APPELLATE CRIMINAL

Before Harnam Singh and Dulat, JJ.

NISHAN SINGH,—*Convict—Appellant.*

1953

October, 12th

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 356 of 1953.

Criminal Law Amendment Act (XLVI of 1952)—Section 7—All Sessions Judges and Additional Sessions Judges specified as Special Judges—Sessions Judge transferring case to Additional Sessions Judge—Case tried by Additional Sessions Judge—Entire prosecution evidence and part of defence evidence recorded before State Government allocated the case to the Additional Sessions Judge under section 7(2)—Proceedings before Additional Sessions Judge prior to such allocation—Whether valid—Code of Criminal Procedure (Act V of 1898)—Sections 193, 409 and 529(e) & (f)—Effect of—Prevention of Corruption Act (II of 1947) Section 3—Permission under—Form of—Section 6—Sanction under—Facts whether should be shown on the face of the sanction—Indian Evidence Act (I of 1872)—Section 114, Illustration (e)—Presumption under—'regularly performed'—Meaning of.

N was arrested on 21st May, 1952, for accepting a bribe and a Magistrate of the First Class acting under section 3 of the Prevention of Corruption Act, 1947, granted permission to Police officers below the rank of Deputy Superintendent of Police, to investigate the case. Sanction to prosecute N under section 161, Indian Penal Code, and section 5(2) of the Prevention of Corruption Act was granted by the Deputy Commissioner as required by section 6 of the said Act. The Challan was put in the Court of the Additional District Magistrate who recorded a part of the prosecution evidence when the Criminal Law Amendment Act, 1952, came into force and the case became triable by a Special Judge. Under section 7 of the said Act all Sessions Judges and Additional Sessions Judges were specified as Special Judges by the State Government. On 7th October 1952, the Additional District Magistrate sent the case to the Sessions Judge who kept on postponing its trial and on 29th May 1953, transferred it to the Court of Additional Sessions Judge who began its trial on 4th June 1953, and finished the entire prosecution evidence and most of the defence evidence by 13th July 1953. On that day the case was adjourned to 21st July, 1953, on which date the remaining defence evidence was recorded and the case was adjourned to 30th July, 1953, for order. On 20th July 1953, a letter was received from the Home Secretary

allocating this case for trial to the same Additional Sessions Judge. N was convicted on 30th July 1953, and he filed an appeal in the High Court. In appeal it was submitted that the proceedings before the Additional Sessions Judge from 4th June 1953 to 13th July 1953, were without jurisdiction, that the permission granted under section 3 of the Prevention of Corruption Act, to police officers below the rank of the Deputy Superintendent of Police was not valid and that the sanction given by the Deputy Commissioner under section 6 of the said Act, was also not valid.

Held, that between 4th June 1953 and the 13th July 1953, when proceedings were taken in the Court of the Additional Sessions Judge, he was a Special Judge within the meaning of section 6 of the Criminal law Amendment Act, and had jurisdiction to try the case. But in the exercise of the jurisdiction possessed by him, the Additional Sessions Judge indisputably did not act according to the mode prescribed by the Statute. If so, the objection relates obviously not to the existence of jurisdiction but to the exercise of it in an irregular manner. It is a well-settled rule that where a Court has jurisdiction to try an offence it is, as a rule, immaterial whether it has taken cognizance of the offence without being empowered to do so or whether the case has been transferred to it by another Court which was not empowered to make the orders of transfer. Clauses (e) and (f) of section 529, Criminal Procedure Code, provide that the commission of some irregularity of this kind prior to the commencement of the trial does not vitiate the trial itself. In the present case, too, the irregularity in the exercise of jurisdiction does not vitiate the trial.

Jhakar Abir and others v. *Province of Bihar* (1), and *Henry Peter Pisani* v. *Her Majesty's Attorney-General for Gibralter and others* (2), relied on.

Held, that section 3 of the Prevention of Corruption Act, 1947, does not require the permission to be in any particular form, nor even to be in writing. Illustration (e) appended to Section 114 of the Indian Evidence Act provides that the Court may presume that judicial and official acts have been regularly performed. In the Illustration the words 'regularly performed' mean done with due regard to form and procedure.

Held further, that it is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since section 6 of the Prevention of Corruption Act does not require the sanction to be in any particular form, nor even to be in writing.

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(1) A.I.R. 1945 Pat. 98
(2) (1874) Law Reports 5 Privy Council 516

Gokal Chand Dwarkadas Morarka v. *The King* (1), relied on.

Appeal from the order of Shri Tirath Das Sehgal, Special Judge, Gurdaspur, dated the 30th July, 1953, convicting the appellant.

NARINJAN SINGH KEER, for Appellant.

KARTAR SINGH, Assistant Advocate-General and K. L. JAGGA, for Respondent.

ORDER

SONI, J. Nishan Singh, a clerk in the office of the Deputy Commissioner, Gurdaspur, was charged under section 161 of the Penal Code and section 5(1)(d) of the Prevention of Corruption Act for having on the 21st of May, 1952, accepted from Darshan Singh a sum of Rs. 12 as gratification other than legal remuneration as motive for rendering service to him by helping him to obtain certain copies and also to have been guilty of criminal misconduct in the discharge of his duties. He was found guilty by the Special Judge trying the case under the provisions of the Prevention of Corruption Act, 1947, as amended, of both charges and was sentenced to six months rigorous imprisonment under each charge, the sentences to run concurrently. He has apealed. Soni, J.

There is one point of considerable importance in this case for which I consider that this case should be referred to a Division Bench. The facts are that this case was originally sent up for trial before the Additional District Magistrate, Gurdaspur. *The challan was put before him on the 2nd of June 1952.* He examined the first witness on the 4th of July, 1952. On the 8th of August, 1952 prosecution evidence was closed. During this interval the Criminal Law Amendment Act XLVI of 1952 came into force on the 28th of July 1952. Under the provisions of this Act offences *punishable under section 161, Indian Penal Code and punishable under subsection (2) of section 5* of the *Prevention of Corruption Act could* only be tried

(1) A.I.R. 1948 P.C. 82

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by Special Judges. The Additional District Magistrate, therefore, on the *7th of October 1952* sent the case to the Special Judge. I suppose the case was not sent earlier because there was no notification appointing a Special Judge till the 5th of September 1952. *By notification No. 7782-JJ-52/3980, dated the 5th of September 1952, published in the Punjab Gazette on the 12th September 1952, all Sessions Judges in the State were appointed* Special Judges for the trial of cases under the Prevention of Corruption Act. This notification was issued under clause (2) of section 6 of the Criminal Law Amendment Act XLVI of 1952. When the case came before the Sessions Judge as Special Judge he went on adjourning it without recording any evidence. Eventually *on the 29th* of May 1953 there is an order by the Judge sending the case to the Additional Sessions Judge who during this interval had also been appointed as a Special Judge. There is a notification No. 10576-JJ-52/17944, dated the 6th of November 1952, published in the Punjab Gazette of the 14th November 1952, by which all Additional Sessions Judges were appointed Special Judges to try cases under the Prevention of Corruption Act. This having been done the Additional Sessions Judge as a Special Judge began to try this case. He began examining witnesses on the 4th of June 1953. On the 13th of July 1953, all defence witnesses were examined except one. That one was examined on the 21st of July 1953. Thereafter judgment was delivered by the Special Judge on the 30th of July 1953. During the interval that the Additional Sessions Judge was trying the case as a Special Judge it seems to have been brought to somebody's notice that *cases cannot be transferred by the Sessions Judge to the Additional Sessions Judge. Under section 7 clause (2) of the Criminal Law Amendment Act* it is provided that every offence specified in subsection (1) of section 6 shall be tried by the special judge for the area within which it was committed, or where there are more special judges than one for such area, by *such one of them as may be specified in this behalf by the State Government.* Attention of the State Government was drawn by the Registrar of this Court

