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For these reasons, I see no force in this petition and I dismiss it with costs. Counsel's fee Rs. 50.

Bishan Narain J.

R. S.

SUPREME COURT

Before Sudhi Ranjan Das, Chief Justice and Sudhanshu Kumar Das, A. K. Sarkar, K. Subba Rao, Hidayatullah, JJ.

S. GURMEJ SINGH,—*Appellant*

versus

S. PARTAP SINGH KAIRON,—*Respondent*

Civil Appeal No. 324 of 1959.

1959

Sept., 30th

Representation of the People Act (XLIII of 1951)—Section 123(7)—Lambardar—Whether covered by any clauses of Section 123(7)—"Revenue officer", "Village accountant" and "other Village officers"—Meaning of—Interpretation of Statutes—Construction of Sections of an Act and excluding clauses.

Held, that lambardars being village revenue officers are excluded from the operation of clause (f) of Section 123(7) of the Representation of the People Act, 1951, with the result that they are freed from the disqualification imposed by the provisions of the said clause.

Held, that a revenue officer is one who is employed in the business of revenue, and the term is comprehensive enough to take in all such revenue officers in the chain of heirarchy in the revenue administration of the State.

Held, that the enumerated officers in clause (f) of Sections 123(7) of the Act and the like indicate precisely the content and connotation of the words "village accountant". The phrase "such as" immediately following the words "village accountants", and the phrase "the like" following the enumerated officers indicate that the examples are intended to provide a definition by illustration.

Held, that "Other village officers" are village officers other than the village accountants. The point to be emphasized is that unlike in the case of revenue officers, who include officers whose jurisdiction is not confined to the respective villages alone, this category of officers are confined to those exercising jurisdiction within a village.

Held, that it is an elementary rule that construction of a section of an Act is to be made of all the parts together and not of one part only by itself, and that phrases are to be construed according to the rules of grammar. The legislative device of exclusion is adopted only to exclude a part from the whole, which, but for the exclusion, continues to be part of it.

Appeal by Special Leave from the Judgement and Order, dated the 12th March, 1959, of the Punjab High Court in Civil Writ No. 170 of 1959.

For the Appellant : Mr. N. C. Chatterjee, Senior Advocate, (Mr. Janardan Sharma, Advocate; with him).

For the Respondent . Mr. G. S. Pathak, Senior Advocate, Mr. H. S. Doabia, Additional Advocate-General for the State of Punjab, (M/s. Gopal Singh and P. S. Safeer, Advocates, with them).

JUDGMENT

The following Judgment of the Court was delivered by

SUBBA RAO, J.—This appeal by special leave raises the question of true construction of the provisions of section 123(7) of the Representation of the People Act, 1951, (hereinafter called "the Act"). The material facts may be briefly stated: Sardar Gurmej Singh, the appellant, Sardar Partap Singh Kairon, the present Chief Minister of the State of Punjab and respondent herein, and others were the contesting candidates in the general election held in February, 1957, from the Sarhali constituency. The respondent secured the highest

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number of votes and was duly declared elected to the Punjab Legislative Assembly. On April 11, 1957, the appellant filed an election petition (Election Petition No. 22 of 1957), for the declaration that the election of the respondent was void under section 100 of the Act. It was, *inter alia,* alleged by him that the respondent and his election agent had appointed a number of persons as the respondent's counting and polling agents at different centres and that the said persons were, at the material time, working as lambardars, and, therefore, the respondent was guilty of corrupt practice within the meaning of section 123 of the Act. The respondent denied the material allegations made in the petition. On the pleadings as many as 12 issues were framed, and issues 3 and 8 were taken up for trial as preliminary issues. Issue 8, which is the only relevant issue for the present enquiry, reads:

> "Is Lambardar a person in the service of Government or is it covered by any of the clauses of section 123(7) of the Representation of the People Act, 1951 ?"

The Election Tribunal held against the respondent on both the preliminary issues. On issue 8 it held that a lambardar was a revenue officer and vilage accountant in the service of Government within the meaning of clause (f) of sub-section (7) of section 123 of the Act. On the basis of the findings on the preliminary issues, the Tribunal directed that the remaining issues be set down for hearing. The respondent canvassed the correctness of that order by filing a petition in the High Court of Punjab at Chandigarh under Articles 226 and 227 of the Constitution. The petition was heard by a division bench of the Punjab High

Court, consisting of Falshaw and Mehar Singh, JJ. The learned Judges by their order, dated Mach 12, 1959, confirmed the order of the Election Tribunal on issue 3, but set aside its order on issue 8. The learned Judges held that "Lambardars are undoubtely a class of revenue officers appointed by the Government for the purpose of collecting the land revenue and receiving a statutory percentage on the sums realised by them as their remuneration for so doing, but whereas they were included along with village accountants, who are called Patwaris in this State and by other names set out in the section in other parts of India, they are clearly excluded by he provisions of clause (f)." Though the scope of this finding was subject to some controversy, it is clear that the learned Judges intended to hold that, though a lambardar was disqualified under the corresponding sub-section (8) of section 123 of the Act before it was amended in 1956, he was excluded from the operation of that section by clause (f) of sub-section (7) of the amended section. On the basis of that finding, the High Court set aside the decision of the Tribunal on issue 8 and confirmed the same in other respects. The appellant filed the present appeal by obtaining the special leave of this Court.

