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provisions of the Land Acquisition Act. The Madras High Court held that the decision of the High Court upon an appeal against an award given under the Land Acquisition Act was not a judgment.

There is no decision to the contrary and Mr. Sarin has not been able effectively to challenge the preliminary objection raised by Mr. Sud. I am, therefore, clearly of the opinion that the order passed by Kapur, J., cannot be deemed to be a judgment and therefore no appeal against it lies under clause 10 of the Letters Patent. This appeal must, therefore, fail and I would dismiss it with costs.

Bhandari, C. J.

BHANDARI, C. J.—I agree.

APPELLATE CRIMINAL

Before Khosla and Falshaw, JJ.

BINDRA BAN,—*Convict-Appellant*

v.

THE STATE,—*Respondent*

Criminal Appeal No. 73 of 1956.

1956

Sept. 26th

Prevention of Corruption Act (II of 1947)—Section 5(1) (c)—Validity of—Whether intravires of Article 14 of Constitution—Indian Evidence Act—(I of 1872)—Section 114—Presumption under—Public Servant charged with misappropriating large sums of money—Possessing pecuniary resources disproportionate to his known source of income—Effect of.

Held, that section 5(1) (c) of the Prevention of Corruption Act is intra-vies and does not offend against the provisions of Article 14 of the Constitution.

Held further, that when a public servant is charged with criminal misappropriation of a large sum of money and he is found to have in his possession pecuniary resources which he could not have acquired honestly, the

Court may, in a fit case, presume that there is a nexus between the resources of the accused person and the factum of misappropriation.

Case law discused.

Appeal from the order of Shri H. S. Bhandari, Special Judge, Ambala, dated the 23rd January, 1956, convicting the appellant.

B. S. CHAWLA, for Appellant.

Y. P. GANDHI, for Advocate-General, for Respondent.

JUDGMENT.

Khosla, J.

KHOSLA, J.—In the course of arguments addressed to me in Criminal Appeal No. 73 of 1956, the vires of section 5(1)(c) of the Prevention of Corruption Act was challenged on the ground that it offended against the provisions of Article 14 of the Constitution. Since I considered the point to be of considerable importance, I referred the matter to larger Bench. My brother Falshaw, J. and I have now heard Mr. Chawla, counsel for the appellant, and Mr. Gandhi, counsel for the State. Arguments at some length were addressed to us and a number of decisions of the Supreme Courts in India were cited before us. After giving the matter my most anxious consideration, I have come to the conclusion that the impugned law is *intra vires* and does not offend against the provisions of Article 14 of the Constitution.

The appellant in this case was tried upon a charge punishable under section 5(2) of the Prevention of Corruption Act. The nature of the charge was that he being a public servant had dishonestly misappropriated monies, which were entrusted to him as public servant. The nature of the offence is defined in section 5(1) (c) of the Prevention of Corruption Act and the penalty is provided for by section 5(2), but it is

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clear that the offence is also punishable under section 409, Indian Penal Code.

The substance of the argument addressed to us on behalf of the appellant may be summarised as follows :—

(1) Section 409 of the Indian Penal Code and section 5 of the Prevention of Corruption Act are two distinct provisions of law which provide two distinct ways of trying and punishing the same offence. Section 5 no doubt deals with certain new offences, but for the purposes of the present case we are only asked to consider the provisions of section 5 (1) (c). Therefore, a public servant accused of dishonesty or fraudulently misappropriating property entrusted to him as public servant may be tried by an ordinary Court of a Magistrate or Sessions Judge according to the procedure laid down in the Criminal Procedure Code or his case may be entrusted to a Special Judge appointed under the Prevention of Corruption Act in which case a somewhat different procedure would be followed.

(2) The Government has been given absolute and unfettered discretion to decide which public servant shall be tried upon a charge under section 409, Indian Penal Code, and which under section 5(2) read with section 5(1) (c) of the Prevention of Corruption Act. Therefore, the Prevention of Corruption Act contemplates the division of public servant into two classes (a) the class which may be tried upon a charge under section 409, Indian Penal Code, and (b) the class who are to be tried under the Prevention of Corruption Act.

