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hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power."

The apology which has been tendered in this case by the respondent is not of any avail.

The next question which calls for consideration relates as to the appropriate nature of the punishment which should be awarded in such a case. I have already expressed the view that the contempt of which I find the respondent guilty is of a grave nature and the obstruction offered on the two occasions to the bailiff was deliberate. This is a case which calls for a punishment which should be sufficiently severe in order to be effectively deterrent. A sentence of fine will be of no purpose in bringing home to the respodent the full significance of the gravity of his conduct. This is a case which calls for a sentence of imprisonment. I, therefore, sentence him to undergo simple imprisonment for one month. I also order him to pay costs of these proceedings which are assessed at Rs. 50.

B.R.T.

SUPREME COURT

Before Syed Jafer Imam and J. L. Kapur, JJ.

SHRI KRISHAN KUMAR,—*Appellant*

versus

THE UNION OF INDIA.—*Respondent*

Criminal Appeal No. 114 of 1957

1959

May, 21st

Prevention of Corruption Act (II of 1947)—Section (1)(c)—Offence under—Nature of—Offence of misappropriation—Essential facts to be proved.

Held, that the offence under Section 5(1)(c) of the Prevention of Corruption Act, 1947, is the same as embezzlement. It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated a strong circumstance against the accused person. In the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. . If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he has to prove them. Of course the prosecution has to establish a *prima facie* case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of section 106 of the Evidence Act to throw the onus on him to prove his innocence.

Appeal by Special Leave from the Judgment and Order dated the 6th December, 1955, of the Punjab High Court (Circuit Bench) Delhi in Criminal Appeal No. 25-D of 1953, arising out of the Judgment and Order, dated the 27th August, 1953, of the Court of the Special Judge ot Delhi in Criminal Case No. 3 of 1953.

R. L. ANAND with S. N. ANAND, for Appellant.

H. J. UMRIGAR & R. H. DHEBAR, for Respondent.

JUDGMENT

The following Judgment of the Court was delivered by:—

KAPUR, J.—This appeal by special leave is brought against the judgment and order of the Kapur, J.

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High Court of the Punjab confirming the order of conviction of the appellant under section 5(1)(c) of the Prevention of Corruption Act (2 of 1947) (hereinafter referred to as the Act). The High Court reduced the sentence of the appellant to nine months' rigourous imprisonment.

The appellant was employed as an Assistant Store-keeper in the Central Tractor Organisation at Delhi and amongst other duties his duty was the taking of delivery of consignment of goods received by rail for Central Tractor Organisation and in that capacity he is alleged to have misappropriated a major portion of a wagon load of iron and steel weighing about 500 mds. received at Delhi Railway Station from the Tata Iron & Steel Co., Tatanagar under Railway Receipt No. 039967 dated August 12, 1950. This consignment of goods was taken delivery of on October 2, 1950, at the Lahori Gate Depot. The consignment had been lying at the Railway depot for a considerable time and the Central Tractor Organisation was before taking the delivery, making efforts to have the wharfage and demurrage charges reduced but it only succeeded in getting a reduction of Rs. 100. The appellant paid Rs. 2,332-4-0 for demurrage by means of credit notes P. N. and P. O. on October 2, and on the following day he paid a further sum of Rs. 57-3-0 by a credit note P. Q. The prosecution case was that this consignment never reached the Central Tractor Organisation and that the appellant had removed these goods and had misappropriated them. He was absent from work after October 4, 1950, on the alleged ground of illness but he was sent for on October 7, and appeared before the Director of Administration Mr. F. C. Gora and he gave an explanation that he (the appellant) had lost the Railway Receipt along with another Railway Receipt and blank

credit notes which had been signed by the Patrol and Transport Officer. He also stated that he did not know that the goods covered by that Railway Receipt had been cleared. After this explanation the appellant was handed over to the police and a case was registered against him at the instance of Mr F. C. Gora on October 7, 1950.