Mr. N. C. Chatterjee, the learned Counsel for the appellant, contends that a lambardar is both a revenue officer and village accountant within the meaning of clause (f) of sub-section (7) of section 123 of the Act, and, therefore, the respondent in engaging the lambardars as his counting and polling agents for different centres in his constituency, was guilty of a corrupt practice. On the other hand, Mr. Pathak, the learned Counsel for the respondent, contends that a lambardar is neither a revenue officer nor a village accountant within the meaning of the said clause.

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The question raised turns upon the relevant provisions of section 123 of the Act. The said section reads:

> *Section 123. Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act :—
>
> .....
>
> (7) The obtaining or procuring or abetting to obtain or procure by a candidate or his agent or, by any other person, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—
>
> .....
>
> (f) revenue officers including village accountants, such as, patwaris, lekhpals, talatis, karnams and the like but excluding other village officers.
>
> *Explanation.*—(1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.
>
> (2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or a counting agent of that candidate.

Under this section, so far as it is material to the present enquiry, a candidate cannot appoint a person as his election agent if such person is in the service of Government and is one of the officers governed by clause (f) of sub-section (7). A lambardar to be a disqualified officer should not only be in the service of Government but should be a revenue officer within the meaning of clause (f) of sub-section (7) of section 123 of the Act. If he was not one of the revenue officers within the meaning of clause (f) of the said sub-section, the question whether he was in the service of Government would not arise for consideration. We shall, therefore, proceed to consider whether a lambardar is one of the officers covered by clause (f) of sub-section (7) of section 123 of the Act.

Clause (f) of sub-section (7) of section 123 of the Act mentions three categories of officers, namely, (i) revenue officer; (ii) village accountants; and (iii) other village officers. Who are the officers that fall under each of these categories ?

(i) *Revenue Officers*: Revenue officers are a well-known class of officers who are entrusted with the revenue administration of the various States though there are some variations in regard to nomenclatures and designations given to them from State to State. They consist of an hierarchy with the Revenue Board or a Commissioner at the apex and the village officers at the bottom. Baden-Powell in his book "Land-Systems of British India", Volume I, describes generally the machinery of the British land administration at p. 323. He points out the different officers that are in charge of the revenue administration in the various States at the State, district, taluk and village levels. He allots different chapters for various States and describes minutely the various limbs of

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the revenue administration in each of the States. Coming to the Punjab State, he describes the revenue officers with the following designations: Financial Commissioner, Director of Land-Records and Agriculture, the Commissioner, the Deputy Commissioner (Collector), Subordinate Officers, Tehsil Officers and Village Officers. The same pattern with slight variations prevails in the other States. It may, therefore, be held without contradiction that a revenue officer is one who is employed in the business of revenue and the term is comprehensive enough to take in all such revenue officers in the chain of hierarchy in the revenue administration of the State.

It is not necessary in this case to express our opinion on the question whether the officers in the service of a State or the Union, who are not in charge of land revenue but are connected with other sources of revenue such as customs, income-tax or the like, fall within the category of "revenue officers".

(*ii*) *Village Accountants*: The second group of officers in clause (f) of sub-section (7) of section 123 of the Act are the village accountants, such as, patwaris, lekhpals, talatis, karnams and the like. A careful study of the functions of the enumerated officers discloses that they are only local equivalents of a patwari. Clause (f) itself supplies the dictionary to ascertain the meaning of the words 'village accountants". The phrase "such as" immediately following the words "village accountants", and the phrase "the like" following the enumerated officers indicate that the examples are intended to provide a definition by illustration. To put it differently, the enumerated categories of officers and the like indicate precisely the content and connotation of the words "village accountants".

(iii) Other Village Officers: Other village officers are obviously village officers other than the village accountants. The point to be emphasized is that unlike in the case of revenue officers, who include officers whose jurisdiction is not confined to the respective villages alone, this category of officers are confined to those exercising jurisdiction within a village.

It is an elementary rule that construction of a section is to be made of all the parts together and not of one part only by itself, and that phrases are to be construed according to the rules of grammar. So construed the meaning of the clause is fairly clear. The genus is the "revenue officers", and the "including" and "excluding" clauses connected by the conjunction "but" show that the village accountants are included in the group of revenue officers, but the other village officers are excluded therefrom. If X includes A but excludes B, it may simply mean that X takes in A but ejects B. It is not necessary in this case to consider whether the inclusive definition enlarges the meaning of the words "revenue officers", or makes them explicit and clear, viz., that the enumerated officers are within the fold of "revenue officers"; for, in either construction the village accountants would be revenue officers. But we cannot accept the argument that what is excluded was not part of that from which it is excluded, and that lambardars were not revenue officers and yet had to be excluded by way of abundant caution. If so, it follows that the village officers, who included lambardars, were excluded from the group of revenue officers, with the result that they are freed from the disqualification imposed by the provisions of the said clause.

But it is said that this construction would make the words "revenue officers" and the words

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"excluding other village officers" unnecessary, for, the same result could be achieved by enacting simply "village accountants, such as, patwaris, lekhpals, talatis, karnams and the like". This argument, if we may say so, overlooks the difference between the terms "revenue officers" and "village officers". "Revenue officers", as we have poined out, is a more comprehensive term and takes in all officers who are employed in the revenue business, whereas the jurisdiction of the village officers is confined to their respective villages. Village officers do not exhaust the content of revenue officers, and even after their exclusion there will be many revenue officers at higher levels who would be governed by clause (f). If this be the construction, every word used in the clause is given a meaning and no words become a surplusage.