by a letter of the 10th June 1953 that Government should take steps to make the allocation of cases to the Additional Sessions Judges. Thereafter lists were prepared of the various Additional Sessions Judges who had been made Special Judges and of the various cases that were pending in various districts. On the *20th of July 1953, by letter No. 9891-JJ-53/49958* the Home Secretary to the Punjab Government wrote to the Registrar of this Court allocating various cases to various judges specifying them as Ist and IInd Additional Sessions Judges as the case may be. The present case is allocated to Mr. Tirath Das Sehgal, the Additional Judge. The point that has been argued in this case is that at the time when the present Special Judge, Mr. Tirath Das Sehgal, began the *proceedings* in the present case which was on the 4th of June 1953, there had been no allocation of the present case to him by the State Government and as there was no allocation to him by the State Government, it is argued that the *proceedings before him were void.* The letter of the Home Secretary, dated the 20th of July, 1953, appears on the scene towards the end of the proceedings before the Special Judge. A copy of the Home Secretary's letter is sent to the Sessions Judge on 24th July 1953. It is argued that it cannot possibly *cure the initial* defect that had existed when the Special Judge, Mr. Tirath Das Sehgal, began to take cognizance and to record evidence in this case. On behalf of the appellant attention is drawn to a ruling of their Lordships of the Privy Council in *Nusserwanjee Pestonjee and others* v. *Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor,* (1). At page 155 their Lordships say—

> "The present question turns upon this principle, that wherever jurisdiction is given to a Court by an Act of Parliament, or by a Regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is

(1) 6 Moore's Ind. App. 134

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a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise."

Thier Lordships then went into the facts of the case with which they were dealing which was the matter of an award. The arbitrators could have taken cognizance of the award only on certain conditions and their Lordships found that those conditions not having been fulfilled as specified by the Regulation under which they were acting the whole proceedings were bad. It is argued that this case decided by their Lordships of the Privy Council coincides with the present case. In the present case the Special Judge could have only jurisdiction under clause (2) of section 7 of the Criminal Law Amendment Act, 1952, if the case had been sent *on to him for trial by the State Government. As the State Government never did this on or before the 4th of June 1953,* when he began to record evidence in this case it is argued that he had no jurisdiction in this case and the letter of the Government, dated the 20th July 1953, reached too late and would not give him jurisdiction in a case in which he had *ab initio* no other jurisdiction at all. On behalf of the State it is stated that that ruling of their Lordships of the Privy Council was distinguished by Mr. Justice Mookerjee in the case of *Khosh Mahomed Sirkar* v. *Nazir Mahomed,* (1), decided by a Full Bench of the Calcutta Court. Rampini and Mookerjee, JJ., referred the case which was pending before them to a Full Bench. There an initiatory order under section 145 (1) of the Criminal Procedure Code was drawn up in a form according to which it was argued that the magistrate had no jurisdiction. Mr. Justice Mookerjee at page 357 dealing with the judgment of their Lordships of the Privy Council in Moore's Indian Appeals said:—

"By that Regulation jurisdiction was conferred upon the Civil Courts to deal with arbitration awards made out of Court,

(1) I.L.R. 33 Cal. 352

provided the reference to arbitration and the award complied with certain conditions minutely detailed in the Regulation itself. One of *these conditions was that the agreement of reference should specify the time for the completion* of the award. An agreement of reference to arbitration was made which contravened this condition and specified no time within which the award was to be made. It was held by their Lordships of the Judicial Committee that an award made upon such a reference was not an award which the Civil Court could deal with under the Regulation, because the Civil Court had been given jurisdiction over awards made under a specified condition, and the award in suit was not an award of that description. That was, therefore, a case which stood on an entirely different ground and has no analogy to the case now before us. We are consequently unable to hold that the omission to state the grounds in the initial order makes it an order without jurisdiction so as to invalidate the whole proceedings."

The Full Bench agreed with the view thus expressed in the referring order. In the present case it is urged that Mr. Tirath Das Sehgal, Special Judge, had jurisdiction in the matter of trial of cases punishable under section 161, Indian Penal Code, and subsection 2 of section 5 of the Prevention of Corruption Act because a notification of the State Government had been issued on the *6th of November 1952, appointing all Additional Sessions Judges as Special Judges. It is stated that that was the notification* which gave Mr. Tirath Das Sehgal jurisdiction over all cases of this nature. So far as the allocation of a particular case is concerned that matter is dealt with in another section of the Criminal Law Amendment Act, that section being section 7 *clause* (2) *which authorises the* State Government to allocate the various cases. It is argued that this is a purely ministerial duty and

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that clause (2) of section 7 might as well have given this duty of allocation of cases to the Sessions Judges or to the High Court or to anybody else which the Legislature pleased but that so far as the actual vesting of the jurisdiction is concerned, clause (2) of section 7 has nothing to do with it. *That matter of vesting of jurisdiction is dealt with in clause (2) of section 6 and when a notification is issued under clause (2) of section 6 all Additional Sessions Judges become Special Judges competent to try* cases of the present nature. Mr Chawla, one of learned counsel for the State, in an able argument drew my attention to section 529 of the Criminal Procedure Code. In that section it is provided—

> "If any Magistrate not empowered by law to do any of the following things, namely:—
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> * * * * *
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> (e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b);
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> * * * * *
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> erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered."

If reference is made to section 190 we find that it is stated as follows:—

> "190 (1). Except as hereinafter. provided any Presidency Magistrate. District Magistrate or Sub-Divisional Magistrate and any other Magistrate specially empowered in this behalf may take cognizance of any offence—
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> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a report in writing of such facts made by any police-officer;
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> * * * * *

Ordinarily Magistrates cannot take cognizance of offences directly. This is a privilege which is given to the District Magistrates, the Sub-Divisional Magistrates or the Magistrates specially empowered for that purpose. But otherwise Magistrates take cognizance of cases which are ordinarily sent to them either by the Sub-Divisional Magistrate or the District Magistrate. *Section 529 enacts that if any Magistrate not empowered by law to take such cognizance erroneously in good faith takes cognizance, then his proceedings will not be set aside merely on the ground that he was not so empowered.* It is argued that in this case Mr. Tirath Das Sehgal acted *bona fide*, that no objection at all was taken to his proceedings from the beginning right to the end when he delivered his judgment and that this objection is being taken now for the first time in this Court. Mr. Chawla referred me to a Full Bench judgment of the Patna High Court in the case of *Jhakar Abir and others* v. *Province of Bihar* (1), in which Mr. Justice Shearer at page 102 says—

> "The jurisdiction of every criminal Court to try a particular offence is derived from statute, either from the statute which creates the Court or from the statute which defines the offence (see Bailey on Jurisdiction Vol. 1, P. 486)."