On the following day, that is, October 8, 1950, the appellant made a statement to Sub-Inspector Sumer Shah Singh that he had given the goods to Gurbachan Singh who was traced and in the presence of this Sub-Inspector who was not in uniform at the time Gurbachan Singh handed over Rs. 200 to the appellant which the Sub-Inspector took possession of and then Gurbachan Singh took the party which consisted of the Sub-Inspector, Dharam Vir of the Central Tractor Organisation and witness Kartar Singh to the premises of Amar Singh at Motia Khan where iron and steel goods were seized and recovery memos prepared. Of the goods covered by the consignment, seven packages were later recovered from the Lahori Gate Goods Depot.

The defence of the appellant was that he took delivery of the goods on October 2 & 3 and removed them to another Railway Siding known as Saloon Siding where the goods of the Central Tractor Organisation used occassionally to be stacked in order to save wharfage and demurrage. In his evidence he stated that he removed these goods to the Saloon Siding on October 2 and 3 by means of a truck of the Central Tractor Organisation which was driven by Sukhdev Singh. The appellant produced Sukhdev Singh and two chowkidars in support of his defence that he had removed these goods from the Lahori Gate Depot to the Saloon Siding by means of the truck of Sukhdev

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Singh and on some carts. The High Court has not accepted this evidence. Therefore the position comes to this that the goods received in that consignment were, according to the appellant's own showing, removed from the Lahori Gate Depot but it is not proved that they reached the Saloon Siding and they did not reach the Central Tractor Organisation. There is also the fact that the appellant gave false explanation on October 7, 1950, as to what had happened to the Railway Receipt or the credit notes which he had received from the Central Tractor Organisation and there is the further fact that the appellant was absent from the duty from October 4 to October 7 till he was sent for by Mr. F. C. Gora.

The prosecution also tried to show that the goods were removed by Gurbachan Singh to Amar Singh's place from where certain iron and steel goods were recovered. Now these iron and steel goods do not tally with the goods which were received from Tatanagar under Railway Receipt No. 039967 and the goods seized from Amar Singh's place have not been shown to be of the Tata Iron & Steel Co.'s manufacture. Therefore the case reduces itself to this that the appellant took delivery of the goods. These goods were removed from the Lahori Gate Railway Depot by the appellant and they never reached the Central Tractor Organisation. The prosecution sought to connect the goods found at Amar Singh's place with the goods received, taken delivery of and removed by the appellant but they failed to do so because neither the identity of the goods is the same nor has Gurbachan Singh been produced to depose that it was the appellant who asked him to remove the goods for being taken to Amar Singh's place.

In this view of the matter the question for decision is whether the case of the prosecution

should be held to be proved that the appellant had misappropriated the goods. It emerges from the evidence of both parties that the goods were received by the appellant and removed by him; and they never reached the Central Tractor Organisation. Indeed before the High Court it was not disputed that the appellant took delivery of the whole consignment at Lahori Gate Depot and "he was responsible for the actual removal of two considerable portions of the consignment on the 2nd and 3rd of October."

The offence of which the appellant has been convicted is section 5(1)(c) of the Act which is as follows:—

> 5. (1) "A public servant is said to commit the offence of criminal misconduct in the discharge of his duty—
>
> (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do."

The word 'dishonestly' is defined in section 24 of the Indian Penal Code to be:—

> "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'."

Fraudulently has been defined in the Indian Penal Code in section 25 as follows:—

> "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

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Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property. Therefore when a particular thing has gone into the hands of a servant he will be guilty of misappropriating the thing in all circumstances which show a malicious intent to deprive the master of it. As was said by Fazl Ali, J., in *Harkrishna Mahtab* v. *Emperor* (1):—

> "Now I do not mean to suggest that it is either necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused, because under the law, even temporary retention is an offence, provided that it is dishonest,... ... ...
>
> ... ...
>
> I must point out that the essential thing to be proved in case of criminal breach of trust is whether the accused was actuated by dishonest intention or not. As the question of intention is not a matter of direct proof, the Courts have from time to time laid down certain broad tests which would generally afford useful guidance in deciding whether in a particular case the accused had or had not *mens rea* for the crime. So in cases of criminal breach of trust the failure to account for the money proved to have been received by the accused or giving a false account of its use is generally considered to be a strong circumstance against the accused.'