Now let us test the correctness of the other two interpretations of the section suggested by the learned Counsel for the appellant. Firstly, it is argued that the words "village officers" are used in abundant caution in view of the long list of officers enumerated in the earlier Act, lest the public might interpret the word "like" in such a way as to take in all the village officers who are not revenue officers. To accept this argument is to impute to the legislature want of precision. The words "revenue officers", in whatever sense they are used, cannot obviously comprehend officers who are not revenue officers, and in that situation there is no necessity to exclude such officers from the group of revenue officers. The legislative device of exclusion is adopted only to exclude a part from the whole, which, but for the exclusion, continues to be part of it. This interpretation must be rejected as it involves the recognition of words which are surplusage.

Nor has the alternative construction any higher merits. The genus, the argument proceeds, is the village accountants, and the exclusion is from the category of village accountants only. This construction suffers from two defects. Firstly, village officers cannot be the species carved out of the genus "village accountants", for, the words "village officers" have a wider connotation than the words "village accountants". To accept this interpretation is to read "village accountants" as "village officers". Secondly, if the words were so substituted, both the groups of words "village officers" and "other village officers" become surplusage, as the same result can be achieved by enacting simply "revenue officers including the enumerated officers; for, according to the learned Counsel, the object of the inclusive clause is only to bring in the enumerated officers. This interpretation also deserves to be rejected for the reason that its acceptance involves the re-writing of the clause and the recognition of the unnecessary words therein. It also involves excluding something from a category which *ex hypothesi* does not include it; the exclusion in that view is wholly redundant.

Learned Counsel for the appellant relied upon the decision of this Court in *Raja Bahadur K. C. Deo Bhanj* v. *Raghunath Misra* (1), and contended that this Court has accepted the interpretation which he seeks to put on clause (f). The question raised in that case was whether the sarpanch of a Grama Panchayat constituted under the Orissa Gram Panchayats Act, 1948, was a person in the service of the Government of the State of Orissa. The Court held that sarpanch was not a person in the service of the Government within the meaning of section 123(7)(f) of the Act. That

(1) A.I.R. 1959 S.C. 589

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conclusion was enough to dispose of the appeal but the Court considered also the alternative argument that even if sarpanch was a person in the service of the Government he was not one of the officers covered by clause (f) of the said sub-section. It was held that sarpanch was neither a revenue officer nor a village accountant within the meaning of the said clause. But in the course of the judgment certain observations were made in regard to the construction of the said clause on which reliance is placed by the learned Counsel for the appellant. The relevant observations are found at p. 596, and they are as follows:

> "Clause (f), in the first instance, speaks of a person in the service of the Government who is a revenue officer and then further extends the class to village accountants. The words "such as patwaris, lekhpals, talatis, karnams and the like" are merely descriptive of the words "Revenue officers including village accountants". Under clause (f) it is essential that a person in the service of the Government must be a revenue officer or a village accountant, by whatever name such officer or village accountant may be described. The exclusion of every other village officer from the provisions of clause (f) compels the conclusion that before this clause can apply to a Sarpanch of the Gram Panchayat under the Orissa Act it must be proved that he is either a revenue officer or a village accountant."

It is contended that the said observations show that this Court interpreted the terms of clause (f) in a manner different from that we have indicated

While we have held that the words "such as etc...," and "the like" are only descriptive of village accountants, the observations extracted above seem to suggest, that the said words are descriptive of the composite expression "revenue officers including village accountants". Even in that view, we do not think that that excluding clause refers to village accountants only and not to revenue officers. The learned Judges were concerned with a sarpanch, and they held that he was not a village officer. If he was not a village officer, he was not excluded from the category of revenue officers in the clause, and therefore, the said clause would apply to him if he was a revenue officer or a village accountant. Therefore, when the learned Judges said that it must be proved that sarpanch was a revenue officer or a village accountant before the clause could be applied to him they must have used the words " revenue officers" in the sense of revenue officers within the meaning of that clause. namely, revenue officers excluding other village officers. That decision did not really proceed on an interpretation of the excluding clause, but proceeded on the footing that the sarpanch of that case was firstly not in the service of Government and secondly not a revenue officer within the meaning of the Act, because he did not perform revenue functions; nor was he a village accountant. Far the reasons mentioned, we hold, accepting the plain meaning of the words used in the section that lambardars, being village revenue officers are excluded from the operation of clause (f) of sub-section (7) of section 123 of the Act.

This leads us to the consideration of the question whether a lambardar is a village accountant within the meaning of the said clause.

The history of the village administration of our country from the earliest times shows a clear

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demarcation of status and functions between a headman and a patwari, known by different names in different parts of our country. So for as the State of Punjab is concerned, it is common case that a village headman has all along been described as a lambardar. Baden-Powell in his book "Land Systems of British India", Vol. I, describes a village headman thus, at p. 21:

> "Again, I may well use the English term Headman to indicate the person who in some forms of village tenure is an essential part of the community,— an hereditary officer of some consideration. Even where such a person is not essential to the social constitution of the village, the Government has generally appointed or recognised a headman in some form or other, because it is more convenient to deal with one man and make him the medium of communication and the representat.ve."