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(3) The Act contains no direction or indication of basis upon which the classification must be made and this division of Government servants accused of similar offences is left to the caprice of an executive authority.

(4) There is no nexus between the nature of the classification and the aims and objects of the Act because there is no basis for classification given in the Act.

(5) Trial under the Prevention of Corruption Act entails certain disadvantages which result in the denial of equal protection of the laws, and therefore the relevant provision of the Act offends against Article 14 of the Constitution. This part of the argument is based on the ground that the presumptions referred to in section 4 and section 5(3) of the Act place the accused persons at a distinct disadvantage.

There is no direct authority in which the *vires* of the Prevention of Corruption Act was challenged on these grounds. The point was on one occasion raised in the Supreme Court in *Shreekantiah Ramayya Munipalli and another* v. *State of Bombay* (1), but was abandoned and therefore was not adjudicated upon. Paragraph 14 of the judgment of Bose, J., states the circumstances in which the argument was dropped—

"At this stage of the arguments we asked the learned counsel for the appellants whether they intended to challenge the *'vires'* of this law under Article 14 of the Constitution because, if they did the matter

(1) A.I.R. 1955 S.C. 287

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> would have to go to a Constitution Bench as we, being only three Judges, would have no power to decide it. The learned Attorney-General at once objected because the point had not been raised at any stage and was not to be found even in the grounds of appeal to this Court. The learned counsel for the appellants replied that they did not wish to take the point."

The inverse argument challenging the validity of section 409, Indian Penal Code, was raised in a number of cases heard and decided by the Calcutta, Bombay, and Allahabad High Courts. It was contended in those cases, on behalf of the accused persons, that ordinarily a charge under section 409, Indian Penal Code, placed an accused person at a distinct disadvantage and that a trial under the Prevention of Corruption Act conferred certain privileges and benefits which were denied if he was charged under section 409, Indian Penal Code. The Courts were of the view that section 409, Indian Penal Code, was valid despite the existence of section 5 of the Prevention of Corruption Act because the charge under section 409, Indian Penal Code, did not involve any disabilities or disadvantages which could be construed into a denial of equal protection of the laws. I shall refer to these cases in the course of my discussion which, however, will have to proceed on the basis of first provisions because there is no direct authority on the point.

There can be no doubt that the offence punishable under section 409, Indian Penal Code, is also the offence which is defined in section 5(1)(c) of the Prevention of Corruption Act. Both offences make criminal misappropriation by public servants punishable and when a public servant can be tried upon a charge under section 409, Indian Penal Code, he can also be tried under the Prevention of Corruption Act for

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having committed the offence defined in section 5(1)(c). This seems to have always been taken for granted and in *The State* v. *Gurcharan Singh,* (1), which was heard by my brother Falshaw, J, and myself it was argued that section 409, Indian Penal Code, and section 5(1)(c) of the Prevention of Corruption Act could not co-exist. Our decision was that as long as section 5 of the Prevention of Corruption Act remained in force, the provision of section 409, Indian Penal Code, so far as it concerns offences by public servants stood *pro tanto* repealed by section 5(1)(c) of the Act. After this decision the Prevention of Corruption Act was amended and sub-section (4) was added to section 5. The legislature therefore accepted the position that there is no difference in the offence punishable under section 409, Indian Penal Code, and the offence described in section 5(1)(c) of the Prevention of Corruption Act. Raghubar Dayal J. expressed the same opinion in *Gopal Das* v. *State,* (2). In the course of his judgment, he said—

> "It would appear from the different provisions of the various sections quoted above that the act of a public servant in dishonestly misappropriating or otherwise converting for his own use any property entrusted to him or under his control as a public servant or in allowing any other person so to do will be an offence both under section 5(1)(c) of Act II of 1947 and also under section 409, Penal Code."

