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etc.

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open to ask to increase the damages for the pecuniary loss of the plaintiff which certainly appear to have been underestimated by the lower Court. Even on the assumption that the figure relating to the alleged earnings of the deceased had been greatly exaggerated by the witnesses produced it is evident that the plaintiff a young boy must have been kept and maintained properly by his father and again at certainly higher level than the lowest. At a bare minimum I would put plaintiff's pecuniary loss at Rs. 50 per mensem and I would allow damages at this rate for a period of fifteen years which would come to Rs. 9,000.

The net result is that I would dismiss the appeals of the Committee in the case of Jagdish Raj and Sobhag Wanti, etc., with costs, and in the case of Munshi Lal, etc., I would reduce the sum decreed from Rs. 15,000 to Rs. 7,200 and in the case of Kuldip Raj from Rs. 20,000 to Rs. 9,000. In these two cases I would leave the parties to bear their own costs.

Chopra, J,

CHOPRA, J.— I agree.

SUPREME COURT

Before S. J. Imam, J. L. Kapur and K. N. Wanchoo, JJ.
THE STATE,—Appellant.

versus

HIRALAL GIRDHARILAL KOTHARI AND OTHERS,—
Respondents.

Criminal Appeals Nos. 25 to 27 of 1958

Code of Criminal Procedure (V of 1898)—Section 337 (1)—Tender of pardon under—Whether in respect of the only offences mentioned—Official Secrets Act (XIX of 1923)—Section 5—Person accused of offence under, read with S. 120-B of the Indian Penal Code—Whether can be tendered pardon—Such person—Whether can be examined as an approver—Application for tender of pardon and

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order tendering pardon also mentioning other offences for which pardon could be tendered—Effect of.

Held, that under section 337 (1) of the Code of Criminal Procedure pardon can only be tendered with respect to an offence which falls in one of the three categories mentioned therein. As section 5 of the Official Secrets Act read with S. 120-B of the Indian Penal Code does not fall within any of these categories, no pardon can be tendered with respect to that offence. Therefore, Mehra to whom pardon had been tendered, could not be examined as an approver in the proceedings which are concerned only with an offence under section 5 of the Official Secrets Act read with S. 120-B of the Indian Penal Code. It is of no consequence that in the application in which the police requested the Additional District Magistrate for tender of pardon or in the order of Additional District Magistrate tendering pardon, section 5 of the Official Secrets Act was mentioned along with other offences for which pardon could be tendered.

Appeals from the Judgment and Order dated the 25th June, 1957, of the Punjab High Court in Criminal Revisions Nos. 184-D, 185-D and 186-D of 1956 arising out of the Judgment and Order dated the 23rd. October, 1956, of the Sessions Judge, Delhi, in Criminal Revision Applications Nos. 249, 250 and 251 of 1956.

For the Appellant : M/s Bipan Behari Lal and R. H. Dhebar, Advocates.

For the Respondent (In Cr. A. No. 25 of 58) : Mr. G. C. Mathur, Advocate for Mr. I. N. Shroff, Advocate.

For the Respondent (In Cr. A. No. 26 of 58) : Mr. A. G. Ratnaparkhi, Advocate.

Respondent in Criminal Appeal No. 27 of 58 : Not represented.

JUDGMENT

The following Judgment of the Court was delivered by—

WANCHOO, J.—These three appeals arise out of three certificates granted by the Punjab High

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Court in a criminal matter. They will be dealt with together as the point raised in them is common. The brief facts necessary for the purpose are these : There is a Government Printing Press at Rashtrapati Bhavan known as Rashtrapati Bhavan Printing Press which is located in the President's estate in New Delhi. Jacobs was the General Foreman of this Press. Every year the budget proposals are printed at this Press under the supervision of Jacobs. As usual, Jacobs supervised the printing of budget proposals in his official capacity in February, 1955, also. It appears that Jacobs entered into a conspiracy to divulge the budget proposals on receiving valuable consideration for the same. Consequently the proposals were divulged to D. P. Chadda and were passed on to certain businessmen of Bombay, including Nandlal More and Hiralal G. Kothari through one A. L. Mehra. All this was done against the provisions of the Official Secrets Act, No. XIX of 1923. Further an offence was committed under the Prevention of Corruption Act, No. II of 1947, also inasmuch as money was paid to Jacobs for divulging the budget proposals. The same thing happened in February, 1956, with respect to the budget proposals for 1956-57. This was discovered on March 9, 1956, and a case was registered under section 165-A of the Indian Penal Code, section 5(2) of the Prevention of Corruption Act, section 5 of the Official Secrets Act and section 120-B of the Indian Penal Code and investigation started on March, 1956. Thereafter pardon was tendered to A. L. Mehra by the Additional District Magistrate on March 23, 1956, under section 337 of the Code of Criminal Procedure. The four offences mentioned above were specified in the order of the Additional District Magistrate tendering pardon to Mehra. Thereafter owing to technical legal difficulties a complaint under section 5 of the Official Secrets Act read with section 120-B of the