At page 103 the learned Judge said—

> "Where a Court has jurisdiction to try an offence it is, as a rule, immaterial whether it has taken cognizance of the *offence without being empowered to do so or whether the case has been* transferred to it by another Court which was not empowered to make the order of transfer. Clauses (e) and (f) of S. 529, Criminal P.C., provide that the commission of some irregularity of this kind prior to the commencement of the trial does not vitiate the trial itself."

(1) A.I.R. 1945 Pat. 98

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It is urged that in the present case the jurisdiction of Mr. Tirath Das Sehgal was conferred on him by the notification of the *6th of November 1952*, issued under the provisions of clause (2) of section 6 of the Criminal Law Amendment Act. That notification issued under statutory powers was the basis of the jurisdiction of Mr. Tirath Das Sehgal and his exercise of jurisdiction had nothing to do with his getting the jurisdiction. The exercise of that jurisdiction was no doubt irregular as the case had not been transferred to him by an order of the State Government but had been sent on to him by the order of the Sessions Judge but that irregularity, it is urged, is not fatal because it is not urged that Mr. Tirath Das Sehgal was not acting *bona fide* or that any failure of justice has been occasioned and it is also urged that the objection is being taken too late. Under the provisions of section 537 of the Criminal Procedure Code it is said—

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or *other proceedings before or during trial* or in any inquiry or other proceedings under this Code.
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> unless such error, omission, irregularity or misdirection has in fact occasioned failure of justice."

It is urged that in this particular case no failure of justice has been accasioned much less proved.

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Attention was also drawn to the explanation of section 537. The explanation says—

> "In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

It is said that if the attention of Mr. Tirath Das Sehgal had been drawn to the fact that he was not competent to try this case as the case had been sent on to him by the Sessions Judge he would have stayed his hand and would have drawn the attention of the Sessions Judge or of other officers to the fact that the case should be sent on to him by the State Government and on that irregularity having been pointed out the State Government would have sent the case on to him at a date earlier than the 20th of July 1953. Mr. Chawla drew my attention also to a ruling of the Peshawar Court in the case of *Pearey Lal Bhatia,* (1). In this case Almond J.C. said at page 43—

> "A Senior Subordinate Judge does not exercise his powers in view of any authority delegated to him by the Provincial Government, but in view of the satutory provisions embodied in the Civil Procedure Code".

Reference may also be made to a judgment of their Lordships of the Privy Council in the case *Ledgard* v. *Bull* (2). At pages 144-45 their Lordships say—

> "The Defendant pleads that there was no jurisdiction in respect that the suit was instituted before a Court incompetent to entertain it, and that the order of transference was also incompetently

(1) A.I.R. 1940 Pesh. 41
(2) 13 I.A. 134

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made. The District Judge was perfectly competent to entertain and try the suit, if it were competently brought, and their Lordships do not doubt that, in such a case, a Defendant may be barred, by his own conduct, from objecting *to irregularities in the institution* of the suit. When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him. *But there are numerous authorities which establish that when in a cause which the Judge is competent to try, the parties* without objection join issue, and go to trial upon the merits, the Defendant cannot subsequently dispute his jurisdiction upon the grounds that there were *irregularities in the initial procedure, which, if objected to at the time,* would have led to the dismissal of the suit."

This case no doubt was a case of a civil nature but the principles which their Lordships enunciated in this case are of general application. I have already referred to the case of *Khosh Mahomed Sirkar* v. *Nazir Mahomed* (1). In the same volume there is another case decided by the Full Bench, *Sukh Lal Sheikh* v. *Tara Chand* (2). In the order of reference to the Full Bench it is stated at page 71—

"Another class of question may, however, arise, namely, whether a Court in the exercise of the jurisdiction which it possesses, has acted according to the mode prescribed by the Statute. If such a question is raised, it relates obviously not *to the existence of the jurisdiction, but to the exercise of it in an irregular*

(1) I.L.R. 33 Cal. 352
(2) I.L.R. 33 Cal. 68

or an illegal manner. We are not prepared to accept the view that a non-compliance with every rule of procedure destroys the jurisdiction of the Court."

The Full Bench at page 78 said—

"In our opinion the mere fact that the Court omitted to have a copy of the Magistrate's order, referred to in section 145, published by affixing it in some conspicuous place at or near the subject of dispute did not deprive the Court of its jurisdiction to deal with the case. We express this opinion with some diffidence, as a different view has been expressed by Division Benches of this Court, which is entitled to every consideration and respect. Assuming that subsection (1) of section 145 has been complied with, the Court had undoubted jurisdiction to deal with the case. Has this jurisdiction been lost by reason of the omission as to notice referred to above ? We think not. We regard the provision as to publication of the order in subsection (3) of section 145 as directory, and as a matter of procedure only, and not as destroying the jurisdiction of the Court, if not complied with."

In the case of *Vishnu Sakharam Nagarkar* v. *Krishnarao Malhar* (1), West, J., said at page 158—

"It is this, that where jurisdiction over the subject-matter exists, requiring only to be invoked in the right way, the party who has invited or allowed the Court to *exercise it in a wrong way cannot afterwards turn round and challenge the legality of the proceedings* due to his own invitation or negligence."

Later at the same page West, J., says—

"Had there indeed been no jurisdiction over the subject-matter, the acquiescence of

(1) I.L.R. 11 Bom. 153

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the parties concerned could not create it; but as there was a jurisdictional power, and the questions at issue were investigated and determined, the irregularity, according to the subsequent ruling in another case, was covered by the assent with which this Court acted."

and reference is made to a number of authorities by the learned Judge. The matter is again dealt with by Mr. Justice Mookerjee in the case of *Gurdeo Singh* v. *Chandrikah Singh* (1). At page 207 Mookerjee, J., states as follows:—

"An entirely different class of questions, however, arises, when it is suggested that a Court in the exercise of the jurisdiction which it possesses, has not acted according to the mode prescribed by the Statute. If such a question is raised, *it relates obviously, not to the existence* of jurisdiction, but to the *exercise of it in an irregular or illegal manner.* This distinction between elements, which are essential for the foundation of jurisdiction and the mode in which such jurisdiction has to be assumed and exercised, *is of fundamental importance,* but has not always been sufficiently recognised. That the distinction is well-founded is manifest from cases of high authority. Thus, in *Pisani* v. *Attorney-General of Gibraltar* (2), their Lordships of the Judicial Committee held that, where there is jurisdiction over the subject matter, but noncompliance with the procedure prescribed as essential for the exercise of jurisdiction, the defect might be waived. The same principle was adopted in *Ex-parte Pratt* (3), and *Ex-parte May* (4), which are authorities for the proposition that where jurisdiction over the subject-matter exists requiring only

(1) I.L.R. 36 Cal. 193
(2) (1874) L.R. 5 P.C. 515
(3) (1884) 12 Q.B.D. 334
(4) (1884) 12 Q.B.D. 497

to be invoked in the right way, the party, who has invited or allowed the Court to exercise it in a wrong way, cannot afterwards turn round and challenge the legality of the proceedings due to his own invitation or negligence; see *Vishnu Sakharam Nagarkar* v. *Krishna Rao Malhar,* (1). Although the objection that a Court is not given jurisdiction over the subject-matter by law, cannot be waived, *Golab Sao* v. *Chowdhury Madho Lal,* (2), yet defects of jurisdiction arising from irregularities in the commencement of the proceedings, may be waived by the failure to take objection at proper stage of the proceedings."

