs of the complainant both in the Magistrate's Court and in this Court be paid to him by way of compensation.