

where the plea is that the insured himself was not liable for the reason that he had transferred the vehicle by the date of the accident, the restrictions contained in sub-section (2) of section 96 as regards the defence open to an insurer cannot apply. That sub-section only deals with the grounds on which the insurer may avoid his liability even though the person insured is liable for the accident."

(13) It must be taken, therefore, that the position in law is now well-settled that transfer of ownership of a motor vehicle puts an end to the liability of the insurance company with which it was insured, even though the insured continues to be shown as the registered owner of the vehicle in the records of the registering authority. In other words, the liability for the accident, besides that of the person actually causing it, is of the real owner whether or not he also happens to be the registered owner thereof. This being so, there can be no escape from the conclusion that no liability for the compensation awarded could be fastened upon M/s Jolly Engineers & Contractors Private Limited or upon the New India Assurance Company Limited. The liability was thus only that of the driver of the offending vehicle and the owner thereof M/s Navrang Bus Service, Amritsar. It shall be open therefore, to the claimants to recover the amount awarded from both or either of these respondents.

(14) This appeal is accordingly accepted. In the circumstances, however, there will be no order as to costs.

N. K. S.

Before J. M. Tandon, J.

MADAN MOHAN,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Misc. No. 4224-M of 1984.

November 21, 1984.

Prevention of Corruption Act (II of 1947)—Sections 5(3) and 8—Indian Penal Code (XLV of 1860)—Sections 161, 165 and 165-A—Prosecution of a witness under section 5(3) (ii)—Such prosecution—Whether barred in view of the provisions of Section 3—Section 5(3) (ii)—Whether constitutes an offence independent of Section 165-A.

Held, that the abetment of an offence under section 161 or 165 the Indian Penal Code is an independent offence under Section 165-A. Section 5(3) of the Prevention of Corruption Act, 1947, prescribes more severe punishment for an accused convicted of an offence under Section 165-A of the Code, if he commits that offence habitually. It is difficult to infer that section 5(3) of the Act constitutes an offence independent of Section 165-A of the Code. An accused who habitually commits an offence shall still be convicted under Section 165-A of the Code. In other words, a person who is immune under Section 8 cannot be prosecuted under Section 5(3) of the Act.

(Para 4).

Petition Under Section 432 Cr. P. C. praying that the impugned orders Annexures P-1 to P-3 passed by the learned Special Judge, Kurukshetra be quashed.

It is further prayed that proceedings before the trial Court be stayed.

Jagdev Sharma, Advocate, for the Petitioner.

Rajesh Mahajan, Advocate, for the State.

JUDGMENT

J. M. Tandon, J.—

(1) Madan Mohan petitioner appeared as a prosecution witness on April 30, 1984, in *State v. Abhey Singh* under section 161/165-A/109, Indian Penal Code and section 5(3) of the Prevention of Corruption Act, 1947 (hereinafter the Act) and stated that he had been obtaining permits for the purchase of cement sanctioned in the name of other persons from the office of B.D. and P.O. Kaithal on payment of illegal gratification at the rate of Rs. 10 per bag of cement. He further stated that there was no question of any pressure of illegal demand made by the officials including the accused and that he paid them illegal gratification of his own because he was in need of the cement bags for the construction of of rice sheller. The Special Judge, Kurukshetra, *vide* order dated April, 30, 1984, summoned the petitioner as an accused to stand trial under section 165-A, Indian Penal Code read with section 5(3) (ii) of the Act. The Special Judge by another order dated June 4, 1984, opined that in view of the provisions contained in section 8 of the Act, the petitioner could not be prosecuted for an offence under section 165-A. He was, however,

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ordered to be charged under section 5(3) (ii) of the Act. On the same date the petitioner was charged as under :—

“That you habitually gave illegal gratifications to the officials of the office of Block Development and Panchayat Officer, Kaithal for getting permits of cement bags issued in the names of others and in particular, you on 14th September, 1981, at Kaithal, gave Rs. 150 to Abhey Singh Head Clerk of the said office as illegal gratification, for giving you a permit of eight bags of cement issued in the name of Manohar Lal and thereby committed an offence punishable under section 5(3) (ii) of the Prevention of Corruption Act, 1947, and within my cognizance.