The learned Judge quotes American cases in his support. The learned Judge then continues at page 208—

"To put the matter from another point of view, it is only when a Judge or Court has no jurisdiction over the subject-matter of the proceeding or action in which an order is made or a judgment rendered, that such order or judgment is wholly void, and that maxim applies that consent cannot give jurisdiction; in all other cases, this objection to the exercise of the jurisdiction may be waived, and is waived when not taken at the time the exercise of the jurisdiction is first claimed."

It is urged that the Additional Sessions Judge's jurisdiction cannot be split up by reference in one instance to clause (2) of section 6 and in a second instance to clause (2) of section 7 of the Criminal Law Amendment Act, but that both these clauses must be read together and when read together it is clear that Mr. Tirath Das Sehgal could only have jurisdiction over the subject matter of this case if the State Government were to send this case on to him. It is urged

(1) (1886) I.L.R. 11 Bom. 153
(2) (1905) 2 C.L.J. 384

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that the Privy Council had repeatedly held that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all and other methods of performance are necessarily forbidden : *Nazir Ahmad's* case, (1).

The letter of Government, dated the 20th of July 1953, affects a large number of cases in which proceedings had been started before Additional Sessions Judges as Special Judges before the letter was issued and vitally affects the trial of those cases. The matter is of general importance and I consider that though I am inclined to hold that there is no substance in the objection, the matter be heard by a Division Bench.

So far as the merits of the case are concerned, there are also some difficulties in the case. The case for the prosecution is that a man, called Darshan Singh, wanted certain copies. He applied to the Copying Department on the 7th of May, 1952. The copies were not delivered. Then he again wanted certain other copies and made an application on the 19th of May 1952 which was registered on the 20th of May. It was found that the copies related to a certain file which had to be sent for and it is said that Nishan Singh accused was the person who had to send for the file and he told Darshan Singh that unless some money was paid the file would not be sent for and the copies would not be made, or, at any rate, considerable delay would take place. It is said that Darshan Singh was accompanied by a relation of his, Tek Singh, whose wife is Darshan Singh's father's maternal uncle's daughter. They both asked Nishan Singh to get on with the work but Nishan Singh would not do so unless a sum of Rs. 12 was given to him. They promised to bring the money the next day. Next day they went to him and wanted to bargain but Nishan Singh was adamant and wanted his Rs. 12. Thereupon they went to a Police Inspector, Sohan Lal, who recorded the statement of Darshan Singh. After recording the

(1) I.L.R. 17 Lah. 629

statement of Darshan Singh he was taken to Mr. Abhairaj Singh, Magistrate, who also recorded his statement and thereafter marked currency notes of the value of Rs. 12 were given to Darshan Singh and a raid was organized. It is said that Mr. Abhairaj Singh, the Magistrate, and others kept behind while Darshan Singh and Tek Singh went towards the Copying Department. They took Nishan Singh aside and there it is alleged that the Rs. 12 were paid and on a signal being given the Magistrate and the raiding party approached and the marked currency notes of Rs 12 were recovered from the pocket of Nishan Singh. Thereafter an application was made to Mr. Abhairaj Singh by Sohan Lal for permission to investigate the case which permission Mr. Abhairaj Singh gave. Mr. Abhairaj Singh made a report of what had happened to the District Magistrate. The District Magistrate on that report ordered the prosecution of Nishan Singh as Nishan Singh worked under the Deputy Commissioner who was incharge of the Copying Department. It was probably felt by the Police that the permission to investigate by Mr. Abhairaj Singh was perhaps not proper. So another application was made by Sohan Lal to Mr. Ajit Singh, Magistrate for permission to investigate the offence. He also applied for permission to be given to Assistant Sub-Inspector, Gurbakhsh Singh to investigate the case and these permissions were granted by Mr. Ajit Singh. All this was done on the 21st of May 1952. A few days later the Deputy Commissioner also gave the permission to prosecute Nishan Singh. It is urged that the permission to investigate the case was improperly obtained. In my opinion it would have been better on the part of Mr. Abhairaj Singh not to give the permission as he himself was the person who was acting in the case and the permission to investigate the case should have been given by another Magistrate. It is then urged that the permission which was given by Mr. Ajit Singh was improper as the application of Sohan Lal to Mr. Ajit Singh was in the folowing terms—

> "I may kindly be permitted to conduct the investigation of case *Crown* v. *S. Nishan*

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Singh, second Moharrir, in the Copying Agency.

(Sd.) Sohan Lal,

Inspector, Police.

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It is urged that there is nothing to show that Mr. Ajit Singh was apprised of any facts before permission was granted. Mr. Ajit Singh has not been examined as a witness and there is no statement of anybody saying that the facts were given to Mr. Ajit Singh. It is however urged on behalf of the State that when *Mr. Ajit Singh was approached we must not presume that he did act blindfold but that he asked the Inspector what this application was about and that the Inspector must have told him what had happened.* Moreover all this took place within the Court compound and everybody must have come to know of it including the Magistrate, Mr. Ajit Singh. Under the provisions of section 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The grant of permission to investigate an offence to an officer of an inferior rank of police does not stand on the same footing as the sanction of the prosecution of a person accused of an offence. In an investigation facts have to be found out and the only question to be considered by the authority granting permission to investigate is whether a particular police officer of a rank inferior to that of a Deputy Superintendent of Police should or should not investigate the offence. A Deputy Superintendent can always investigate. In my opinion there is no substance in this objection.

It is next urged that the permission to prosecute, given by the Deputy Commissioner, Mr. H.B. Lall, was not proper. The sanction to prosecute

by Mr. H.B. Lall was given in the following terms:—

"I, H.B. Lall, Deputy Commissioner, Gurdaspur, do hereby accord sanction under section 6 of the Prevention of Corruption Act to the prosecution of Nishan Singh, son of Harnam Singh, Mazhbi Sikh of Sohal, a Clerk in my office for offences under section 5(2) of the aforesaid Act and section 161, I.P.C. in having accepted on 21st May 1952 a sum of Rs. 12 as bribe or gratification other than legal remuneration as a motive or reward for doing an act in the discharge of his official duties, from Darshan Singh Jat, of village Marrar, Police Station Sadar Batala, for supplying him copies of his claim reports.

(Sd.) H.B.Lall,

30-5-52

Deputy Commissioner
Gurdaspur."