Chagla C. J. made a similar observation in *The State* v *Sahebrao Govindrao Jadha* (3)—

> "It is true that an offence which falls under section 409, Penal Code, would also fall

(1) A.I.R. 1952 Pun. 89
(2) A.I.R. 1954 All. 80
(3) A.I.R. 1954 Bom. 549

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> under the offences enumerated in the section 5(1) (c)."

The Allahabad High Court made an attempt to seek a difference between the two provisions and Randhir Singh J. in *Om Parkash* v. *The State* (1), observed—

> "If a person, therefore, has done an act which constitutes an offence under section 409, Indian Penal Code, and also an offence punishable under section 5(2), Prevention of Corruption Act, it would not be correct to say that the offence under section 409 is punishable under section 5(2) or *vice versa.* It is only an offence under section 409, Indian Penal Code, which is punishable under section 409, and only an offence under section 5(2), Prevention of Corruption Act, which is punishable under section 5(2) of that Act. It would thus appear that an act is an offence only with reference to the particular section of a penal statute, but divorced from it, no act or omission could be called an offence. It would be difficult to call an act or omission an offence in general."

With great respect to Randhir Singh J., I have not been able to follow the argument. Section 409, Indian Penal Code, and section 5(1) (c) of the Prevention of Corruption Act are merely labels for the offence which is criminal misappropriation by a public servant. To say that the two offences are distinct and have no meaning except in reference to the statute in which they are defined means that it is the label which is important and not the thing itself. In other words, if

(1) A.I.R. 1955 All. 275

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a collection of articles are "six" in number they would be subjected to one kind of treatment, but if you call them "half a dozen", it will have to be treated in a wholly different way. The other two Judges who sat on this Full Bench did not subscribe to the opinion of Randhir Singh, J.

It is therefore clear that the offence referred to in section 409, Indian Penal Code, is essentially the same as the offence referred to in section 5(1) (c) of the Prevention of Corruption Act. It is also clear that the procedure provided under the Prevention of Corruption Act is in some respects different from the procedure according to which a person charged under section 409, Indian Penal Code, is tried. The differences are in the main five—(1) the mode of giving sanction under section 197, Criminal Procedure Code, applying to a charge under section 409, Indian Penal Code, differs in minor respects from the sanction given in section 6 of the Prevention of Corruption Act, (2) the maximum sentence which can be awarded under section 409, Indian Penal Code, is higher than the maximum sentence which can be awarded under section 5(2) of the Prevention of Corruption Act, (3) a person charged under section 409, Indian Penal Code, is tried by a Magistrate or an Assistant Sessions Judge whereas a person charged under section 5(2) of the Prevention of Corruption Act is tried a Special Judge, (4) under section 4 and section 5(3) the Special Judge appointed under the Prevention of Corruption Act must take into account certain presumptions, and (5) under the Prevention of Corruption Act an accused person is entitled to appear as a witness and give evidence on solemn affirmation whereas he cannot do so if tried under the Criminal Procedure Code.

There are therefore differences in the procedure under the two Acts.

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The Prevention of Corruption Act does not lay down which Government servant must be tried under the Act and which upon a charge under section 409, Indian Penal Code, according to the ordinary procedure, and the Government has been given the absolute discretion to make a decision in this respect. Therefore if any disadvantage attaches to one kind of trial, the person aggrieved may genuinely complain that he has been denied equal protection of the laws in that there is no basis for classification (and the Government has been given the discretion to choose) but would be subjected to a more disadvantageous procedure.

The Supreme Court laid down the test of permissible classification in *Budhan Choudhry and others* v. *State of Bihar* (1). Two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group, and (2) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. In the present case there is no intelligible differentia. The matter was raised by the Calcutta High Court in *Amarendra Nath Ray* v. *The State* (2), and this is the way in which Guha Ray, J., dealt with it—

> "The third point of Mr. Dutt, namely, about discrimination may well be disposed of by saying that the Prevention of Corruption Act although it does not expressly lay down any basis for classification does by implication in its various provisions lay down a line of classification of offenders who are to be prosecuted under that Act. It is the case of those public servants alleged or

(1) A.I.R. 1955 S.C. 191
(2) A.I.R. 1955 Cal. 236

> suspected to be corrupt who cannot be brought within the law by available evidence and who can only be brought to justice by certain rules of presumption which was intended to be met by this Act. Thus, there is an implied basis of classification so that no question of discrimination really arises."