Indian Penal Code was filed against the persons involved and it was stated in that complaint that proceedings with respect to the charge under section 5(2) of the Prevention of Corruption Act would be taken separately. Proceedings then began before a magistrate on this complaint. It may be mentioned that no proceedings have yet started in so far as the offences under section 5(2) of the Prevention of Corruption Act and section 165-A of the Indian Penal Code are concerned.

In the course of these proceedings before the magistrate, the prosecution wanted to examine Mehra as an approver. Thereupon the accused persons objected that as the proceedings before the magistrate were only under section 5 of the Official Secrets Act and section 120-B of the Indian Penal Code, Mehra could not be examined as an approver and in consequence the case could not be committed to the Court of Session but should be disposed of by the magistrate himself. The magistrate held that Mehra could be treated as an approver and proceedings before him were, therefore, in the nature of commitment proceedings. Thereupon there was a revision to the Sessions Judge who took the view that as the proceedings before the magistrate were under section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code and as no pardon could be tendered under section 337 of the Code of Criminal Procedure for these offences, Mehra could not be treated as an approver and had to be examined as an ordinary witness and the proceedings must be held to be trial proceedings before the magistrate and not commitment proceedings. He, therefore, recommended to the High Court that the order of the magistrate be set aside.

The High Court upheld the view of the Sessions Judge and ordered accordingly. It granted

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certificates under Article 134(1)(c) of the Constitution ; and that is how these three appeals have been filed by the State before us.

The only question that has been urged before us is that the view of the magistrate is correct and Mehra could be treated as an approver and examined as such for the purposes of the proceedings before him. The question whether the case should be committed to the Court of Session does not survive now as we are told that one of the accused has asked for trial by the Court of Session as provided under section 13(2) of the Official Secrets Act. The High Court examined section 337 of the Code of Criminal Procedure and came to the conclusion that a pardon under that section could only be tendered with respect to certain offences mentioned therein. It was further of the view that as section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code was not covered by the words of section 337(1) and as the proceedings before the magistrate were only with respect to these offences, Mehra could not be treated as an approver, to whom pardon had been tendered, for the purpose of these proceedings.

A mere perusal of section 337 of the Code of Criminal Procedure shows that the view of the High Court is correct. Section 337(1) provides for tender of a pardon in respect of the following offences, namely—

- (i) Any offence triable exclusively by the High Court or Court of Session ;
- (ii) Any offence punishable with imprisonment which may extend to seven years;
- (iii) Any offence under any of the following sections of the Indian Penal Code: 161,

165, 165-A, 216-A, 369, 401, 435 and 477-A.

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Thus pardon can only be tendered with respect to an offence which falls in one of these categories. It is not disputed that an offence under section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code does not fall within any of these categories. So if the proceedings were with respect only to an offence under section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code, section 337 of the Code of Criminal Procedure would not apply and no pardon could be tendered to any person. It is urged, however, that section 337(1) contemplates tender of a pardon on condition of the person pardoned making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof; and this means that the person to whom pardon is tendered is expected to tell the whole truth including details of any other subsidiary offence which might have been committed in the course of the commission of the offence for which pardon is tendered and therefore the pardon so tendered must be held to include the subsidiary offence, even though, if the subsidiary offence alone were committed and were not of the nature mentioned in section 337(1), no pardon could have been tendered for the same. Reliance in this connection is placed also on section 339 of the Code of Criminal Procedure, which provides that where any person who has accepted pardon either by wilfully concealing anything essential or by giving false evidence, does not comply with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was tendered or for any

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other offence of which he appears to have been guilty in connection with the same matter. It is said that the specific provision for trial for any other offence which might have been committed in connection with the same matter in section 339 shows that the pardon would cover the other offence also even though it may not be an offence for which the pardon was and could be tendered.

