

## REVISIONAL CRIMINAL

Before Fálshaw, J.

THE STATE,—Petitioner  
versus

MADAN LALL,—Respondent.

Criminal Revision No. 777 of 1953

1953

August 18<sup>h</sup>

*Prevention of Corruption Act (II of 1947)—Section 5(4), Proviso—Whether makes section 156 of the Code of Criminal Procedure (Act V of 1898) inapplicable to investigation for an offence under section 5(2) of Act II of 1947—Charge-sheet based on investigation made in contravention of Proviso to Section 5(4)—Effect of—Proceedings, whether can be quashed.*

*Held*, that the Proviso to Section 5(4) of the Prevention of Corruption Act, 1947, makes the provisions of Section 156 of the Code of Criminal Procedure, 1898, inapplicable to investigations of an offence under section 5(2) of that Act.

*Held further*, that the trial of the accused on the basis of the charge-sheet based on investigation made in contravention of Proviso to Section 5(4) of the Prevention of Corruption Act, 1947, could not proceed any further after the objection was taken by the accused. But the Special Judge was not competent to pass an order quashing the proceedings in the case in the sense of completely putting an end to them. It will still open to the prosecution to institute the case against the accused afresh after complying with the provisions of Section 5(4) of the Act, i.e., either by having the case re-investigated by a Deputy Superintendent of Police or re-investigated by an officer of a lesser rank after obtaining an order of a Magistrate of the first class. It will, however, be necessary to submit a fresh charge-sheet and the proceedings cannot continue on the previous charge-sheet.

*Sudhir Kumar v. The State* (1), relied on; *Promod Chandra Shekhar v. Rex* (2), dissented.

*Petition under section 439 of Criminal Procedure Code for revision of the order of Shri Maharaj Kishore, Special Judge, Hissar, dated the 15th April 1953, quashing proceedings against the respondent.*

K. S. CHAWLA, Assistant Advocate-General for Petitioner.

C. RAI, for Respondent.

(1) A.L.R. 1953 Cal. 226.  
(2) A.L.R. 1951 All. 546.

## JUDGMENT

FALSHAW, J.—This is a revision petition by the State against an order of a Special Judge at Hissar, quashing proceedings against Madan Lal, respondent, against whom a case had been instituted under section 5(2) of the Prevention of Corruption Act, 1947.

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The case against the respondent was that he had embezzled certain money received by him in his official capacity as an operator at the Police Radio Station at Hissar. In the early stages of the case, before any evidence had been recorded, preliminary objections were raised on his behalf that the case could not proceed against him, firstly because the proper sanction for his prosecution under the Act had not been obtained, and secondly that the investigation had not been carried out by an officer of the rank of a Deputy Superintendent of Police. The learned Special Judge, without investigating the question of proper sanction, has found that the case could not proceed against him because the investigation had not been carried out in accordance with the provisions of section 5(4) of the Prevention of Corruption Act, which reads:—

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a police officer below the rank of Deputy Superintendent of Police, shall not investigate any offence punishable under subsection (2) without the order of a Magistrate of the first class or make any arrest, therefor without a warrant."

It is admitted in the present case that the investigation was carried out by an officer of the rank of Sub-Inspector without any order having been obtained from a First Class Magistrate. There is thus no doubt that the alleged offence committed by the respondent was not investigated in accordance with the provisions of the Act under which he was prosecuted, and the question which