With great respect I find myself unable to subscribe to this opinon. The essence of discrimination is that of persons similarly situated, some may be subjected to a more disadvantageous treatment. The Act does not give any indication as to how to make this selection. To say that those Government servants who cannot be brought within the law by the available evidence may be tried under the Prevention of Corruption Act is merely to state that there is a most unjust machinery provided for capricious discrimination. In my view there is no basis for classification either express or implied in the Act. Therefore, if I were to take the view that the presumptions which must be imported into the case under the provisions of section 4 and section 5(3) of the Prevention of Corruption Act entail a real disadvantage I should not hesitate to say that the Act was discriminatory and bad inasmuch as it does not give a basis for classification, and if there is any implied classification, there is no nexus between the differentia and the aims and objects of the Act. Therefore, the decision of this case must rest not on whether there is a difference in the two procedures but what is the nature of that difference and whether the difference entails a distinct disadvantage of hardship.

I now come to the differences in the two Acts. These are, as stated above, five in number relating to (1) mode of sanction, (2) maximum sentence which can be awarded, (3) the forum, (4) presumptions

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arising under section 4 and section 5(3) of the Prevention of Corruption Act, and (5) competence of the accused to appear as a witness.

Examination of section 197 of the Criminal Procedure Code and section 6 of the Prevention of Corruption Act would show clearly that really there is no essential difference with regard to the mode of granting sanction. The purpose of both provisions is to save public servants from vexatious prosecution. Under section 197 the sanction is given either by the Central Government or by the State Government, whereas under section 6 of the Prevention of Corruption Act the sanction must be given by the authority competent to remove him from office. In either event someone must be satisfied that there are good grounds for prosecuting a public servant. It cannot therefore be said that of two persons, one being charged under section 409, Indian Penal Code, and the other under section 5(2) of the Prevention of Corruption Act, either is at any disadvantage whatsoever. On this ground, therefore, nobody can challenge the *vires*. of section 5(1) (c) because he suffers no disadvantage and cannot say that the provision with regard to sanction denies him equal protection of the laws.

The second difference relates to the maximum sentence which can be awarded. Under section 409, Indian Penal Code, the guilty person may be sentenced to imprisonment for life or to ten years' imprisonment. The maximum sentence which can be awarded under section 5(2) of the Prevention of Corruption Act is seven years. It will therefore be seen that there is a distinct advantage to the person who is being tried under the Prevention of Corruption Act, although it will appear that by reason of the provisions of section 71 of the Indian Penal Code a person charged under section 409, Indian Penal Code, cannot be

awarded a higher sentence than the sentence permissible under section 5(2) of the Prevention of Corruption Act. This point was noticed by Raghubar Dayal, J. In *Gopal Das* v. *State*. (1). Therefore there is no real difference, and in any event a person who is being tried under the Prevention of Corruption Act cannot have any grievance and cannot complain that he has been denied equal protection of laws by being subjected to a harsher treatment under the special law.

The third difference relates to the nature of the forum. Under the ordinary law a person tried upon a charge under section 409 of the Indian Penal Code must now be tried by an Assistant Sessions Judge although before the passing of the Criminal Law Amendment Act XXVI of 1955 he could be tried by a Magistrate. Under the Prevention of Corruption Act the trials are held by Special Judges appointed under the Act. These Special Judges in the Punjab are in all cases Sessions Judges or Additional Sessions Judges. The general opinion in the State is that an accused person gets a fairer trial in the Court of Sessions Judge than in the Court of a Magistrate. I am not prepared to say whether this is in fact so, but the basis for this opinion appears to be that the Sessions Judges enjoy a greater measure of freedom because they are not controlled by the executive authority whereas the Magistrates are subject to the control of the executive. The present case was tried before the Criminal Law Amendment Act XXVI of 1955 came into force and, therefore, it must be considered whether the trial by the Special Judge results in any disadvantage or disability (since the 1st January, 1955 there is no essential difference in the two forums competent to try a person charged under section 409, Indian Penal Code, and a person charged under section 5(2) of the Prevention of Corruption Act). I am of the