(1) A.I.R. 1930 Patna 209

The offence under section 5(1)(c) is the same as embezzlement, which in English law, is constituted when the property has been received by the accused for or in the name or on account of the master or employer of the accused and it is complete when the servant fraudulently misappropriates that property (Halsbury's Laws of England, Vol. 10, 3rd Edition, page 787). In *Larnier* v. *Rex* (1), the offence of embezzlement was described as a wilful appropriation by the accused of the property of another. A court of Justice, it was said in that case "cannot reach the conclusion that the crime has been committed unless it be a just result of the evidence that the accused in what was done or omitted by him was moved by the guilty mind."

So the essence of the offence with which the appellant was charged is that after the possession of the property of the Central Tractor Organisation he dishonestly or fraudulently appropriated the property entrusted to him or under his control as a public servant and deprived the owner i.e. Central Tractor Organisation of that property.

It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated a strong circumstance against the accused person. In the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being

(1) [1914] A.C. 221

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within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he has to prove them. Of course the prosecution has to establish a prima facie case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of section 106 of the Evidence Act to throw the onus on him to prove his innocence. *See* Harries C. J. in *Emperor* v. *Santa Singh* (1). In the present case the appellants received the consignment of goods which came from Tatanagar. It is admitted that he removed them and it was found by the High Court that they never reached the Central Tractor Organisation. He gave an explanation in court which has been found to be false. Before Mr. F. C. Gora he made a statement to the effect that he had lost the Railway Receipt and therefore had never got the delivery of the goods which was also false. In these circumstances, in our opinion, the court would be justified in concluding that he had dishonestly misappropriated the goods of the Central Tractor Organisation. The giving of false explanation is an element which the Court can take into consideration (*Emperor* v. *Chattur Bhuj* (2). In *Rex* v. *William* (3) Coleridge J. charged the jury as follows: —

> "The circumstances of the prisoner having quitted her place, and gone off to Ireland, is evidence from which you may infer that she intended to appropriate the money; and if you think that she did so intend, she is guilty of embezzlement.

(1) A.I.R. 1944 Lah. 339, 345
(2) (1935) I.L.R. 15 Patna 108
(3) (1836) 7 C. and P. 338

Again in *Reg.* v. *Lynch* (1), Moore J., said: –

> "You have further the fact that, after getting the money, the prisoner absconded and did not come back till he was in custody. You may infer that he intended to appropriate this money, and if so, he is guilty of embezzlement."

The appellant's counsel relied on certain observations in certain decided cases which, according to his submission, support his contention that the prosecution has to prove not only receipt of goods by the accused but also to prove that he converted them to his own use and did not apply them to the purpose for which he received them. He referred to *Ghulam Haider* v. *Emperor* (2); *In re Ramakkal & Others* (3); *Bolai Chandra Khara* v. *Bishan Bejoy Srimari* (4), *Bhikchand* v. *Emperor* (5); *Pritchard* v. *Emperor* (6). So broadly stated this submission does not find support even from the cases relied upon by the appellant's counsel. They are all decisions on the peculiar circumstances of each case. In *Ghulam Haider's case* (supra) (2) the proposition was qualified by saying that proof of receipt and failure to account "is a long way towards proof of misappropriation but not the whole way". In that case the books in which receipts ought to have been entered were not produced and there was absence of "clear accounts". In *Ramakkal's case* (supra) (3) the accused was the receiver of a currency note found by a child and it was held that mere intention to misappropriate or even preparation to that end was not an offence. It was a case brought to the High Court at an intermediate stage for quashing the charge and the High Court did not do so.

(1) (1854) 6 Cox. C.C. 445
(2) A.I.R. 1938 Lah. 634
(3) A.I.R. 1938 Mad. 172
(4) A.I.R. 1934 Cal. 425
(5) A.I.R. 1934 Sindh 22
(6) A.I.R. 1928 Lah. 382

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Bolai Chandra Khara's case (supra) (1) only emphasised that proof of one element of the criminal breach of trust is not enough for conviction and proof of non-payment of money collected by a *gomastha must* be given by the prosecution. In *Bhickchand's case* (supra) (2) it was held that it is only on proof of non-payment of money received by the accused that "presumption will arise of misappropriation". In *pritchard's case* (supra) (3) also the prosecution *did not* produce the books of account showing non-payment. All these decisions must be confined to their peculiar facts and in their ultimate analysis do not support the proposition contended for by the appellant..,