Speaking of a patwari, the learned author says, at p. 22:

> "Another very common Indian revenue term is patwari, meaning the person who keeps the village accounts, and above all, looks after the maps and records of rights, and registers changes in land proprietorship and intenancies. Some books call him 'village accountant', others 'village registrar', but neither term is satisfactory. Synonymous with Patwari (in Northern India and the Central Provinces) is the name 'Karnam' in the South, and 'Kulkarni' in the west."

In Vol. II of the said book, the learned author again describes a lambardar and a patwari in Punjab in the following terms, at p. 740:

> "In the Punjab, the headman is styled 'lambardar'. As many, if not most, villages have several sections, there are usually several 'lambardars', and thus the advantage of representation of many co-sharers by one man is to some extent lost. It is thought necessary, therefore, to have as agent for a number of representatives, a single chief headman with whom it is easier to communicate, and who can be held responsible."

Dealing with patwaris, the learned author says at p. 733:

> "This official is of the utmost importance to the system. On his being duly trained and being competent carefully to prepare the village records and statistics, really depends (in the last resort) the hope of diminishing the labour and trouble to the people which the recurrence of Settlement proceedings occasions."

The learned author mentions the other duties of the patwaris at p. 735. The most important of the duties of a patwari is the preparing and keeping up of the Annual Land-Records. Historically, therefore, there is a clear demarcation between the status and the functions of these two categories of officers.

The same pattern was followed in Punjab. The Punjab Land Administration Manual, compiled by Sir James Mac Duie, considered to be a standard book on the subject, describes in detail the nature

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and the respective duties of a village headman and a patwari. Chapter VIII deals with the duties of a village headman. A village headman has duties to the Government and to the land-owners and tenants of the estates in their relations with the State. His duties to the Government are as follows:

A. 1. To collect and pay into the treasury the land revenue and all sums recoverable as land revenue.

2. To report to the tahsildar—

(a) the deaths of assignees and pensioners, and their absence for over a year;

(b) encroachments on, or injury to, Government property.

3. To aid—

(a) in carrying out harvest inspections surveys, the record of mutations and other revenue business;

(b) in providing, on payment, supplies or means of transport for troops and officers of Government.

B. Duties to land-owners and tenants of estate:

1. To acknowledge every payment received from them in their parcha books.

2. To collect and manage the common village fund (malba), and account to the share-holders for all receipts

and expenditure.—(Since 1953 the lambardar has been relieved of this duty, as, at present, there are no common lands.)

One of the other chief duties of a headman is to aid in the prevention and detection of crime.

The duties of a patwaris are given in Chapter VII of the said Manual. His three chief duties are:

(1) The maintenance of a record of the crops grown at every harvest:

(2) the keeping of the record of rights up to date by the punctual record of mutations; and

(3) the accurate preparation of statistical returns embodying the information derived from the harvest inspections, register of mutations, and record of rights.

Chapter XI of the said Manual describes the particulars of the registers kept by a patwari. They are:

(1) Area statement or *milan rakba*.

(2) Kharif crop statement or *jinswar*.

(3) Rabi crop statement or *jinswar*.

(4) Revenue account or *jama wasil baki*.

(5) Statement of transfers of rights of owners and occupancy tenants.

(5-A) Statement of sales and mortgages of ownership by classes of land.

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(6) Statement of ownership, mortgages and revenue assignments.

(7) Statements of cultivating occupancy.

(8) Statement of rent paid by tenants-at-will.

(9) Statement of agricultural stock.

For better particulars of the respective duties of a village headman and a patwari, the provisions of the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and the Rules made thereunder, particularly r. 20 thereof, and Chapter III of the Punjab Land Records Manual may conveniently be referred to.

A comparative study of the respective duties of a village headman and a patwari brings out the distinction between the two, namely, that the former is not only an agent of the State in the village but also the recognised representative of the village, and the latter is a comparatively minor officer entrusted with the duty of maintaining the accounts and other relevant records pertaining to the revenue business.

With this background the Parliament passed s. 123 of the Act. Originally s. 123(8), which corresponded to s. 123(7) of the Act, read as follows:

"123. *Major corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with

the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation.—For the purposes of this clause—

(a) a person serving under the Government of India shall not include any person who has been declared by the Central Government to be a person to whom the provisions of this clause shall not apply;

(b) a person serving under the Government of any State shall include a patwari, chaukidar, dafedar, Zaildar, shanbagh, karnam talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole-time office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply".

Under this section, obtaining assistance from any person serving under the Government was a corrupt practice, and all the village officers were, by inclusive definition, declared to be persons

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serving under the Government. The list of village officers given in the section included a patwari and similar officers and also a village headman and similar officers. For reasons best known to the Parliament, that section was amended in 1956. Section 123(7)(f) as amended in 1956 has already been extracted. Under this clause, village officers other than village accountants such as patwaris, etc. were excluded from the definition of revenue officers. When Parliament, with the knowledge of the clear distinction between the two categories of officers, expressly included the one within the definition of revenue officers and excluded the other village officers from it, it would be unreasonable to construe the clause in such a way as to include the village headman in the category of village accountants. It would be doing violence to the language used in the clause; for, the words "village accountants", as defined in the clause, have acquired a secondary meaning by convention and statute.

