REVISIONAL CRIMINAL

Before D. S. Tewatia, J.

ONKAR CHAND,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 904 of 1977

November 11, 1977.

Indian Penal Code (XLV of 1860)—Sections 21 Clause 12 (b), 120, 161, 162, 165 A, 406 and 420—Prevention of Corruption Act (II of 1947)—Sections 5(1) (d) and 5(2)—Electricity (Supply) Act (LIV of 1948)—Sections 5 and 81—Punjab State Electricity Rules 1959—Rules 3, 5(4), 7, 7A, 8(d) and 9—Part-time non- official member of a State Electricity Board—Whether "in the service of" the Board—Strict relationship of master and servant—Whether necessary—Such member—Whether a public servant—Acceptance of illegal gratification for another public servant—Whether latter to be specified to constitute an offence under section 161—Public servant held out to do the favour not identified to the complainant—Identity of such public servant—Whether necessary to be mentioned in the charge—Offence under section 5(1) (d)—Ingredients of.

Held, that the expression "every person in the service or pay of" used in clause 12 of section 21 of the Indian Penal Code 1860 does bring within its ambit not only the persons who stand in the relationship of a servant *qua* the Government, the local authority and a statutory corporation as also persons who could be considered in the employment of such institutions, but also such persons as were in the regular pay of such institutions or by virtue of the office that they held under such institutions, were liable to render service to such institutions. The position of a part-time member of the Punjab State Electricity Board enjoining a fixed tenure with his powers and functions expressly delineated with a right to enjoy travelling allowance and medical facilities and remuneration for every meeting, is clearly covered by the expression "every person in the service of" used in sub-clause (b) of clause twelfth of section 21 of the Code for he holds a regular office for a fixed period under the Board and on account of that he is liable to serve the Board. The expression "in the service of" is to be liberally construed because the Legislature chose to use the expression "every person" in place of the expression "every officer". The use of this expression was deliberate and is designed to enlarge the ambit of the clause so as to include not only such persons as could be strictly construed as the servants of those institutions but also all such persons, who by virtue of their regular office under such institutions were liable to serve the said institution. It was for this reason that the legislature refrained from using the expression "in service of the

local authority or a corporation etc." but used a more comprehensive expression "in the service of" for the former expression would have tended to restrict the ambit of the clause to such persons who answered the relationship of servants quo such institutions. The expression "in the service of" is normally employed for such persons who stand in the position of servant qua some other person.. One normally does not use the expression that "so and so" is in the service of "so and so" more particularly when the master is not an individual but a public institution such as the Government or a local authority or a statutory corporation to which service can be rendered in many capacities not necessarily restricted to the capacity of a servant strictly so called. Thus a part-time non-official member of a State Electricity Board is "in the service of the Board" and therefore a public servant.

(Paras 14 and 17)

Manshankar Prabhashanker Dwivedi and another v. *The State of Gujarat A.I.R.* 1970 *Gujarat* 97 dissented from.

Held, that section 161 of the Code in terms does not require that a public servant contemplated therein must be a specified person.

(Para 25)

Held, that the two portions of section 161 of the Code (i) "as motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person" and (ii) "as a motive or reward ..... for rendering or attempting to render any service or disservice to any person, with only local authority; a corporation or a Government company referred to in section 21 or with any public servant" indicated two categories of public servants. The first category of persons, who accept illegal gratification as a reward for doing something which they could do on their own and the second category refers to the public servants who do the favour not on their own; but through the instrumentality of someone else. As to whether the case would be covered by the first portion or by the second portion would depend on the facts as to what was held out by the accused public servant, whether he asserted that it was he who himself had to do the job or he told the complainant that the needful had to be done by someone else, and he would merely be a go-in-between. As to whether that "someone else" has to be specified or not in the charge would depend on such further fact as to whether the accused public servant had identified to the complainant 'that someone else' whom he had to approach as a go-in-between on behalf of the complainant. If 'that someone else' is not so mentioned then in the charge framed by the court 'that someone else' is not required to be specified.