It is urged that this sanction is improper and reference is made to a ruling of their Lordships of the Privy Council in *Gokulchand Dwarkadas Morarka* v. *The King* (1), where the sanction was in the following terms:—

"Government is pleased to accord sanction under Cl. 23, Cotton Cloth and Yarn (Control) Order, 1943, to the prosecution of Mr. Gokulchand Dwarkadas Morarka for breach of the provisions of Cl. 18(2) of the said Order.

By Order of the Governor of Bombay,
(*Signed*).
Deputy Secretary to Government, Bombay."

The Privy Council held that in that case there were no sufficient facts given and nor was there any extraneous evidence to show that any facts had been placed before the Governor at the time when he accorded the sanction. But in the present

(1) A.I.R. 1948 P.C. 82

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case we have the evidence of the Deputy Commissioner's Clerk Hansa Singh, P.W. 5 to the effect that an application, Ex. P.B., was sent by the Superintendent of Police to the Deputy Commissioner for obtaining sanction for prosecution. This application, Ex. P.B., reads as follows:—

> "A *prima facie* case has been made out against Nishan Singh, accused, cited as subject for offences under section 5(2) Prevention of Corruption Act and section 161, I.P.C. in having accepted a sum of Rs. 12 from one Darshan Singh Jat, of Marar, Police Station Sadar Batala, as bribe or gratification other than legal remuneration as motive or reward for supplying him copies of his claim reports—an act in the discharge of his official function.
>
> It is therefore, requested that sanction for his prosecution for the above-said offence as required under section 6 of the said Act may kindly be granted."

This application does give the facts of the case. We have moreover the evidence of Mr. Abhairaj Singh that he sent his report of what had happened to the Deputy Commissioner, his report being Ex. P.W. 6/C which gives details of all that happened on the 21st of May, 1952. I must presume that this report of Mr. Abhairaj Singh reached the Deputy Commissioner. The detailed report of Mr. Abhairaj Singh and the application, Ex. P.B., of Superintendent of Police made to the Deputy Commissioner apprised him of all the facts and it cannot be urged that he did not know what he was doing. The sanction, Ex. P.C., of the Deputy Commissioner, dated the 30th of May 1952, gives in my opinion, *sufficient facts and I think that there is no substance in this objection.*

It was next urged that this sanction referred to a charge under section 161, Indian Penal Code, only while there were two charges framed against the accused one under section 161, Indian Penal

Code, and another under section 5(1)(d) of the Prevention of Corruption Act. In my opinion there is no *substance in this objection.* The two sections in certain respects overlap and the section even if it be granted for the sake of argument that it was only for an offence under section 161, Indian Penal Code, is really a sanction for the prosecution of offences punishable under section 161 Indian Penal Code, or section 5(2) of the Prevention of Corruption Act. It is next urged that there is no evidence in the case from which it can be concluded that this sum of Rs. 12 was given to corrupt Nishan Singh. I have already given the facts of the case. It is urged that Darshan Singh is an accomplice and that his statement requires corroboration. It was urged on behalf of the State that his conduct is corroboration, his conduct being that he wanted certain copies and not being able to get those copies without payment of Rs. 12 he made a report of this to the inspector of Police Sohan Lal and later on reported his grievance before the Magistrate Mr. Abhairaj Singh and then repeated what had happened to the Court. It is urged that a repetition by a person any number of times does not corroborate. The corroboration must be from a source other than the person to be corroborated. It is urged on behalf of the State that Tek Singh corroborated him. First of all Tek Singh is a relation of Darshan Singh and secondly in my opinion Tek Singh and Darshan Singh were both acting jointly and they are both accomplices and therefore the statement made by Tek Singh would not corroborate the statement made by Darshan Singh. One accomplice cannot corroborate another. The corroboration must be by a person who is not an accomplice. It is next urged that the corroboration is by circumstances in so far as that at the time when the currency notes of Rs. 12 were demanded from the accused by Mr. Abhairaj Singh, Magistrate, at the time of the raid the accused did not tell the Magistrate that this sum was not an illegal gratification but was what he subsequently alleged to be part payment of a loan of Rs. 25 due from Darshan Singh to the accused. It is said that his silence at the time shows his guilt and is corroborative of the evidence of Darshan Singh. It

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was held in a case in England, *R.* v. *Feigenbaum,* (1), that silence may be corroboration but the authority of this case seems to have weakened in England; see Archbold's Criminal Pleading, Evidence and Practice, 1949 edition, pages 463-464. It is also urged that in the present case though at the moment of time when the Magistrate demanded Rs. 12 from the accused the accused did not give his story but did so immediately after reaching the Court Room of the Magistrate from the Copying Department Office. It is said that this interval of time taken to travel from the Copying Department to the Magistrate's Court Room was so short that the statement of the accused that this sum of Rs. 12 was part payment of the loan given by the accused might be taken as his explanation given at the time regarding the sum of Rs. 12. There is something to be said for this. It is further urged that besides this corroboration by silence there is no other corroboration in the case. In the case of *Anwar Ali* (2), decided by Cornelius and Falshaw, JJ., Mr. Justice Cornelius said at page 29—

> "The weakness of the prosecution case as has been indicated already, consists in the fact that the statement of Mr. Bahi as to the reason why Anwar Ali took the money from him is not corroborated by any other evidence, oral or circumstantial. All the evidence for the prosecution conveys the impression that it was considered sufficient for establishing a case of bribery against the accused, that it should be proved that the marked notes passed from Mr. Bahi to him. Obviously, that is in fact not sufficient for establishing such an offence. Money may be passed from one person to another on a variety of pretexts, and it cannot be remembered too carefully that persons who lend themselves for use as decoys and agents provocateur possess

(1) (1919) 1 K.B. 431
(2) A.I.R. 1948 Lah. 27

ingenuity and suppleness of wit above the ordinary. No stupid or simple person could ever hope to perform such a function. Therefore, it is of the utmost importance in cases of this kind that there should be independent corroboration of the statement of the decoy witness, that the money was received by the accused person for an illegal purpose. Naturally, the decoy witness will be extremely keen that his trap should not fail, and having in the forefront of his mind that the central thing is that the marked money should be passed to the intended victim, and assuming a certain elasticity of moral character in the decoy witness, there is a real danger that he may pass on the money under some pretext which may perhaps not be guilty in the relevant sense or which may even be wholly innocent, but in giving his evidence may represent that he gave money for the purpose relevant in the case, feeling confident that having taken care that the money was passed with as little publicity as possible; the case on this particular point will resolve itself into a conflict between his evidence on solemn affirmation and the statement of the accused person which must necessarily be made without an oath. If the prosecution had wished, there can be no doubt that they could have arranged for some person or persons to be within earshot of Mr. Bahi and the Ticket Collector throughout the proceedings."