What the prosecution have proved in this case is that the appellant took delivery of the goods on October 2 and 3. His own statement on oath shows that he removed these goods from the Railway Siding. This removal is also proved by documentary evidence in the form of gate passes. There is also proof of the fact that the goods did not reach the Central Tractor Organisation. The appellant has given an explanation that he removed these goods to the Saloon Siding. This explanation has not been accepted. The prosecution have also proved that the appellant in the first instance gave a false explanation that he had not taken delivery of the goods. He had absented himself from duty and had to be called by the Officer-in-charge. He has set up the defence of removal to the Saloon Siding which was not accepted. The prosecution also set out to prove that the goods were disposed of by the appellant by giving them to one Gurbachan Singh who in turn put these at the premises of Amar Singh and some steel goods were recovered from there but the prosecution have

(1) A.I.R. 1934 Cal. 425
(2) A.I.R. 1934 Sindh 22
(3) A.I.R. 1928 Lah. 382

neither produced Gurbachan Singh nor has it been proved that the goods are part of the consignment which was taken delivery of by the appellant. If under the law it is not necessary or possible for the prosecution to prove the manner in which the goods have been misappropriated then the failure of the prosecution to prove facts it set out to prove would be of little relevance. The question would only be one of intention of the appellant and the circumstances which have been above set out do show that the appellant in what he has done or has omitted to do was moved by a guilty mind.

In our opinion the appellant was rightly convicted and we would therefore dismiss this appeal.

B.R.T.

SUPREME COURT

Before Bhuvaneshwar Prashad Sinha, P. B. Gajendragadkar and K. N. Wanchoo, JJ.

C. S. D. SWAMI,—*Appellant.*

versus

THE STATE,—*Respondent*

Criminal Appeal No. 177 of 1957

1959

May, 21st

Prevention of Corruption Act (II of 1947)—Section 5(3)—Scope and requirements of—Onus of proof—On whom lies—Specific instances of corruption not proved—Conviction—Whether can be based on presumption under Section 5(3).

Held, that Section 5(3) of the Prevention of Corruption Act, 1947, does not create a new offence but only lays down a rule of evidence, enabling the court to raise a presumption of guilt in certain circumstances—a rule which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged,

and that the burden never shifts on to the accused to disprove the charge framed against him.

Held, that the requirement of Section 5(3) of the Prevention of Corruption Act, 1947, is that the accused person shall be presumed to be guilty of criminal misconduct in the discharge of his official duties "unless the contrary is proved." The words of the statute are peremptory, and the burden must lie all the time on the accused to prove the contrary. After the conditions laid down in the earlier part of sub-section (3) of section 5 of the Prevention of Corruption Act, 1947, have been fulfilled by evidence to the satisfaction of the court, the court has got to raise the presumption that the accused person is guilty of criminal misconduct in the discharge of his official duties, and this presumption contiues to hold the field unless the contrary is proved, that is to say, unless the court is satisfied that the statutory presumption has been rebutted by cogent evidence. Not only that, the section goes further and lays down in forceful words that "his conviction, therefor, shall not be invalid by reason only that it is based solely on such presumption."

Held, that the failure of the prosecution to adduce sufficient evidence to prove the particular facts and circumstances of criminal misconduct so as to bring the charge home to the accused under Section 5(1)(a) of the Act does not necessarily lead to the legal effect that the accused person must be acquitted. As soon as the requirements of Sub-section (3) of Section 5, have been fulfilled, the Court will not only be justified in making, but is called upon to make, the presumption that the accused person is guilty of criminal misconduct within the meaning of Section 5(1)(d). In order to succeed in respect of the charge under Section 5(1)(a), the prosecution has to prove that the accused person had accepted or obtained or agreed to accept or attempted to obtain from any person any gratification by way of bribe within the meaning of section 161 of the Indian Penal Code. The charge under Section 5(1)(d) does not require any such proof. If there is evidence forthcoming to satisfy the requirements of the earlier part of sub-section (3) of section 5, conviction for criminal misconduct can be had on the basis of the presumption which is a legal presumption to be drawn from the proof of facts in the earlier part of the sub-section (3) aforesaid. Hence, the failure of the

charge under clause (a) of sub-section (1) of Section 5, does not necessarily mean the failure of the charge under Section 5(1)(d) of the Act.