(Para 26)

Held, that clause 1(d) of section 5 of the Prevention of Corruption Act 1947 clearly envisages two types of misconduct — one consists in the obtaining of any valuable thing or any pecuniary advantage for himelf or any other person by corrupt or illegal means and the other consists in the obtaining of any valuable thing or any pecuniary advantage for himself or any other person by abusing his position as a public servant even though means adopted may neither have been corrupt or illegal.

(Para 28)

Manshankar Prabhashankar Dwivedi and another v. *The State of Gujarat A.I.R.* 1970 *Gujarat* 97 dissented from.

Petition for revision under section 397 *of Criminal Procedure Code against the order of Shri Mukhtiar Singh Gill Special Judge, Patiala, dated* 19*th October*, 1977 *for quashing the order dated* 12*th October*, 1977 *and the charge framed against the petitioner dated* 19*th October*, 1977.

Anand Swaroop Senior Advocate, A. S. Sandhu Advocate with him. *for the petitioner.*

D. S. Boparai A.A.G. Pb. D. S, Chimni D.A., *for the Respondent,*

JUDGMENT

D. S. Tewatia, J.—

(1) One Jagdev Singh, son of Sher Singh, of village Rattangarh Sindhran, addressed an application to the Senior Superintendent of Police, Patiala, alleging therein that his son Jasbir Singh sought employment in Food Corporation of India and had been called for interview,—*vide* interview-card No. 15880, that he talked to Joginder Singh in that regard, and the latter assured him that he could get his son employed in the Food Corporation of India, as he had an approach with Onkar Chand, a big officer there; that he accompanied Joginder Singh to Chandigarh on 15th December, 1976 along with his son; that Joginder Singh on reaching Chandigarh took them to Kothi No. 330, Sector 9-A! that the said Joginder Singh told them to wait outside and himself went inside the said Kothi, telling that he would have a talk with Onkar Chand; that after sometime, Joginder Singh and Onkar Chand both came out of the said Kothi; that Onkar Chand told him (Jagdev Singh) and his son that their work would be done and that they should pay Rs. 12,000 to Joginder Singh. After saying this, Onkar Chand went inside the Kothi, while Joginder Singh remained with them. Jagdev Singh asked Joginder Singh as to what was that talk of payment of money to

him as he (Joginder Singh) had earlier merely said that he would help in getting the job without any condition regarding payment. Thereupon, Joginder Singh told him that without payment of money it was difficult to secure the job as vacancies were few and the applicants were too many and further if the job could be secured by paying money then why one should go after anything else. Joginder Singh asked Jagdev Singh to pay Rs. 5,000 in advance and the balance of Rs. 7,000 after the job in question was secured. Jagdev Singh believed Joginder Singh and paid Rs. 5,000 to him on 1st of January, 1977 after withdrawing the said amount from his account in the Punjab and Sind Bank. Some time past when his son still did not get the job, Joginder Singh told him that more payment should be made and only then the job would be secured. He (Jagdev Singh) finding, no way out-having already given Rs. 5,000, paid Rs. 5,000 more to Joginder Singh. The latter kept on putting off the former whenever he met him by saying that since the officials were busy in doing election duty, the work could not be done and that it would be done soon. When he (Jagdev Singh) thought that there was no hope of his son getting the job in question, he pressed Joginder Singh to return the money, who in the beginning tried to put him off, but eventually on 22nd June, 1977 and 22nd July, 1977 executed 2 separate pronotes of Rs. 5,000 each without any attesting witness and handed over the same to him (Jagdev Singh), saying that if they had no faith in his words then they could keep those pronotes by way of security. When his (Jagdev Singh's) son, Jasbir Singh still did not get the job he (Jagdev Singh) again asked Joginder Singh to pay back the money, but the latter told him that some money had been spent and some money had been passed on to Onkar Chand, and so he would not return the money to him (Jagdev Singh) and that he could do whatever he liked. That last refusal of Joginder Singh then led him to address the present complaint on 3rd August, 1977. On the basis of the aforesaid complaint, First Information Report No. 208 came to be recorded in Police Station Ghagga District Patiala, for offences under Sections 406, 420, 161, 162, 165A of the Indian Penal Code (hereinafter to be referred as the Penal Code), and Section 5(2) of the Prevention of Corruption Act, against Onkar Chand and Joginder Singh. The trial proceeded against them in the Court of Shri Mukhtiar Singh Gill, Special Judge, Patiala. Both Onkar Chand and Joginder Singh aforesaid challenged the jurisdiction of the Special Judge to try them on the ground that no offence triable by the Special Judge was made out as neither Onkar Chand nor Joginder Singh was a