It is urged that this case is worse than the case which the learned Judges were dealing with in Lahore. There Mr. Bahi was a decoy witness but here Darshan Singh is a vitally interested witness and if corroboration was needed for Mr. Bahi's statement it is all the more essential that it should be needed for the statement of Darshan Singh or of his relation Tek Singh as Tek Singh was

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also as much interested as Darshan Singh. As observed by Cornelius, J., if the prosecution had wished they could have arranged for some person to be within the earshot of Nishan Singh and Darshan Singh and Tek Singh at the time of the passing of the money but though a police constable is said to have accompanied them to a certain distance the evidence is that he came away and left the two to go alone to Nishan Singh. On the other hand it is urged that Darshan Singh had no enmity with the accused, that he was like many others an applicant for certain copies and had nothing to do with the accused and that the story that he was indebted to the accused in the sum of Rs. 25 out of which he had already paid Rs. 13 and that Rs. 12 was the balance due from him which was being paid that day, has been held by the Special Judge not to be proved. After going through the defence evidence regarding this matter I am of the same opinion as the Special Judge that this story of a sum of Rs. 25 being due from Darshan Singh to the accused has not been proved.

Considering all the matters in this case I think it would be desirable that the facts of this case would also be examined by the Division Bench which would decide the general point of law which I have stated in the beginning of this order, in order to find out whether there is in law any corroboration of the accomplices' statements.

The papers will be laid before the Hon'ble the Chief Justice for the purpose of the constitution of a Division Bench. I suggest an early date for hearing as the question of jurisdiction is involved in a large number of cases.

JUDGMENT OF THE DIVISION BENCH

Harnam Singh, J.

HARNAM SINGH, J., Nishan Singh, clerk of the office of the Deputy Commissioner, Gurdaspur, has been convicted under section 161 of the Indian

Penal Code, hereinafter referred to as the Code and section 5(2) of the Prevention of Corruption Act, 1947, hereinafter referred to as the Act, and sentenced to suffer rigorous imprisonment for six months on each count, the sentences to run concurrently. Nishan Singh appeals from his conviction and sentence.

Briefly summarised, the facts of the case are these. On the 7th of May, 1952, Darshan Singh made application, Exhibit P.D., for the grant of copy of an application, dated the 12th of November 1949, and copy of the final order passed on that application by the Revenue Assistant, Rehabilitation. On the 20th of May, 1952, Darshan Singh made application, Exhibit P.F., for the grant of copy of the order passed by the Revenue Assistant, Rehabilitation, on the 19th of May 1952. On the 21st of May 1952, Darshan Singh made statement, Exhibit P.H., in the Court of *Mian* Abhe Raj Singh, Magistrate, Gurdaspur, complaining that he had made two applications for the grant of copies and had paid the necessary court-fee, but on the 21st of May 1952, Nishan Singh demanded rupees 12 as bribe before he gave the copies to him. *Mian* Abhe Raj Singh, Magistrate, 1st Class, gave seven marked currency notes, Exhibits P. 1 to P. 7, to Darshan Singh, P.W., with the direction that he should pass on the notes to Nishan Singh. Tek Singh who followed Darshan Singh was directed to raise his turban as a signal when the currency notes had been passed. Darshan Singh, P.W. 2, handed over the currency notes, Exhibits P. 1 to P. 7 to the accused whereupon Tek Singh gave the appointed signal. Reaching the spot *Mian* Abhe Raj Singh asked the accused to deliver up the currency notes which he had received from Darshan Singh whereupon the accused produced currency notes, Exhibits P. 1 to P. 7.

On the 21st of May, 1952, *Sardar* Ajit Singh, Magistrate, 1st Class, gave permission under section 3 of the Act to *Shri* Sohan Lal, Inspector of

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Police, and *Sardar* Gurbakhsh Singh, Assistant Sub-Inspector of Police, to investigate the offences. In this connection the applications, Exhibits P.W. 6/F and P.W. 6/G, may be seen.

On the completion of the investigation the Superintendent of Police put up papers before the Deputy Commissioner, Gurdaspur, under section 6 of the Act for sanction for the prosecution of Nishan Singh under section 161 of the Code and section 5(2) of the Act. On that application the Deputy Commissioner ordered:—

> "I, H.B. Lal, Deputy Commissioner, Gurdaspur, do hereby accord sanction under section 6 of the Prevention of Corruption Act to the prosecution of Nishan Singh, son of Harnam Singh, *Mazhbi* Sikh of Sohal, a clerk in my office for offences under section 5(2) of the aforesaid Act and section 161, I.P.C., in having accepted on 21st May, 1952, a sum of Rs. 12 as bribe or gratification other than legal remuneration as a motive or reward for doing an act in the discharge of his official duties, from Darshan Singh, Jat of Village Marrar, Police Station Saddar Batala, for supplying him copies of his claim reports."

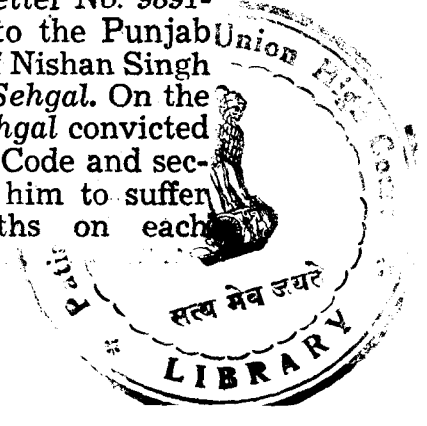
On the 2nd of June, 1952, prosecution put in the *challan* before the Additional District Magistrate. Between the 4th of July 1952, and the 8th of August 1952, evidence for the prosecution was examined in the Court of the Additional District Magistrate. On the 28th of July, 1952, the Criminal Law Amendment Act, 1952, came into force. Section 10 of the Criminal Law Amendment Act, 1952, provides that all cases triable by a Special Judge under section 7 of that Act which, immediately before the commencement of the Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the Special Judge having jurisdiction over such cases.

In the trial that followed *Mian* Abhe Raj Singh, P.W.1, Darshan Singh, P.W.2, Indar Singh, P.W.3, Behari Lal, P.W.4, Hansa Singh, P.W.5, *Shri* Sohan Lal, P.W.6, Tek Singh, P.W.7, and Assistant Sub-Inspector, Gurbakhsh Singh, P.W.8, gave evidence for the prosecution.

In the examination under section 342 of the Code of Criminal Procedure, Nishan Singh pleaded that Darshan Singh had taken a loan of rupees 25 from him, that he had paid him rupees 13 in his village and the balance of rupees 12 was paid to him on the 21st of May, 1952.

By notification No. 7782-JJ-52/3980, dated the 5th of September 1952, published in the Punjab Gazette on the 12th of September 1952, all Sessions Judges in the State were appointed Special Judges for the trial of offences punishable under section 161, section 165 or section 165-A of the Code or sub-section (2) of section 5 of the Act. That being so, the Additional District Magistrate forwarded the case for trial to the Special Judge on the 7th of October 1952.