Appeal by Special Leave from the Judgment and Order dated the 11th April, 1957, of the Punjab High Court in Criminal Appeal No. 7-D of 1955, arising out of the Judgment and Order, dated the 19th January, 1955, of the Court of Special Judge at Delhi in Corruption Case No. 2 of 1953.

G. S. PATHAK with R. GANAPATHY IYER and G. GOPALAKRISHNAN, for Appellant.

C. K. DAPHTARY with G. C. MATHUR and R. H. DHEBAR, for Respondent.

JUDGMENT

The following Judgment of the Court was delivered by:—

Sinha, J.

SINHA, J.—This appeal by special leave is directed against the judgment and order of the High Court of Judicature for the State of Punjab at Chandigarh, dated April 11, 1957, affiirming those of the Special Judge, Delhi, dated January 19, 1955, covicting the appellant under section 5(2) of the Prevention of Corruption Act (2 of 1947). The sentence passed upon the appellant was six months' rigorous imprisonment.

The facts leading up to this appeal, may shortly be stated as follows: During and after the Second World War, with a view to augmenting the food resources of the country, the Government of India instituted a "Grow-More-Food Division" in the Ministry of Agriculture. S. Y. Krishnaswamy, a Joint Secretary in that Ministry, was placed in charge of that Division, with effect from January 2, 1947. The appellant was working in that Department as Director of Fertilizers. He was a

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former employee of the well-known producers of fertilizers, etc., called "Imperial Chemical Industries". Fertilizers were in short supply and, therefore, large quantities of such fertilizers had to be imported from abroad. As chemical fertilizers were in short supply not only in India but elsewhere also, an international body known as the "international Emergency Food Council" (I.E.F.C.) had been set up in United States of America, and India was a member of the same. That body used to consider the requirements of different countries in respect of fertilizers, and used to moke allotments. Russia was not a member of that organisation. Towards the end of 1946, a Bombay firm, called 'Messrs. Nanavati and Company', which used to deal in fertilizers and had business contacts with Russia, offered to supply ammonium sulphate from Russia to the Government of India. In the year 1947 and 1948, considerable quantities of ammonium sulphate were obtained through Messrs. Nanavati and Company aforesaid. One D. N. Patel, who was a former employee of Messrs. Nanavati and Company, joined a partnership business under the style of 'Messrs. Agri Orient Industries Limited of Bombay'. This firm obtained a contract from the Government for the supply of twenty thousand tons of ammonium sulphate from United States of America, in February, 1950. In the course of this business deal, the said Patel experienced some difficulty in obtaining Government orders regarding some consignments. The appellant was approached in that connection, and it is alleged that Patel paid to the appellant Rs. 10,000 at Bombay as bribe for facilitating matters. But in spite of the alleged payment, difficulties and delays occurred and the consignments, even after they had reached thier destination in India, were not moving fast enough,

thus, causing considerable loss to the firm in which Patel was interested. Patel, therfore, approached Shri K. M. Munshi who was then the Minister for Food and Agriculture in Delhi, and disclosed to him the alleged payment of bribe of Rs. 10,000, as also the fact that the appellant had been receiving large sums of money by way of bribes for showing favours in the discharge of his duties in the Department. The Minister aforesaid directed thorough enquiries to be made, and the matter was placed in the hands of the Inspector-General of Special Police Establishment. A departmental committee was also set up of three senior officers of the Department to hold a departmental inquiry, and ultimately, as a result of that inquiry, the Minister passed orders of dismissal of the appellant, in August, 1950. A further inquiry in the nature of a *quasi*-judicial inquiry, was held by the late Mr. Justice Rajadhyaksha of the Bombay High Court, in 1951. The inquiry related to matters concerned with the import of fertilizers into India. After receipt of the report of the inquiry by the late Mr. Justice Rajadhyaksha, in January, 1952; and after consideration of the matters disclosed in that report; a first information report was lodged on April 4, 1952, and thorough investigations were made into the complaints. The result was that two cases were instituted. The first one related to an alleged conspiracy involving the appellant, Krishnaswamy and one of the proprietors of Messrs. Nanavati and Company, and several others, relating to bribery and corruption in connection with the supplies of ammonium sulphate from Russia. With that case, we are not concerned here. The second case, out of which the present appeal arose, was instituted against two persons, namely, the appellant and Krishnaswamy, that they had entered into a conspiracy to receive bribes and