It is said that there cannot be any logical basis for disqualifying a patwari and qualifying a headman in the matter of elections, for, the argument proceeds, a headman has greater influence on the electorate than a patwari. This Court is not concerned with the policy underlying the statute, but only with the expressed intention of the Parliament. Clause (f) of sub-s. (7) of s. 123 was amended by Act LVIII of 1958, and the amended clause runs as follows:

> *S. 123(7).* (f): revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs, or by any other name, whose duty is to collect land revenue and who are remunerated by a share of or commission

on. the amount of land revenue collected by them but who do not discharge any police functions".

Under the amended clause, lambardars are apparently excluded from the definition of "revenue officers". We are referring to this latest amendment not as a help to the constrution of the clause, but to meet the argument that there could not have been any policy underlying the distinction between the said two categories of village officers. The fact that Parliament in its latest amendment has *prima facie* sustained the distinction may be an indication that in its view there is relevant difference between a lambardar and village accountants. We would, therefore, hold that a village headman cannot be brought within the words "the like" in the said clause.

In this view, it is not necessary to express our opinion on the question whether a lambardar is a person in the service of the Government within the meaning of s. 123(7) of the Act.

Before parting with this case, we must express our feeling that the final disposal of the election petition should not have been delayed so long. The elections were held on February 24, 1957, the respondent was declared elected on February 25, 1957, and the election petition was filed on April 11, 1957. Though $2\frac{1}{2}$ years have elapsed, the petition has not yet been finally disposed of. We hope that the election petition would be disposed of on other issues as expeditiously as possible.

In the result, the appeal fails and is dismissed with costs.

B.R.T.

SUPREME COURT

Before Sudhanshu Kumar Das, A. K. Sarkar and M. Hidayatullah, JJ.

ROMESH CHANDRA ARORA,—*Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 70 of 1957.

1959

Oct., 6th

Code of Criminal Procedure (V of 1898)—Sections 423, 439 and 526—Person convicted by magistrate—High Court issuing notice for enhancement of sentence suo moto*—Convicted person filed appeal before the Sessions Judge before issue of notice by the High Court—High Court transfering appeal to itself and after dismissing appeal enhanced sentence—Procedure followed by the High Court—Whether legal.*

Held, that the High Court called for the record in order to satisfy itself as to the propriety of the sentence passed by the magistrate under Section 439(2) of the Code of Criminal Procedure without being aware that a few days earlier the appellant had preferred an appeal to the Sessions Judge. Later on the High Court transferred the appeal pending before the Sessions Judge to itself in exercise of the powers under Section 526(I) (e) (iii) and heard the appeal and the notice of enhancement together. The whole case against the appellant was, therefore, at large before the High Court and when the High Court was itself in seizin of the appeal, the inferior court from whose decision the appeal was being heard was clearly the court of the magistrate who convicted and sentenced the appellant. If the High Court was not aware of the filing of an appeal, it was open to it to call for the record of the proceeding before the Magistrate in order to satisfy itself whether the sentence passed was a proper one or not. When, however, it was brought to the notice of the High Court that an appeal was pending before the Sessions Judge of Delhi, it could order that the appeal be withdrawn to the High Court so that the appeal and the rule could be heard together. After the appeal was validly transferred for hearing to the High

Court, it was open to the High Court to enhance the sentence in exercise of its revisional power under Section 439, Criminal Procedure Code, when it dismissed the appeal on merits after hearing the appellant. There can be no doubt in the present case that the appellant has had an opportunity of being heard both as to the correctness of his conviction and the propriety of the sentence. It is not possible to hold that the High Court committed an illegality in adopting the course which it did.

Held, that the usual practice is that when an appeal is pending before an inferior court, the High Court exercises, if necessary, its powers of revision after the appeal has been disposed of. There may, however, be exceptional cases where the ends of justice require that the appeal itself be heard by the High Court and in such a case it is open to the High Court to exercise its powers of revision under Section 439, Criminal Procedure Code, of enhancing the sentence after having heard and dismissed the appeal.

Appeal from the Judgment and Order dated the 21st December, 1956, of the Punjab High Court (Circuit Bench) at Delhi in Criminal Appeal No. 488-C of 1956 and Criminal Revision No. 659-C of 1956.

For the Appellant : Mr. N. C. Chatterjee, Senior Advocate, (Mr. Vir Sen Sawhney; Advocate. with him).

For the Respondent : Mr. H. R. Khanna, R. H. Dhebar and T. M. Sen, Advocates.

JUDGMENT

The following Judgment of the Court was delivered by

S. K. DAS, J.—This is an appeal on a certificate granted by the Punjab High Court under Art. 134 (1) (c) of the Constitution. S. K. Das, J.