(1) A.I.R. 1954 All. 80

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opinion that a person cannot complain of any disadvantage because his case is made over to a Special Judge. A Special Judge has, other things being equal, greater experience and wider knowledge of criminal law. The appeal in the first instance comes to the High Court which is deemed an advantage by all convicted persons. In any event, the discrimination would not be held to be bad merely because of a difference in the forum unless there is a material difference in the procedure. The matter has been considered on several occasions by the Supreme Court and it has been held that the power to make over a case to a Special Magistrate conferred by section 197 of the Criminal Procedure Code does not violate the provisions of Article 14 of the Constitution. If the procedure in the Court of a Special Judge is to be the same as in the Court of a Magistrate, then the trial in the Court of the Special Judge would not amount to a denial of equal protection of the laws. The denial lies in the deprivation of certain rights with regard to procedure or substantive law. Therefore in order to determine whether the provisions of Article 14 of the Constitution have been violated, we must consider the nature of the procedure and not the nature of the forum. Reference may be made to *Budhan Choudhry and others* v. *State of Bihar* (1), *M. K. Gopalan* v. *The State of Madhya Pradesh* (2), and *Matajog Dobey* v. *H. C. Bhari*, (3).

The real disadvantage according to the learned counsel for the appellant lies in the provisions of section 4 and section 5(3) of the Prevention of Corruption Act. The Judge must raise certain presumption in the case of a person tried under the Prevention of Corruption Act. These presumptions are rebuttable and not conclusive. An examination of the nature of these

(1) A.I.R. 1955 S.C. 191
(2) A.I.R. 1954 S.C. 362
(3) A.I.R. 1956 S.C. 44

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presumptions will atonce show that no real hardship is caused by the special rule of evidence. The presumption which must be raised in the case of the appellant is contained in section 5(3) which is as follows:—

> "In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption."

This sub-section may be analysed as follows:—

(1) the prosecution may prove the possession of disproportionate pecuniary resources;

(2) proof of (1) gives rise to a presumption that the accused is guilty;

(3) the presumption is rebuttable; and

(4) conviction may be based on presumption alone.

Now, when a public servant is accused of misappropriation of funds which were entrusted to him as a public servant, the prosecution can certainly prove that he is in possession of property which could not have come into his possession by honest means, and when such proof is given the Court may presume that there is a connection between this property and the

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misappropriation with which he is charged. Ordinarily the existence of disproportionate pecuniary resources will not be sufficient to convict a person upon a charge of misappropriation, but it is not difficult to envisage cases in which this circumstance alone may be taken as sufficient proof of guilt. A reference to section 114 of the Indian Evidence Act shows that certain presumptions may be made under the ordinary law. This section provides—

> "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."

Two of the illustrations to this section may also be mentioned—

> (a) The Court may presume that a man who is in possession of stolen goods soon after the theft is either thief or has received the goods knowing them to be stolen unless he can account for his possession.
>
> (g) The Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

Section 114 of the Evidence Act is very wide in its terms, and when a public servant is charged with criminal misappropriation of a large sum of money and he is found to have in his possession pecuniary resources which he could not have acquired honestly, the Court may in a fit case presume that there is a nexus between the resources of the accused person and the factum of misappropriation. All that the Prevention of Corruption Act does is to make it obligatory on

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the Court to draw such a presumption. It does not make it obligatory to base a conviction upon such presumption. Therefore, the case of a person who is being tried under the Prevention of Corruption Act is not in practice very different from the case of a person tried under the Code of Criminal Procedure. It seems to me that the difference is not so considerable as to warrant the inference that the person is being denied equal protection of the laws.