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presents from various firms, in connection with the import of fertilizers. The learned Special Judge, who heard the prosecution evidence, came to the conclusion that it did not disclose any conspiracy as alleged, except in certain instances which formed the subject-matter of the charge of conspiracy which was being tried separately, as aforesaid. The present case, therefore, proceeded against the appellant alone under two heads of charge, namely, (1) that he had been habitually accepting or obtaining, for himself or for others, illegal gratifications from a number of named firms and others, in connection with the import and distribution of fertilizers—section 5(1)(a) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the Act'), and (2) that he had been habitually receiving presents of various kinds by abusing his position as a public servant—section 5(1)(d) of the Act. The High Court, in agreement with the learned Special Judge, found the evidence of P. Ws. 9 and 10, who were the principal prosecution witnesses as regards the passing of certain sums of money from certain named firms to the appellant, as wholly unreliable. Furthermore, Patel, being in the position of an accomplice, his evidence did not find sufficient corroboration from other facts and circumstances proved in the case. The High Court, not being in a position to accept the tainted evidence aforesaid, found that the case of payment of particular sums of money by way of bribes, had not been established. But relying upon the presumption under sub-section (3) of section 5 of the Act, the High Court came to the conclusion that the appellant had not satisfactorily accounted for the receipt of Rs. 73,000 odd in cash and about Rs. 18,000 by cheques, during the years 1947 and 1948, which sums were wholly disproportionate to the appellant's known source of income, namely, his salary as a

Government servant, and that, therefore, he was guilty of criminal misconduct in the discharge of his official duties. In that view of the matter, the High Court confirmed the conviction and sentence of six months' rigorous imprisonment, passed by the learned Special Judge of Delhi.

The learned counsel for the appellant has contended (1) that on the admitted facts, the ingredients of section 5(3) of the Act, had not been established, (2) that when the charge in respect of specific instances of corruption, has not been proved, as found by the courts below, it should have been held that the contrary of the presumption contemplated by section 5(3), namely, of the guilt of criminal misconduct, had been established and (3) that the appellant's statement under section 342 of the Code of Criminal Procedure, as also his statements contained in his written statement, had not been proved to be false, and that, therefore, it should have been held that the case against the appellant had not been proved beyond all reasonable doubt.

It is true that section 5(3) of the Act, does not create a new offence but only lays down a rule of evidence, enabling the court to raise a presumption of guilt in certain circumstances—a rule which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that the burden never shifts on to the accused to disprove the charge framed against him. With reference to the provisions of section 5(3) of the Act, it has been contended, in the first instance, that the charge of criminal misconduct in the discharge of his official duties, is now confined to the fact as disclosed in his bank accounts with the Imperial Bank of India

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(New Delhi Branch), and the Chartered Bank of India, Australia and China (Chandni Chowk Branch), that his net credit with those banks totalled up to a figure just over Rs. 91,000. He accounted for that large balance by stating that he was the only son of his father who had been able to give him advanced education in England for a period of over seven years; that after his return to India, he had been holding highly paid posts for about 20 years in the Imperial Chemical Industries, in the Army and in the Government of India; that he had no children and no other dependants except his wife; that with his limited household expenses, he was able to save a good round sum out of his salary and allowances which were considerable, because his duty took him throughout the length and breadth of the country, thus enabling him to earn large sums of money by way of travelling allowances which he saved by staying with his friends and relations during his official tours. He added that he had received a gratuity for services rendered to the Army, and also considerable sums of money as his provident fund from the Imperial Chemical Industries, towards the end of November, 1947. He also stated that his deposits in the two banks aforesaid, represented sums of money saved in cash out of his salaries, allowances and gifts from his parents, as also repayments of loans advanced by him to his friends while he was in the Army, and later. He added that some of the deposits in cash were really redeposits of earlier withdrawals from the banks, as also the sale-proceeds of his old car sold in June, 1948, for Rs. 5,500, together with the sale-proceeds of gold jewellery belonging to his wife. He also tried to explain the large deposits of cash in 1948, by alleging that he had borrowed a sum of Rs. 20,000 from one Ganpat Ram on a pronote (which he, later on, re-paid and obtained a receipt),