The facts giving rise to the appeal are somewhat sordid and we shall set out such of them only as are relevant to it. On December 14, 1954 a person whom we shall refer to as X submitted a

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written report to the Superintendent of Police, Delhi City, to the effect that one of his daughters was being molested and threatened by the appellant and that he had received letters of an objectionable nature from him "for the purpose of blackmailing and extorting money". Some of these letters were shown to the Superintendent of Police. The latter sent the report to the Station Officer, Karol Bagh police station, with a direction to register a case under s. 506, Indian Penal Code, and investigate it. The Station Officer investigated the case and submitted a charge-sheet against the appellant. He also took in charge some of the letters said to have been received by X. They contained a reference to photographs of a daughter of X, and at least one of the letters said that a sample photograph was being enclosed with it. These photographs it appeared subsequently in evidence, were taken in the nude and were of a character which, if made public, would undoubtedly compromise the reputation of the girl as well as of her father. X said in evidence that he first tried to persuade the father and other relatives of the appellant to exercise their influence on the appellant so as to put a stop to the blackmail. He, however, failed to get any sympathetic response form them. In November, 1954, he met the appellant and requested him to behave properly; the appellant, however, said that it was his profession to extort money by blackmail through girls and he further threatened that he would circulate the photographs to the relatives of the girl unless "hush money" was paid. The appellant was tried on a charge under s. 506, Indian Penal Code, by the learned Magistrate exercising first class powers at Delhi. The learned Magistrate found that the appellant took indecent photographs of the girl by showing false love to her,

and threatened X, in letters written to him, with publication of the photographs with intent to extort money from the latter. He accordingly convicted the appellant and sentenced him to rigorous imprisonment for one year. This was on May 18, 1956.

On June 9, 1956 the appellant preferred an appeal from his conviction and sentence to the Sessions Judge of Delhi. It appears, however, that on June 14, 1956, Kapur, J. of the Punjab High Court (as he then was) *suo motu* called for the record of the case on reading a report thereof in a newspaper, and directed the issue of a notice to the appellant to show cause why the sentence should not be enhanced. Presumably, this action was taken under the provisions of ss. 435 and 439 of the Code of Criminal Procedure. On August 17, 1956 the appeal pending before the Sessions Judge of Delhi was transferred to the High Court itself for hearing. We again presume that this order was passed under the provisions of s. 526 (1) (e) (iii) of the Code of Criminal Procedure, because neither the order dated June 14, 1956, nor the order dated August 17, 1956, have been printed in the paper-book and the exact terms of the two orders have not been made available to us. The High Court heard together the appeal and the rule for enhancement. By a judgment pronounced on December 21, 1956, it affirmed the finding of the learned Magistrate, upheld the conviction, dismissed the appeal, and enhanced the sentence to two years' rigorous imprisonment. On or about January 10, 1957, an application was moved on behalf of the appellant for a certificate that the case was a fit one for appeal to this Court in which it was alleged (1) that on the finding of the learned Magistrate affirmed by the High Court, the appellant could only be found guilty of the offence

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under s. 384 read with s. 511, Indian Penal Code, for which the maximum punishment was 18 months only; (2) that the High Court could not issue a notice for enhancement of the sentence when an appeal from this conviction and sentence was pending before the Sessions Judge; (3) that the order transferring the appeal to the High Court was not validly made and, in any case, it was improperly made without issuing a notice to the appellant; and (4) that the procedure adopted had deprived the appellant of his right of getting first a decision from the court of appeal and then another from the High Court in the exercise of its revisional jurisdiction. By an order dated January 14, 1957, Falshaw, J. of the Punjab High Court gave the necessary certificate. He said in his order that though the grounds mentioned above were not urged before him at the time when the appeal and the rule for enhancement of sentence were heard by him, it appeared to him that the grounds could be legitimately raised and the case was, therefore, a fit one for appeal to the Supreme Court. The present appeal has come before us on that certificate.

Learned counsel for the appellant has urged before us the same four grounds which were taken on his behalf while asking for a certificate under Art. 134(1)(c) of the Constitution.

We proceed now to consider these grounds in the order in which we have stated them. Learned counsel for the appellant has drawn our attention to the charge framed against the appellant by the learned Magistrate. That charge said, in effect, that in the years 1953 to 1954 the appellant committed criminal intimidation by threatening X and his daughter with injury to their reputation

by publication of the nude photographs, with intent to cause alarm to them. It is pointed out that there was no reference to blackmail or extortion in the charge. The argument before us is that the charge mentioned that the intent was to cause alarm only to X and his daughter, but the finding was that there was an attempt to extort money from X on the threat of publishing the objectionable photographs. It is contended that on this finding the conviction of the appellant under s. 506 Indian Penal Code, was bad; he might have been found guilty under s. 384 read with s. 511, Indian Penal Code, if a charge were properly made under those sections.

We are unable to accept this contention as correct. We agree with the High Court that the charge framed against the appellant was not as clear as it might have been. It stated, however, that the offence of criminal intimidation was committed by threatening X and his daughter with injury to their reputation by having the indecent photographs published; the intent mentioned was to cause alarm to X and his daughter. The real intention, as disclosed by the evidence accepted by the trial Magistrate and the High Court, was to force X to pay "hush money". Section 506 is the penal section which states the punishment for the offence of criminal intimidation; the offence itself is defined in s. 503. Leaving out what is not necessary for our purpose, the section last mentioned is in two parts; the first part refers to the act of threatening another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested; the second part refers to the intent with which the threatening is done and it is of two categories: one is intent to cause alarm to the person threatened, and the second is to cause that