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arises is, therefore, whether this constitutes a bar to proceeding any further with the case. On this matter conflicting opinions have been expressed by the High Courts of Allahabad and Calcutta. In both the decisions cited the cases were under section 161, Indian Penal Code, read with the Prevention of Corruption Act, which also makes provision regarding such offences, but the relevant words of the section which makes an offence under section 161, Indian Penal Code, cognizable notwithstanding the provisions of the Criminal Procedure Code, are almost identical with the words of section 5, clause (4). In the Allahabad case *Promod Chandra Shekhar v. Rex* (1), a public servant had been convicted under section 161, Indian Penal Code, and one of the questions which was referred to a Division Bench consisting of Mootham and Wanchoo, JJ., was—'what is the effect of non-compliance with the proviso to section 3 of the Prevention of Corruption Act, 1947?'. Their opinion was that the failure to comply with the proviso to section 3 was an irregularity which fell within subsection (2) of section 156, Criminal Procedure Code, and accordingly the proceedings of the investigating officer could not be called in question. The reasoning of the learned Judges was that the proviso to section 3 of the Act was in effect merely a proviso to subsection (1) of section 156 of the Code and, therefore, it was governed by the provisions of subsection (2) according to which no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. On the other hand in the Calcutta case *Sudhir Kumar v. The State* (2), the petitioner had moved the High Court to quash the proceedings against him in a case in which he was accused under section 161, Indian Penal Code, on the ground that the investigation had been carried out only by a Sub-Inspector without any order from a first class Magistrate. In these circumstances K. C. Das Gupta and Debabrata Mookerjee, JJ.,

(1) A.I.R. 1951 All. 546  
(2) A.I.R. 1953 Cal. 226

took a view exactly contrary to that of the Allahabad High Court. The judgment was delivered by K. C. Das Gupta, J., who observed:—

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“The effect of the proviso is that section 156, Criminal P.C., is made inapplicable to investigation of an offence under section 161, Penal Code. What section 156, Criminal P.C., provides is that any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter 15 relating to the place of inquiry or trial. Subsection (2) of this section provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

It was contended by Mr. Banerjee on behalf of the State on the authority of a decision of the Allahabad High Court in *Promod Chandra v. Rex* (1), that this investigation by a Sub-Inspector in violation of the provisions in the proviso that a police officer below the rank of the Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the first class is merely an irregularity falling within section 156(2), Criminal Procedure Code.”

Then follows the reasoning for the decision of the learned Judge of the Allahabad High Court which I have set out above, and judgment proceeds:—

“It is difficult to see, however, how the fact that the proviso in section 3 of Act 2 of 1947, operating as the limitation to the

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powers of investigation given to police officers-in-charge of police station can attract the provision of subsection (2) of section 156, Criminal P.C. Certainly that would have been the position if the proviso to section 3 of Act 2 of 1947, had in fact been incorporated by the Legislature in section 156, Criminal P.C. That was not done and instead very clear words were used by the Legislature to ensure that such offence should not be investigated by any police officer below the rank of the Deputy Superintendent of Police, without the order of a Magistrate, 1st Class. In my opinion, we are not treating the Legislature seriously if we are to ignore such words and take the view that even though a command of this nature is disobeyed, it is a mere irregularity."

It was accordingly held that on account of the illegality in the investigation the entire proceedings based on the charge-sheet reported by the officer not competent to investigate must fail and it was ordered that the proceedings should be quashed.

In my opinion there can be no doubt that the view of the Calcutta Court is correct and I accordingly hold that the case could not proceed any further against the respondent as it stood when the objection was taken by him in the Court of the learned Special Judge. I do not, however, consider that the learned Special Judge was competent to pass an order quashing the proceedings in the case in the sense of completely putting an end to them, nor do I think that it is even necessary for this Court, which can pass such an order, to do so. In my opinion it will still be open to the prosecution to institute the case against the respondent afresh after complying with the provisions of section 5(4), i.e., either by having the case re-investigated by a Deputy Superintendent of Police or re-investigated by an officer of a lesser rank after obtaining an order of a Magistrate of the first class. It will,

however, be necessary to submit a fresh charge-sheet, and the proceedings cannot certainly continue on the present one. I am not expressing any opinion about the other objection raised, namely the validity of the sanction, which is a matter still to be investigated by the learned Special Judge. The revision petition of the State is accordingly accepted to the above-limited extent.

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