By notification No. 10576-JJ-52/17944, dated the 6th of November 1952, published in the Punjab Gazette of the 14th of November 1952, all Additional Sessions Judges were appointed Special Judges for the trial of offences punishable under section 161, section 165 or section 165-A of the Code or section 5(2) of the Act. On the 29th of May 1953, the Sessions Judge sent the case for trial to *Shri* Tirath Das, Additional Sessions Judge. In the Court of *Shri* Tirath Das, evidence was examined between the 4th of June 1953, and the 13th of July 1953. On the 20th of July 1953, by letter No. 9891-JJ-53/49958, the Home Secretary to the Punjab Government specified that the case of Nishan Singh should be tried by *Shri* Tirath Das, *Sehgal*. On the 30th of July 1953, *Shri* Tirath Das *Sehgal* convicted the accused under section 161 of the Code and section 5(2) of the Act and sentenced him to suffer rigorous imprisonment for six months on each count.



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In this Court Criminal Appeal No. 356 of 1953 was placed before Soni, J., for final disposal. Finding that the points that arose for decision were of considerable importance, Soni J., ordered that the papers may be placed before the Chief Justice for constituting a Division Bench to decide the points that arose in the case.

In these proceedings it is said that the conviction of Nishan Singh should be quashed for the reason that the permission to investigate given by *Sardar* Ajit Singh to *Shri* Sohan Lal and *Sardar* Gurbakhsh Singh was not valid, that the sanction given by the Deputy Commissioner for the prosecution of Nishan Singh under section 6(c) of the Act was not valid and that the proceedings before the Special Judge between the 4th of June 1953 and the 20th of July 1953, were void. On merits it is said that the conviction of Nishan Singh on the evidence given by Darshan Singh, P.W.2 and Tek Sing P.W.7, cannot be sustained.

Section 3 of the Act provides—

> "An offence punishable under section 161 or section 165 of the Indian Penal Code shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein:
>
> Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the order of a *Magistrate of the first class* or make any arrest therefor without a warrant."

Now, it is said that the prosecution must show that the Magistrate giving permission to a police officer below the rank of the Deputy Superintendent of Police had before him the relevant facts on the basis of which the permission to investigate was given. In the Court of first instance no objection was raised that the permission to investigate

given by *Sardar* Ajit Singh was defective, or that *Sardar* Ajit Singh did not consider the facts of the case before giving permission to *Shri* Sohan Lal and *Sardar* Gurbakhsh Singh to investigate the offences. In these circumstances *Sardar* Ajit Singh, Magistrate, was not examined at the trial. Section 3 of the Act does not require the permission to be in any particular form, nor even to be in writing. Illustration (e) appended to section 114 of the Indian Evidence Act provides that the Court may presume that judicial and official acts have been regularly performed. In the illustration the words 'regularly performed' mean done with due regard to form and procedure. In my judgment, the objection to the validity of the permission under section 3 of the Act is not sustainable.

Then it is said that there was no valid sanction for the prosecution of the appellant under section 161 of the Code and section 5(2) of the Act for the sanction did not disclose the facts which could have enabled the Deputy Commissioner to grant the sanction in a proper manner. In arguments counsel cites *Gokulchand Dwarkadas Morarka* versus *The King* (1), to show that there was no valid sanction for the prosecution of the appellant.

In A.I.R. 1948, P.C. 82, Sir John Beaumont said:—

> "It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the

(1) A.I.R. 1948 P.C. 82

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Government have an absolute discretion to grant or withhold their sanction."

In A.I.R. 1948 P.C. 82 sanction to the prosecution of the appellant was given by the order of the Government of Bombay in the following terms:—

"Sanction to Prosecute.

(Signed) H.N.G,

Cotton Cloth and Yarn (Control) Order, 1943

Contravention of the Provisions Prosecutions for—

Government of Bombay.

Finance Department (Supply)

Resolution No. 518

Bombay Castle, 5th January 1945.

Endorsement from the District Magistrate, Sholapur, No. XIX/4506, dated 8th November 1944.

Resolution. Government is pleased to accord sanction under Cl. 23, Cotton Cloth and Yarn (Control) Order, 1943, to the prosecution of Mr. Gokulchand Dwarkadas Morarka for breach of the provisions of clause 18(2) of the said Order.

By Order of the Governor of Bombay,

(signed)

Deputy Secretary to Government, Bombay.

To

The District Magistrate, Sholapur."

From the facts in the preceding paragraph it is plain that the sanction given by the Government of Bombay for the prosecution of Gokalchand

Dwarkadas Morarka specified the appellant as the person to be prosecuted and the clause of the Order which he was alleged to have contravened *but did not specify the acts of the appellant alleged to constitute such contravention.*

As stated above, Nishan Singh was clerk in the office of the Deputy Commissioner, Gurdaspur in May, 1952. On the 30th of May 1952, the Superintendent of Police, Gurdaspur, wrote to the Deputy Commissioner letter, Exhibit P.B., reading:—

> "A *prima facie* case has been made out against Nishan Singh, accused, cited as subject for offences under section 5(2) Prevention of Corruption Act and section 161 I.P.C., in having accepted a sum of Rs. 12 from one Darshan Singh Jat, of Marar, Police Station Saddar Batala, as bribe or gratification other than legal remuneration as a motive or reward for supplying him copies of his claim reports —an act in the discharge of his official function.
>
> It is, therefore, requested that sanction for his prosecution for the above-said offences as required under section 6 of the said Act may kindly be granted."

On the facts appearing in the letter of the Superintendent of Police cited above it is futile to contend that the sanctioning authority was not possessed of the material facts of the case when that authority gave sanction for the prosecution of Nishan Singh. Indeed, the facts constituting the offences charged are shown on the face of the sanction, Exhibit P.C., and Hansa Singh, *Ahlmad* to the Deputy Commissioner, gave evidence at the trial that the application of the Superintendent of Police, Exhibit, P.B., was placed before the sanctioning authority. From the sanction, Exhibit P.C., it is plain that the Deputy Commissioner ordered the prosecution of Nishan Singh under section 5(2) of the Act and section 161 of the Code. In these circumstances I repel the contention with regard to

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the invalidity of the sanction given by the Deputy Commissioner under section 6 of the Act.

Basing himself upon the provisions of section 7(2) of the Criminal Law Amendment Act, 1952, counsel urges that the proceedings taken in the Court of *Shri* Tirath Das *Sehgal* between the 4th of June 1953 and the 13th of July 1953 are void.

Section 7 of the Criminal Law Amendment Act, 1952, provides—

> "7 *Cases triable by special judges.* (1), Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law the offences specified in subsection (1) of section 6 shall be triable by special judges only.
>
> (2) Every offence specified in subsection (1), of section 6 shall be tried by the special judge for the area within which it was committed, or *where there are more special judges than one for such area, by such one of them as may be specified in this behalf by the State Government.*
>
> (3) When trying any case, a special judge may also try any offence other than an offence specified in section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial."

As stated above, by notification No. 10576-JJ-52/17944, dated the 6th of November 1952, published in the Punjab Gazette of the 14th of November 1952, the State Government appointed all Additional Sessions Judges in the State to be Special Judges to try cases falling under section 6 of the Criminal Law Amendment Act, 1952. That being so, *Shri* Tirath Das *Sehgal* was a special Judge within the meaning of section 6 of the Criminal Law Amendment Act, 1952, between the 4th of

June 1953 and the 13th of July, 1953, when proceedings were taken in his Court.