with a view to building a house of his own in Delhi, but as that negotiation fell through, he deposited that cash amount in his account in the two banks aforesaid in August, 1948, as the creditor aforesaid would not accept re-payment of the loan within a period of two years, unless the interest for that period was also paid at the same time. With reference to those statements of the accused from the dock, it was contended by the learned counsel for the accused that in view of those facts, it could not be said that the accused had not accounted for those large deposits with the two banks aforesaid. The High Court has pointed out that the matters alleged in the statement aforesaid of the accused, were capable of being easily proved by evidence which had not been adduced; that allegation was no proof, and that his lucrative posts in the Imperial Chemical Industries and in the Army, were matters of history in relation to the period for which the charge had been framed. The High Court, therefore, found it impossible to accept the appellant's bare statement from the dock as to how amounts earned far in the past, could find their way into the banks during the years 1947 and 1948. It has been repeatedly observed by this Court that this Court is not a Court of criminal appeal, and we would not, therefore, examine the reasons of the High Court for coming to certain conclusions of fact. Apparently, the High Court considered all the relevant statements made by the accused under section 342 of the Code of Criminal Procedure and in his written statement, and came to the conclusion that those statements had not been substantiated. We cannot go behind those findings of fact.

Reference was also made to cases in which courts had held that if plausible explanation had been offered by an accused person for being in

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possession of property which was the subject-matter of the charge, the court could exonerate the accused from criminal responsibility for possessing incriminating property. In our opinion, those cases have no bearing upon the charge against the appellant in this case, because the section requires the accused person to "satisfactorily account" for the possession of pecuniary resources or property disproportionate to his known sources of income. Ordinarily, an accused person is entitled to acquittal if he can account for honest possession of property which has been proved to have been recently stolen (see illustration (a) to section 114 of the Indian Evidence Act, 1872). The rule of law is that if there is a *prima facie* explanation of the accused that he came by the stolen goods in an honest way, the inference of guilty knowledge is displaced. This is based upon the well-established principle that if there is a doubt in the mind of the court as to a necessary ingredient of an offence, the benefit of that doubt must go to the accused. But the Legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily", and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.

Another argument bearing on the same aspect of the case, is that the prosecution has not led evidence to show as to what are the known sources of the appellant's income. In this connection, our attention was invited to the evidence of the Investigating Officers, and with reference to that evidence, it was contended that those officers have not said, in terms, as to what were the known sources of income of the accused, or that the salary

was the only source of his income. Now, the expression "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of section 106 of the Evidence Act. The prosecution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of Government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund. We are not, therefore, impressed by the argument that the prosecution has failed to lead proper evidence as to the appellant's known sources of income. It may be that the accused may have made statements to the Investigating Officers as to his alleged sources of income, but the same, strictly, would not be evidence in the case, and if

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the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by the prosecution. In the present case, the prosecution has adduced the best evidence as to the pecuniary resources of the accused person, namely, his bank accounts. They show that during the years 1947 and 1948, he had credit at the banks, amounting to a little over Rs. 91,000. His average salary per mensem, during the relevant period, would be a little over Rs. 1,100. His salary, during the period of the two years, assuming that the whole amount was put into the banks, would be less than one-third of the total amount aforesaid, to his credit. It cannot, therefore, be said that he was not in possession of pecuniary resources disproportionate to his known sources of income.

It was next contended that the burden cast on the accused by sub-section (3) of section 5 of the Act, was not such a heavy burden as lies on the prosecution positively to prove all the ingredients of an offence. In that connection, reference was made to a number of decisons, particularly *Rex* v. *Carr-Briant* (1), to the effect that the onus of proof lies on the accused person to show that a certain proved payment was in fact not a corrupt payment, but that the burden is less heavy than that which, ordinarily, lies on the prosecution to prove its case beyond all reasonable doubt. Reference was also made to *Otto George Ofeller* v. *The King* (2), *Hate Singh* v. *State of Madhya Bharat* (3), and *Regina* v. *Dunbar* (4). In our opinion, those decisions do

(1) [1943] 1 K.B. 607. (referred to under Art. 3997 at p. 1511 in 'Archbold Criminal Pleading Evidence and Practice', 34th Edn.)