And I hereby direct that you be tried by me on the said charge.”

The petitioner has assailed the orders dated April 30, 1984, and June 4, 1984, in the present petition under section 482, Criminal Procedure Code.

(2) The learned counsel for the petitioner has argued that the petitioner cannot be prosecuted on the basis of his statement dated April 30, 1984 in *State v. Abhey Singh* under section 5(3) (ii) of the Act as well in view of the provisions contained in section 8 thereof. The contention of the learned counsel for the State is that irrespective of the fact that the petitioner cannot be prosecuted under section 165-A, Indian Penal Code, in view of the provisions contained in section 8 of the Act but he can be prosecuted under section 5(3) (ii) of the Act because it is an independent offence. The point for consideration is whether section 5(3) (ii) of the Act constitutes an offence independent of section 165-A, Indian Penal Code or not.

Section 165-A, Indian Penal Code, reads :

“165-A. Punishment for abetment of offences defined in section 161 or section 165.—

Whoever abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

(3) In the result, the petition is allowed and the imprisoned

Section 8 of the Act reads :

“8. Statement by bribe giver not to subject him to prosecution.—

Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under section 161 or section 165 of the Indian Penal Code (45 of 1860), or under sub-section (2) or sub-section (3-A) of section 5 of this Act, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 165-A of the said Code.”

(3) It is clear that under section 8 of the Act, the petitioner is immune from prosecution under section 165-A, Indian Penal Code, for his statement dated April 30, 1984, in *State v. Abhey Singh*.

Section 5(3) of the Act reads :

“Whoever habitually commits—

- (i) an offence punishable under section 162 or section 163 of the Indian Penal Code (45 of 1960), or
- (ii) an offence punishable under section 165-A of the Indian Penal Code, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine:

Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.”

(4) The abetment of an offence under section 161 or 165, Indian Penal Code, is an independent offence under section 165-A, Indian Penal Code. Section 5(3) of the Act prescribes more severe punishment for an accused convicted of an offence under section 165-A, Indian Penal Code, if he commits that offence habitually. It is difficult to infer that section 5(3) of the Act constitute an offence

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independent of section 165-A. An accused who habitually commits an offence shall still be convicted under section 165-A, Indian Penal Code. In other words, a person who is immune under section 8, cannot be prosecuted under section 5(3) of the Act. A contrary view taken by the learned Special Judge, Kurukshetra, in the impugned order dated June 4, 1984, cannot be sustained.

(5) In the result, the petition is allowed and the impugned orders of the Special Judge Kurukshetra, dated April 30, 1984, and June 4, 1984, as also the charge framed against the petitioner under section 5(3) (ii) of the Act in *State v. Abhey Singh* are quashed.

N.K.S.

Before J. V. Gupta, J.

RAMO AND ANOTHER,—*Petitioners.*

versus

THE COLLECTOR, LAND ACQUISITION URBAN ESTATE,
FARIDABAD AND OTHERS,—*Respondents.*

Civil Revision No. 66 of 1977.

November 28, 1984.

Land Acquisition Act (I of 1894)—Sections 9, 18 and 53—Code of Civil Procedure (V of 1908)—Section 141—Award given by the Land Acquisition Collector—Reference made under Section 18 for enhancement of compensation—Claimants absenting themselves on the date fixed for their evidence—District Judge dismissing the reference on merits holding that the compensation awarded was fair—Such procedure—Whether valid—Proper course for the court to follow—Stated.

Held, that there is no provision in the Land Acquisition Act, 1894, directly dealing with the situation where a party to the reference absents, nor there is any provision which prevents the Court to pass an order of dismissal of the reference for non-prosecution. Thus, there being no bar, express or implied in the Act to the applicability of any provision of the Code of Civil Procedure and the provisions of the Code in general being made applicable by the provisions of Section 53 of the Act and section 141 of the Code, it cannot be said that the application for setting aside of the order of dismissal