In approaching the matter that arises for decision under section 7(2) of the Criminal Law Amendment Act, 1952, the provisions of section 193 and section 409 of the Code of Criminal Procedure may be borne in mind. Section 193(2) of the Code of Criminal Procedure provides that Additional Sessions Judges and Assistant Sessions Judges shall *try such cases only as the State Government, by general or special order, may direct them to try or as the Sessions Judge of the Division, by general or special order may make over to them for trial.* Section 409 of the Code of Criminal Procedure provides *inter alia* that an Additional Sessions Judge *shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the Division may make over to him.* In my judgment, in cases arising under sections 193 and 409 of the Code of Criminal Procedure or under section 7 of the Criminal Law Amendment Act, 1952, the distinction between elements, which are essential for the foundation of jurisdiction and the mode in which such jurisdiction has to be assumed and exercised, is of fundamental importance. That the distinction is well founded is manifest from the decision given in *Henry Peter Pisani* versus *Her Majesty's Attorney-General for Gibralter and others* (1). In that case Sir Montague E. Smith delivering the judgment of the Privy Council on the preliminary objections said:—

> "It is true that there was a deviation from the *cursus curiae*, but the Court had jurisdiction over the subject, and the assumption of the duty of another tribunal is not involved in the question."

In (1874) Law Reports 5 Privy Council 516 an information by way of bill of complaint was by consent amended by the introduction of the words "That the rights, if any, of the several Defendants may be ascertained and declared by decree of this Honourable Court, and that they may be ordered to pay

(1) (1874) L.R. 5 P.C. 516

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each to the others and other of them their and his costs of this suit, and that this Honourable Court will give such further directions in the premises as shall be necessary." There was no stipulation that the right of appeal should be given up, and it appeared that the parties never contemplated that they were ceasing to keep the cause *in curia,* or that the Judge was to hear it otherwise than as a Judge, or that it was not to go on subject to all the incidents of a cause regularly heard in Court. In pressing the preliminary objection Mr. Fry maintained that the decree so far as it declares the rights of the Defendants, must be regarded as the award of an arbitrator, and that the appeal was incompetent. In overruling that objection their Lordships of the Judicial Committee held that, where there is jurisdiction over the subject-matter, but non-compliance with the procedure prescribed as essential for the exercise of jurisdiction, the defect might be waived.

Section 6 of the Criminal Law Amendment Act, 1952, authorises the State Government by notification in the Official Gazette to appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the offences specified in that section. By notification under section 6(1) of the Act *Shri* Tirath Das *Sehgal* was appointed to be a special judge within the meaning of that section. If so, jurisdiction to try offences specified in section 6(1) (a) and (b) of the Criminal Law Amendment Act, 1952, was conferred on *Shri* Tirath Das *Sehgal* by notification No. 10576-JJ-52/17944, dated the 6th of November, 1952. That being so, it cannot be sustained that *Shri* Tirath Das *Sehgal* had no jurisdiction to take proceedings in the case between the 4th of June 1953, and the 13th of July 1953. Indisputably *Shri* Tirath Das *Sehgal* in the exercise of the jurisdiction possessed by him has not acted according to the mode prescribed by the statute. If so, the objection relates obviously not to the existence of jurisdiction but to the exercise of it in an irregular or illegal manner. In *Jhakar Abir and others* v.

Province of Bihar (1), Shearer J., Sinha J., concurring said at page 103—

> "Where a Court has jurisdiction to try an offence it is, as a rule, immaterial whether it has taken cognizance of the *offence without being empowered to do so or whether the case has been transferred to it by another Court which was not empowered to make the order of transfer.* Clauses (e) and (f) of section 529, Criminal Procedure Code, provide that the commission of some irregularity of this kind prior to the commencement of the trial does not vitiate the trial itself."

With great respect I follow the rule laid down in A.I.R. 1945 Pat. 98 and hold that the irregularity in the exercise of jurisdiction in the present case does not vitiate the trial.

In dealing with the merits of the case it has to be seen that in the complaint, Exhibit P.H. made to *Shri* Abhe Raj Singh, Magistrate, Darshan Singh maintained that Nishan Singh had demanded bribe from him on the 21st of May, 1952. In that statement the demand of bribe on any other occasion is not mentioned.

Darshan Singh gave evidence in the Court of the Additional District Magistrate on the 9th of July 1952. In examination-in-chief Darshan Singh stated:—

> "On the 21st of May, 1952, we met the accused and he told us that we should bring court-fee stamp of Rs. 2-10-0 for each application. I bought the required court-fee stamps and handed these over to the accused and asked him to affix these on the application. The accused told us that the copying agent incharge would be coming in an hour when we should come and take away the copies. Tek Singh remained with me throughout."

(1) A.I.R. 1945 Pat. 98

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From the evidence given by Darshan Singh, P.W. 2, in the court of the Additional District Magistrate, it is plain that no demand of bribe was made by Nishan Singh, accused on the 21st of May 1952.

In the court of the Special Judge Tek Singh, P.W.7, stated on 24th of June 1953—

> "In my presence the accused did not demand payment of any money as a debt due to him from Darshan Singh. I was standing at some distance. I cannot say what talk passed between them."

In the passage cited in the preceding paragraph Tek Singh, P.W.7, refers to what happened between Darshan Singh, P.W.2, and Nishan Singh, accused, on the morning of the 21st of May 1952. Clearly, Tek Singh, P.W.7, does not prove that any demand of bribe was made by Nishan Singh from Darshan Singh on the 21st of May 1952.

In an earlier part of this judgment I have stated that in his first statement, Exhibit P.H., Darshan Singh maintained that the accused Nishan Singh had demanded bribe from him on the 21st of May 1952. On the record there is no other evidence to show that bribe was demanded by Nishan Singh from Darshan Singh on the 21st of May 1952. In these circumstances I hold that the demand of bribe by Nishan Singh from Darshan Singh on the 21st of May 1952, is not proved.

In examination-in-chief Tek Singh maintained that on the 20th of May 1952, Nishan Singh, accused, had demanded rupees 12 as bribe from Darshan Singh. In cross-examination Tek Singh stated:—

> "Portion marked A to A in my statement recorded by the Additional District Magistrate has been read out to me. I do not remember if I made that statement."

In cross-examination it was brought out that in the police statement, Exhibit. D.B., recorded by *Shri* Sohan Lal, Inspector of Police, Tek Singh had not stated that the accused had demanded rupees 12 from Darshan Singh on the 20th of May 1952.

Mian Abhe Raj Singh, P.W.1, stated in cross-examination that within a short time of the occurrence Nishan Singh stated to him that Darshan Singh had given him currency notes, Exhibits P.1 to P. 7, in payment of a pre-existing loan.

Giving the matter my very best consideration, I find that the prosecution has failed to establish the guilt of Nishan Singh.

In the result, I would acquit Nishan Singh and set aside the sentence imposed upon him under section 161 of the Code and section 5(2) of the Act.

Nishan Singh who was released on bail by Soni, J., on the 9th of September 1953, need not surrender to his bail bond.

DULAT, J. I agree. **Dulat, J.**

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