public servant. It was contended before the Special Judge that while Joginder Singh admittedly held no office of any kind, Onkar Chand at the relevant date was merely a Part-time member of the Punjab State Electricity Board (hereinafter to be referred as the Board) and hence, he being a part time member of the Board could not be considered a public servant which is a necessary ingredient of Section 161 of the Penal Code and Section 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act.

(2) The learned Special Judge relying on the provisions of Section 6 of the Criminal Law Amendment Act, 1952, as amended uptodate, Section 21 clause 12(b) of the Penal Code, and Section 81 of the Electricity (Supply) Act, 1948, held that Onkar Chand was a public servant and the offences, with which he and his co-accused were charged were clearly triable by him. Both Joginder Singh and Onkar Chand have challenged in this Court the aforesaid order as also the charges that have been framed against them (Joginder Singh through Cr. Revision No. 874 of 1977 and Onkar Chand through Cr. Revision No. 904 of 1977). Since both revision petitions are directed against a common order and a common question of law and facts is involved, these petitions are proposed to be disposed of by a common judgement.

(3) Mr. Anand Swaroop, learned counsel for the petitioners, has, in the first place, contended that Onkar Chand, admittedly a part time Member of the Punjab State Electricity Board, cannot be considered a public servant and, therefore, the allegations in the First Information Report would not constitute an offence under Sections 161, 165A, 120B of the Penal Code and 5(2) of the Prevention of Corruption Act, which are triable by a Special Judge and hence, the Special Judge had no jurisdiction to try Onkar Chand petitioner, much less Joginder Singh petitioner, who admittedly did not hold any office of any kind. Mr. Anand Swaroop alternatively argued that even if Onkar Chand petitioner was found to be a public servant, he could not be charged for an offence under Sections 161, 162, 163 and 165A of the Penal Code as he was not the person who himself was in a position to give the employment to Jasbir Singh, son of Jagdev Singh complainant, for it was the Food Corporation of India which was to give the employment in question and with that body this petitioner was in no way connected in any capacity. He could be brought within the purview of the aforesaid sections only according to the learned, counsel if the public servant whom he had to approach for securing the job to

the complainant's son had been mentioned in the application and since that is not done, no charge under Sections 161, 162, 163 & 165A of the penal Code could be validly framed against him.

(4) Before dealing with the first contention advanced by the learned counsel for the petitioners, let us be clear about the exact status of Onkar Chand petitioner. Onkar Chand petitioner was admittedly appointed by the Governor of Punjab vide Notification No. 12801-IW(7)-72/18073, dated 8th September, 1972 in exercise of powers under Section 5 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the Act), read with Rule 3 of Punjab State Electricity Rules, 1959 (hereinafter referred to as the rules) a part time Member of the Punjab State Electricity Board with immediate effect for a period of five years. Rule 3 of the rules provides term of office, remuneration, allowance and conditions of service of the Chairman and the Members of the Board. Sub-rule (4) of Rule 5, which deals with the remuneration of a part-time non-official Member, is in the following terms:—

> "A part-time non-official Member shall be paid a sum of Rs. 100 per meeting in addition to the Travelling Allowances from the place of his residence to the Head-quarters of the Board or such other place where a meeting is held and back for the purpose of attending the meetings of the Board as admissible under rule 7 except that daily allowances shall not be admissible :
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> Provided:—
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> that where a member attends a meeting from the place other than permanent place of his residence, he shall get travelling allowances from the place of his residence or from the place from where he attends the meeting, whichever is nearer".