We are of opinion that no such inference could be drawn from the use of these words in section 339, for that section deals with a different contingency altogether, namely, whether the conditions of the pardon had been complied with. It is to be remembered that a pardon tendered under section 337 is a protection from prosecution. Failure to comply with the conditions on which the pardon is tendered removes that protection. All that section 339 says, provided the requisite certificate under that section is given by the Public Prosecutor, is that the person to whom the pardon is tendered can be prosecuted for the offence for which the pardon was tendered as also any other offence of which he appears to be guilty *in connection with the same matter*. This would be just the same as if section 339 merely stated that on failure to comply with the conditions of the pardon such pardon would be forfeited. The words of section 339 therefore are of no help in construing section 337 and we must look to the words of section 337 in deciding whether a pardon could be tendered for an offence under section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code. The fact that in the application in which the police requested the Additional District Magistrate for tender of pardon or in the order of the Additional District Magistrate tendering pardon, section 5 of the Official Secrets Act was mentioned along with

other offences for which pardon could be tendered would not mean that a pardon could be tendered for an offence under that Act if under the law as provided in section 337(1) no pardon could be tendered for an offence under section 5 of the Official Secrets Act. As we read section 337(1), it is to our mind perfectly clear that pardon can only be tendered under that provision with respect to the three categories of offences mentioned therein and already indicated above and none other. As section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code does not fall within any of these categories no pardon can be tendered with respect to that offence. Therefore, Mehra to whom pardon has been tendered, could not be examined as an approver in the proceedings which are concerned only with an offence under section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code.

Learned counsel for the appellant drew our attention to three cases in support of the view that a pardon under section 337(1) could be tendered not only for the offences of the kind enumerated therein but also other offences which might be committed in the course of the commission of the offences enumerated therein but which might not be within the terms of section 337(1). These cases are : *Queen-Empress v. Ganga Charan* (1), *Harumal Parmanand v. Emperor* (2); and *Shiam Sunder v. Emperor* (3). These cases however refer to different circumstances altogether and were not concerned with the interpretation of section 337(1) of the Code of Criminal Procedure. In all these cases the question that arose before the courts was whether an approver who was prosecuted under section 339 for certain offences

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(1) I.L.R. XI All. 79

(2) A.I.R. 1915 Sind 43

(3) A.I.R. 1921 All. 234

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could be or should be so prosecuted. They also turned on the terms of the pardon granted in those particular cases. It was there held that where a question arose how far a pardon would protect an approver, it should not be treated in a narrow spirit, bearing in mind that in countenancing tender of pardon to accomplices the law does not invite a cramped and constrained statement by the approver but requires a thorough and complete disclosure of all the facts within his knowledge bearing upon the offence or offences as to which he gave evidence. The considerations which apply when a trial is taking place under section 339 of the Code of Criminal Procedure are entirely different. The proviso to section 339 shows that at his trial, an approver is entitled to plead that he has complied with the conditions upon which tender of pardon was made and if he succeeds in proving that he has complied with the conditions upon which the tender was made he is protected from prosecution with respect to all offences which appear to have been committed in connection with the matter giving rise to the offence for which pardon was tendered. These three cases really turn on the question whether the accused had complied with the conditions upon which the pardon was tendered to him and it was held that he had so complied. In those circumstances, the trial under section 339 was held to be bad. We are not concerned in the present case with section 339. What we have to decide is whether a pardon under section 337(1) of the Code of Criminal Procedure can be granted in the case of an offence under section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code. To that there can be only one answer on the terms of section 337(1), namely, that no pardon can be granted for an offence of this nature. Therefore, as the present proceedings before the

magistrate are only for an offence under section 5 of the Official Secrets Act read with section 120-B of the Indian Penal Code, Mehra cannot be examined as an approver in that court. There is no force in these appeals and they are hereby dismissed.

B.R.T.

APPELLATE CIVIL

Before Dulat and Dua, JJ.

SHRIMATI DURGA DEVI,—Appellant.

versus

SHANTI PARKASH AND OTHERS,—Respondents.

Regular Second Appeal No. 594 of 1955.

Code of Civil Procedure (V of 1908) Section 11—Bar of Res Judicata—Legal representative—Whether can take plea not available to his predecessor-in-interest—Section 47—Bar to suit under—Whether available where the validity of the decree is challenged—Parties to the suit in which the decree was passed—Meaning of.

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Held, that the governing rule as to the applicability of the bar of *res judicata* is well settled; according to it a verdict against a man impleaded in one capacity will not affect his rights when proceeded against in other distinct capacity; in the latter capacity he would indeed be a different person. The true test is the identity of title in the litigations. If the present suit had been instituted against the mortgagor, it was clearly not open to him to deny his competence to mortgage the land in question, by setting up some one else's paramount title. It is also not open to his legal representative to raise a plea which his predecessor-in-interest could not raise as his liability is restricted to the estate which he represents in the suit.

Held, that the duty to raise the question for the purposes of attracting the provisions of section 11, Civil Procedure Code, and the bar in the later suit, on the basis of the applicability of section 47, Civil Procedure Code, seem to be co-extensive, each complementing the other. The

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