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person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. On the findings arrived at against the appellant, the first part of the section is clearly fulfilled; and as to the intent, it comes more properly under the second category, that is, to cause X to do any act (in other words, to pay hush money) which he was not legally bound to do as a means of avoiding the execution of the threat. It is perhaps correct to say that the threat of publication of the photographs must have also caused alarm to X; but the real intention of the appellant appears to have been not so much to cause alarm only as to make X pay "hush money" to him. It is not unoften that a particular act in some of its aspects comes within the definition of a particular offence in the Indian Penal Code, while in other aspects, or taken as a whole, it comes within another definition. There are obvious differences between the offence of extortion as defined in s. 383 and the offence of criminal intimidation as defined in s. 503. It is unnecessary to dilate on those differences in the present case. All that we need say is that on the finding of the learned Magistrate, which finding was affirmed by the High Court, the appellant was clearly guilty of the offence of criminal intimidation. We, therefore, hold that the conviction of the appellant under s. 506 is correct. We further agree with the High Court that no prejudice was caused to the appellant by reason of the defect, if any, in the charge as to the intent of the appellant. He was fully aware of the case made by the prosecution and had full opportunity of rebutting the evidence given against him.

We now go to the second point. Learned counsel for the appellant has drawn our attention

to ss. 435 and 439 of the Code of Criminal Procedure. Leaving out what is not essential for our purpose, s. 435 states in substance that the High Court may call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court. Section 439 then states (we are again leaving out what is not essential for our purpose) that in the case of a proceeding the record of which has been called for by the High Court, it may in its discretion exercise any of the powers conferred on a court of appeal and may enhance the sentence. In the case under our consideration it is obvious from the materials on the record that the High Court called for the record on June 14, 1956, in order to satisfy itself as to the propriety of the sentence passed by the learned Magistrate, and on the materials placed before us it is not possible to say that the High Court was aware that a few days earlier than June 14, 1956, the appellant had preferred an appeal to the Sessions Judge of Delhi. The argument before us is that when an appeal was pending before the Sessions Judge, the High Court had no power to call for the record of the proceeding of the learned Magistrate in order to satisfy itself about the propriety of the sentence passed. Learned counsel has put his argument in the following way. Firstly, he submits that the sentence passed by the learned Magistrate was itself one of the points for consideration in the appeal before the Sessions Judge and the question of the propriety of that sentence could only arise after that appeal had been disposed of. Secondly, he submits that the expression "any proceedings of such inferior court" in s. 435 cannot refer to the

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court of the Magistrate when an appeal was pending before the Sessions Judge. Learned counsel submits that in the circumstances of this case the power to call for the record of any proceeding before any inferior criminal court given by s. 435 could be exercised only in respect of the proceeding before the learned Sessions Judge of Delhi after the latter had dealt with the appeal. We do not think that these contentions are correct. Firstly, these contentions do not take notice of what happened on August 17, 1956, when the appeal pending before the Sesions Judge of Delhi was transferred to the High Court itself for hearing. Assuming that, that order was vaild, and we shall presently give reasons for holding that it was a vaild order of transfer, the legal position was really this: the High Court had before it the appeal preferred by the appellant as also the rule for enhancement of the sentence which had been issued after calling for the record under s. 435, Criminal Procedure Code. It is necessary to mention here that sub-s. (2) of s. 439 says that no order under s. 439 shall be made to the prejudice of an accused person unless he has an opportunity of being heard either personally or by pleader in his own defence, and subsection (6) says that when an opportunity is given to a convicted person to show cause why his sentence should not be enhanced, he will be entitled also to show cause agaist his conviction. The notice to show cause why the sentence should not be enhanced was issued in the present case by reason of the provisions of sub-s. (2) of s. 439, and in showing cause the appellant was entitled to show that the conviction itself was wrong. The whole case against the appellant was, therefore, at large before the High Court. In the circumstances of this case there is no point in the distinction which learned counsel for the appellant

is seeking to make as to the meaning of the expression "such inferior court"; for, when the High Court was itself in seizin of the appeal, the inferior court from whose decision the appeal was being heard was clearly the court of the Magistrate who convicted and sentenced the appellant. After the appeal had been transferred from the file of the Sessions Judge of Delhi the latter was no longer in the picture. Secondly, we do not consider that learned counsel for the appellant is right in limiting the scope of s. 435 in the way suggested by him. If the High Court was not aware of the filing of an appeal, it was open to it to call for the record of the proceeding before the Magistrate in order to satisfy itself whether the sentence passed was a proper one or not. When, however, it was brought to the notice of the High Court that an appeal was pending before the Sessions Judge of Delhi, it could order that the appeal be withdrawn to the High Court so that the appeal and the rule could be heard together. We are unable to hold that the High Court committed any illegality in adopting the course which it did.