Rules 7 and 7-A of the rules deal with the travelling allowance and medical facilities to the Chairman and the Members of the Board and makes no distinction between the position of a whole-time Member and non-official part-time Member of the Board. Clause (d) of Rule 8 which deals with leave and leave salary provides that the part-time Members shall not be entitled to any leave except that their absence from meeting may be excused by the Board provided

that the absence of a part-time Member for three or more consecutive meetings of the Board, shall be referred to the State Government for condonation. Rule 9, which provides for the functions of Non-official part-time Members, is in the following terms:—

"9. (a) Functions of Non-official part-time Members:—

Non-official part-time Members when appointed shall attend the meetings of the Board and take full part in the deliberations of the meetings. They shall not be placed in charge of any particular subject on a regular basis. They may, however, be entrusted by Board with special duties from time to time".

Let us now see as to what offences are triable by a Special Judge. In this regard Section 6 of the Criminal Law Amendment Act, 1952, as amended upto date, leaves no doubt about the fact that offences falling under Sections 161, 162, 163, 164, 165 and 165A of the Penal Code and offences under Section 5 of the Prevention of Corruption Act and any conspiracy to commit or any attempt to commit or any abetment of any of the above offences, are triable by a Special Judge. The relevant portion of Section 6 aforesaid reads as under:—

"6. Power to appoint special Judges.—

(1) The State Government may, by notification in the Official Gazette, appoint as many special judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely:—

(a) an offence punishable under section 161, section 162, section 163, section 164, section 165 or section 165A of the Indian Penal Code or section 5 of the Prevention of Corruption Act, 1947:

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a)."

(5) Now the stage is set to consider as to whether any of the aforesaid offences are made out or not against Onkar Chand petitioner from the allegations contained in the First Information Report.

This takes us to the consideration of the ingredients that constitute the said offences.

(6) Admittedly, so far as Section 161 of the Penal Code is concerned, the first ingredient that requires to be satisfied is that the person accused of this offence must be a public servant. A question arises as to whether Onkar Chand, petitioner, at the relevant date was a public servant. Section 81 of the Act which treats Members, officers and servants of the Board to be public servants is in the following terms:—

> "All members, officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code".

Although, the Special Judge, in his order, has placed reliance on the aforesaid provisions of the Act to attach the label of public servant to Onkar Chand petitioner yet this may be ignored for the time being, for seeing whether Onkar Chand petitioner was or was not a public servant for admittedly to attract the aforesaid provision it must be shown that the person concerned was acting or purporting to act in pursuance of any of the provisions of the Act. Admittedly Onkar Chand when held out assurance to Jagdev Singh complainant to do his work in question, if he paid Rs. 12,000 to Joginder Singh petitioner, was certainly not acting under any of the provisions of the Act, for even the job that he impliedly promised to secure was not in the Board but in the Food Corporation of India. Hence to find out whether Onkar Chand petitioner at the relevant time was a public servant or not, one will have to resort to the provisions of Section 21 of the Penal Code, which is the basic provision offering the definition of the public servant.

(7) On behalf of the prosecution, it is argued that Onkar Chand petitioner answers to the definition of a public servant as given in clause 12(b) of Section 21 of the Penal Code. Clause 12th of Section 21 which has two sub-clauses (a) and (b), is in the following terms:—

> "21. The words "public servant" denote a person falling under any of the descriptions hereinafter following namely:—
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> * * * * * * * *

Twelfth.—Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956."