In determining whether an Act offends the provisions of Article 14 of the Constitution we must consider the overall picture of the Act and not a particular provision of it. There are distinct advantages which an accused person enjoys under this Act and only one disadvantage with regard to the presumption which must be drawn under section 5(3). Section 5(3) is not in my view so far reaching as to undo the effect of the other provisions that place the accused person at a distinct advantage particularly his competence to give evidence as his own witness. The accused is not compelled to appear in the witness-box and give evidence upon oath. He may choose to stay away but if he wishes he may reinforce his defence by giving evidence himself. In all the previous cases to which reference has been made, the argument advanced was that a person tried under the Prevention of Corruption Act enjoys certain privileges and advantages which are denied to the person charged under section 409, Indian Penal Code. There has been no case so far in which the provisions of the Corruption Act have been challenged on the ground that a trial according to it means a denial of the protection afforded by the ordinary law. We have on the one side the provisions relating to the mode of giving sanction before prosecution can begin, and on the other the advantage of being tried by a higher Court, the advantage of a first appeal being heard by the highest Court in the State, the advantage

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of being allowed to appear in the witness-box and the advantage of not being awarded as high a sentence as can be awarded under the ordinary law counter-balanced by a presumption which must be raised but which could have been raised even under the ordinary law. Weighing the advantages against a single disadvantage, it seems to me that the scales incline slightly in favour of advantages and it therefore cannot be said that a person tried under the Prevention of Corruption Act for an offence defined in section 5(1)(c) is denied equal protection of the laws. I therefore hold that section 5(1)(c) of the Prevention of Corruption Act is *intra vires* and the objections raised on behalf of the appellant are without any force.

The appeal on merits can now be heard by a Judge sitting singly.

Falshaw, J.

Although in the course of the arguments addressed to us I was inclined to take the view that the matter was covered by *Anwar Ali's case* (1), and that consequently the inclusion of subsection 2(c) in section 5 of the Prevention of Corruption Act contravened the provisions of Article 14 of the Constitution. I am now, after having the advantage of reading the judgment which my learned brother proposes to deliver, and giving the matter further consideration, in agreement with his view that the impugned sub-section does not offend against the Constitution. My reasons, however, are not entirely the same and therefore I feel I should also express my own views.

In my opinion the law relating to the prosecution of Government servants for embezzlement of funds in their hands in their official capacity, i.e., the offence punishable either under section 409, Indian Penal Code, or section 5(2) (c) of the Prevention of Corruption Act is in a highly unsatisfactory state, and the

(1) A.I.R. 1952 S.C. 75

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sooner that all aspects of this matter are considered by the Supreme Court, the better it will be.

The Prevention of Corruption Act was introduced in 1947 because it was "expedient to make more effective provision for the prevention of bribery and corruption." It contained provisions for dealing with several kinds of misconduct besides embezzlement. I need not recapitulate here the various changes which were introduced regarding the trial of offences covered by the Act. It is sufficient to state that in consequence of those changes, this very Bench in the case of the *State* v. *Gurcharan Singh* (1), held that as long as section 5 of the Act remained in force the provisions of section 409, Indian Penal Code, stood repealed so far as it related to the offence of embezzlement by a public servant. This decision undoubtedly resulted in serious practical inconvenience, since in the Punjab, and presumably all over India, public servants were being prosecuted for such offences indiscriminately under section 409 and section 5 of the Act at the whim of the local authorities.

It would seem that the matter must have received the consideration of the Government of India which, instead of challenging the correctness of our decision by an appeal to the Supreme Court, introduced the Prevention of Corruption (Second Amendment) Act LIX of 1952 which came into force on the 12th August, 1952, and *inter alia* substituted the following sub-section (4) in section 5 :—

> "The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him".