We must make it clear that we are not considering in the present case the question whether in exercise of the combined powers of appeal and revision, it is open to the High Court to set aside an order of acquittal. That is a different question altogether, one aspect of which was dealt with by the Privy Council in *Kishan Singh* v. *The King Emperor* (1). Some of the earlier decisions of Indian High Courts on that question were referred to by their Lordships. The later decisions on the same question were briefly summarised in a decision of the Patna High Court, *Ambika Thakur*

(1) I.L.R. 50 Mad. 722

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and others v. *Emperor* (1),. As we are not dealing with the question of the power of the High Court to set aside an acquittal in exercise of the combined powers of appeal and revision, no useful purpose will be served by reviewing the decisions on that question. It is sufficient to state that there is clear authority in the decision of the Privy Council *In re Chunbidya and others* (2), that in the exercise of its revisional powers under s. 439, Criminal Procedure Code, a High Court upon having the record of a criminal proceeding brought to its notice on an appeal from the conviction therein, can call upon the appellant to show cause why the sentence should not be enhanced, and having heard and dismissed the appeal can forthwith enhance the sentence under that revisional power although precluded by s. 423, (as it stood prior to its amendment in 1955) from doing so in the appeal. It is true that the appeal in the present case was originally preferred to the Sessions Judge of Delhi and was subsequently transferred to the High Court. To that extent, the present case can be distinguished from the facts of the case which the Privy Council was considering *In re Chunbidya and others* (2). We do not, however, think that, on principle, the distinction is of any materiality. Provided the appeal was validly transferred for hearing to the High Court, it was open to the High Court to enhance the sentence in exercise of its revisional power under s. 439, Criminal Procedure Code, when it dismissed the appeal on merits after hearing the appellant. There can be no doubt in the present case that the appellant has had an opportunity of being heard both as to the correctness of his conviction and the propriety of the sentence.

(1) A.I.R. 1939 Pat, 611
(2) 62 I.A. 36

Section 423, Criminal Procedure Code, deals with the powers of the appellate court in disposing of an appeal. This section was amended by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955) which came into force on January 1, 1956, and sub-s. (1A) was added which says that where an appeal from a conviction lies to the High Court, it may enhance the sentence notwithstanding anything inconsistent therewith contained in cl. (b) of sub-s. (1). We wish to make it clear that we are not basing our decision on the provisions of sub-s. (1A). Those provisions do not apply in the present case, because an appeal from the conviction of the appellant did not lie to the High Court, but lay to the Sessions Judge of Delhi. The appeal came to the High Court on a valid order of transfer made under s. 526, Criminal Procedure Code. We are basing our decision on the power of the High Court to enhance the sentence under s. 439 Criminal Procedure Code, after having given the appellant an opportunity to show cause in the matter of his conviction as well as sentence. he decision of the Privy Council in *In re Chunbidya and others* (1), was a decision with reference to s. 423 as it stood before its amendment in 1955. If in the present case an appeal from the conviction lay to the High Court, it would have been unnecessary for the High Court to invoke its powers under s. 439, Criminal Procedure Code. It could act under its powers under sub-s. (1A) of s. 423, Criminal Procedure Code. As, however, the appeal came to the High Court on an order of transfer, the High Court had before it the appeal as well as the rule asking the appellant to show cause why the sentence should not be enhanced. It was necessary, therefore, for he High Court to consider both the appeal and the rule and this the High Court

(1) 62 I.A. 36

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did in the judgment which it pronounced on December 21, 1956.

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Now, as to the order of transfer. The provisions of s. 526, Criminal Procedure Code, appear to us to be a sufficient answer to the contention urged on behalf of the appellant. It states, *inter alia*, that whenever it is made to appear to the High Court that such an order is expedient for the ends of justice, the High Court may order that any particular case or appeal be transferred to and tried before itself. This is stated in express terms in s. 526 (1) (e) (iii) and sub-s. (3) of s. 526 states expressly that the High Court may act on its own initiative in passing such an order. In this particular case the High Court had the further circumstance that it had earlier issued a rule for enhancement of sentence, without knowing perhaps that an appeal had been filed to the Sessions Judge of Delhi a few days earlier. When this latter circumstance was brought to the notice of the High Court, it thought it expedient for the ends of justice to transfer the appeal to the High Court. We are unable to agree with learned counsel for the appellant that the High Court committed any illegality in passing the order of transfer. It is true that the record does not disclose that any notice was issued to the appellant before the order of transfer was made. It was open to the High Court to act on its own initiative and the appellant can make no grievance of the order of transfer on the ground of prejudice, because the appellant was fully heard both as to the correctness of his conviction and the propriety of the sentence originally passed against him by the learned Magistrate.

As to the last point that the procedure adopted had deprived the appellant of his right of getting

first a decision from the court of appeal and then another from the High Court in the exercise of its revisional jurisdistion, we do not think that there is any substance in it. The High Court had validly before it both the appeal and the rule for enhancement of sentence. It heard the appellant fully with regard to both. Therefore, no question arises of depriving the appellant of any of his rights under the Code of Criminal Procedure.

In conclusion, we wish to add that we have considered in the present case the question if the High Court committed any illegality in passing the two orders, one on June 14, 1956, and the other on August 17, 1956. We have held that the High Court committed no illegality. Nothing said in this judgment should be taken as commending or encouraging a departure from the usual practice which, we understand, is that when an appeal is pending before an inferior court, the High Court exercises, if necessary, its powers of revision after the appeal has been disposed of. There may, however, be exceptional cases where the ends of justice require that the appeal itself be heard by the High Court and in such a case it is open to the High Court to exercise its powers of revision under s. 439, Criminal Procedure Code, of enhancing the sentence after having heard and dismissed the appeal. The present case was an exceptional case of that nature and we do not think that the procedure adopted by the High Court was in any way illegal or prejudicial to the appellant. We find no good grounds for interference by this Court.

Accordingly, we hold that the appeal is devoid of merit and direct that it be dismissed.

B.R.T.