(2) A.I.R. 1943 P.C. 211

(3) A.I.R. 1953 S.C. 468

(4) (1958) 1 Q.B. 1

not assist the appellant in the present case. In this case, no acceptable evidence, beyond the bare statements of the accused, has been adduced to show that the contrary of what has been proved by the prosecution, has been etablished, because the requirement of the section is that the accused person shall be presumed to be guilty of criminal misconduct in the discharge of his official duties "unless the contrary is proved". The words of the statute are peremptory, and the burden must lie all the time on the accused to prove the contrary. After the conditions laid down in the earlier part of sub-section (3) of section 5 of the Act, have been fulfilled by evidence to the satisfaction of the court, as discussed above, the court has got to raise the presumption that the accused person is guilty of criminal misconduct in the discharge of his official duties, and this presumption continues to hold the field unless the contrary is proved, that is to say, unless the court is satisfied that the statutory presumption has been rebutted by cogent evidence. Not only that, the section goes further and lays down in forceful words that "his conviction therefor shall not be invalid by reason only that it is based solely on such presumption".

Lastly, it was argued that when the section speaks of the burden being on the accused person to prove the contrary, it must mean adducing evidence to disprove the charge. The argument proceeds that as in the present case, the facts and circumstances mentioned in the charge, had not been proved, the accused person must be acquitted as having disproved the charge with reference to the particular cases of bribery which had been held not proved. In our opinion, there is a fallacy in this argument. The finding of the High Court and the court below, is that the prosecution had failed to adduce sufficient evidence to prove those particular facts and circumstances of

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criminal misconduct within the meaning of section 5(1)(a) of the Act, but the failure to bring the charge home to the accused under section 5(1)(a), does not necessarily lead to the legal effect contended for. As soon as the requirements of sub-section (3) of secetion 5, have been fulfilled, the Court will not only be justified in making, but is called upon to make, the presumption that the accused person is guilty of criminal misconduct within the meaning of section 5(1)(d). In order to succeed in respect of the charge under section 5(1)(a), the prosecution has to prove that the accused person had accepted or obtained or agreed to accept or attempted to obtain from any person any gratification by way of bribe within the meaning of section 161 of the Indian Penal Code. That charge failed because the evidence of P.W. 9 was not accepted by the High Court or the trial court. The charge under section 5(1)(d) does not require any such proof. If there is evidence forthcoming to satisfy the requirements of the earlier part of sub-section (3) of section 5, conviction for criminal misconduct can be had on the basis of the presumption which is a legal presumption to be drawn from the proof of facts in the earlier part of the sub-section (3) aforesaid. That is what has been found by the courts below against the accused person. Hence, the failure of the charge under clause (a) of sub-section (1) of section 5, does not necessarily mean the failure of the charge under section 5(1)(d).

In our opinion, the judgment of the High Court is correct. and the appeal is, accordingly, dismissed. If the accused is on bail, he must surrender to his bail bond.

B.R.T.

6504 HC—C. P. & S., Pb., Chandigarh

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LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Gosain, J.

SIMLA BANKING AND INDUSTRIAL CO., LTD.,
SIMLA (IN LIQUIDATION),—*Appellant.*

versus

M/s. PRITAMS,—*Respondents.*

Letters Patent Appeal No. 98 of 1956.

1959

March, 23rd

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 17—Scope of—Goods hypothecated to bank remaining in possession of the debtor who could not transfer them without the consent of the bank—Rights of the parties—Whether regulated by section 17—Power and hypothecation—Difference between.

Held, that the provisions of section 17 of the Displaced Persons (Debts Adjustment) Act, 1951, apply when the creditor has been "placed in possession" of the property which is hypothecated to him, and according to the Explanation, the creditor is to be deemed to be in possession of the pledged property in any case in which the pledged property, although not delivered to him, was delivered to a person authorised by him or was being held by the debtor on behalf of the creditor and the ownership or possession thereof could not have been transferred to a third party without the express consent or permission of the creditor.

Held, that there are two kinds of pledges, viz., the "pignus" (pawn) in which the possession of the thing is actually delivered to the person for whose benefit the pledge