(1) A.I.R. 1952 Punjab 89

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Evidently the object of this amendment was to validate any pending and future prosecutions of public servants under section 409, Indian Penal Code. It may be mentioned at this stage that hitherto all cases even under the Prevention of Corruption Act had been cognizable by the ordinary Courts and were being prosecuted in the Courts of Magistrates but almost simultaneously with the amendment of the Act, in fact slightly earlier, there was enacted the Criminal Law Amendment Act, XLVI of 1952, which came into force on the 28th July, 1952, and which further complicated the matter by making all the offences covered by the Prevention of Corruption Act triable solely by the Courts of Special Judges of the status of Sessions Judges. In fact in the Punjab, as far as I know, every Sessions Judge and Additional Sessions Judge has been appointed as a Special Judge under this Act. This innovation had the effect of still further differentiating between the cases of those officers against whom the local authorities decided to proceed under section 409 of the Code and those against whom cases were brought under section 5(2)(c) of the Act.

Since, in the cases mentioned by my learned brother, the validity of the trial of public servants under the provisions of section 409, Indian Penal Code, has been challenged and has been upheld by various High Courts in the light of the amended sub-section (4) in section 5, and doubt has even been cast by the Calcutta High Court as to whether the view we took in *Gurcharan Singh's case* (1) was a correct statement of the law even before the Act was amended.

While I am not wholly convinced that the correct way of deciding whether either section 409, Indian Penal Code, or section 5(2) (c) of the Act is valid or invalid is to set out side by side and weigh the so called "advantages" enjoyed by or "disadvantages"

(1) A.I.R. 1952 Punjab 89

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suffered by the officers tried under one or other of the sections, I cannot see how such a comparison can be avoided, since in a case of discrimination it is necessary to see against whom discrimination is being practised and I agree with my learned brother that the alleged disadvantages suffered by an officer who is prosecuted under the Act are immaterial in substance, and indeed I would go much farther and hold that an officer against whom the local authorities choose to proceed under section 409, Indian Penal Code, is very much worse off. This is particularly so in that legally no sanction is required for his prosecution and in general practice none is obtained. This is in consequence of the interpretation placed by the Courts on section 197, Criminal Procedure Code, and section 270 of the Government of India Act of 1935. The words used in both these sections are "* *, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty * *". The view taken by the Courts generally was that neither an officer who embezzles money which comes into his hands in his official capacity, nor an officer who takes a bribe for conferring a favour in his official capacity, is acting or purporting to act in the discharge of his official duty. The two leading cases on these points are *Dr. Hori Ram Singh* v. *Emperor*, (1), (a case of embezzlement) and *H.H. B. Gill* v. *The King* (2), (a case of bribery).

Apart from this I agree with my learned brother that it is an advantage to an accused to be tried by a Special Judge of the standing of a Sessions Judge both from the point of view of the trial itself and, in case of a conviction, the appeal. It must surely be

(1) A.I.R. 1939 Federal Court 43
(2) A.I.R. 1948 P.C. 128

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considered better by an accused, if his case has to go to the High Court, that it should go by way of appeal than by way of revision.

In these circumstances I am still of the opinion that the view we took in *Gurcharan Singh's case* (1), was correct and that if there is any discriminatory provision in the Prevention of Corruption Act, read with the Criminal Law Amendment Act of 1952, which offends against Article 14 of the Constitution, it is not section 5(2)(c), but section 5(4) which still permits the prosecution of public servants at the caprice of the local authorities under section 409, Indian Penal Code, in the ordinary magisterial Courts and without the previous sanction of any authority.

I therefore agree with my learned brother that section 5(2)(c) of the Prevention of Corruption Act is *intra vires* and does not offend the provisions of Article 14 of the Constitution and that the appeal should now be decided on its merits by a Single Judge.

APPELLATE CIVIL

Before Bishan Narain, J.

THE MUNICIPAL COMMITTEE, NAKODAR,—

Defendant-Appellant

v.

SADHU RAM AND OTHERS,—*Respondents*

Civil Regular Second Appeal No. 856 of 1955.

1956
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Sept. 27th

Punjab Municipal Act (III of 1911)—Section 49—Specific Relief Act (I of 1877)—Section 54—Resolution passed by Municipal Committee claiming the disputed land to be its property—Suit for declaration and mandatory injunction—No notice given to the Committee—Suit whether competent—Specific Relief Act—Section 54, applicability of.

(3) A.I.R. 1952 Punjab 89