(8) Mr. Anand Swaroop, counsel for the petitioners, canvassed that Onkar Chand petitioner being paid either remuneration or fee for his attending a meeting of the Board and for performing such functions as were entrusted to him by the Board, could neither be considered in the pay of the Board, nor on account of his being a part-time non-official Member of the Board, could he be considered in the service of the Board, for the expression "in the service of" takes within its sweep only such persons as those who can be considered servants of the Board and since by no stretch of imagination, the relationship of Onkar Chand petitioner and the Board can be considered that of master and servant, so Onkar Chand petitioner cannot be considered the kind of public servant as is envisaged by clause 12(b) of Section 21 of the Penal Code. Mr. Anand Swaroop sought to highlight the distinction between a person who draws fees or remuneration for the performance of any public duty and those, who are in the service or pay of a Government, Local Authority and a Corporation as the case may, by drawing attention to sub-clause (a) of clause 12 of Section 21 of the Penal Code. The learned counsel stressed that if such persons as were remunerated by fees or commission for the performance of their public duty, were to be considered either in the service or pay of the aforesaid institutions, then there was no necessity to treat them in sub-clause (a) of clause 12 of Section 21 as a category apart from the persons in the service or pay of the Government. It is suggested on behalf of the petitioners that the expression "in the service or pay of" used in clause 12(b) of Section 21 should have the same meaning as it was intended to be given to the said expression when used in clause 12(a) and since in clause 12(a) of Section 21 of the Penal Code, the said expression carries a restricted meaning, *a priori* the said expression must carry the same restricted meaning in clause 12(b) as well and since from clause 12(b) the category of persons remunerated by fees or commission for the performance of any public duty is omitted, then it must

be taken that such persons stand excluded from the purview of sub-section (b) of clause 12 of Section 21 of the Penal Code. Basing on the aforesaid reasoning, the learned counsel canvassed that Onkar Chand petitioner necessarily fell within this category and thus stood excluded from the definition of a public servant (comprehensive though it may have been envisaged) as given in sub-clause (b) of clause 12 of Section 21 of the Penal Code.

(9) Besides seeking support for his above view from the use of differing phraseology in clause 12(a) and (b) of Section 21 aforesaid, the learned counsel placed reliance on the ratio of a Supreme Court decision in *Pradyat Kumar Bose* v. *The Hon'ble the Chief Justice of Calcutta High Court*, (1). He also placed reliance on the following passage from the judgment in *Manshanker Prabhashanker Dwivedi and another* v. *The State of Gujrat*, (2):—

> "It was, however, argued alternatively by the learned Assistant Government Pleader that the case would at any rate fall under clause Twelfth as it then stood. Clause Twelfth as it stood before the amendment made in December, 1964 has been earlier set out. It covered two categories of persons; (i) an officer in the service or pay of a local authority or (ii) of a Corporation engaged in any trade or industry which is established by the Central, Provincial or State Act or of a Government Company as defined in Section 617 of the Companies Act, 1956. It is not the contention of the learned Assistant Government Pleader that accused No. 1 would fall in the second category. His contention is that he would fall under the first category. To fall in that category it must be proved firstly that he is an officer in the service or pay of a local authority. Much argument has been advanced before us whether the Gujrat University is or is not a local authroity. It is not necessary to decide that question. We shall assume that it is a local authority. Even so it is difficult to hold that accused No. 1 is an officer in the service or pay of that authority. We have earlier pointed out that to be an officer a person must hold office. But the further question is whether he can be said to be in the service or pay

(1) A.I.R. 1956 S.C. 285.
(2) A.I.R. 1970 Guj. 97.

of the Gujarat University which, for the present, is assumed to be, a local authority. The word service means according to Concise Oxford Dictionary 'being a servant' and according to Chamber's 20th Century Dictionary 'condition of being servant; working for another'. In Aiyar's Law Lexicon the definition is 'Being employed to serve another'. Bearing these meanings in mind it is obvious that the expression 'in the service of' implies a relationship of master and servant. It is obvious that there was no such relationship between accused No. 1 and the Gujarat University. Explaining the difference between a servant, a contractor and an agent their Lordships of the Supreme Court in Lakshminarayan Ram Gopal *v.* Hyderabad Government, A.I.R. 1954 S.C. 364, accept as correct the following statement of law in Halsbury's Laws of England".

"An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given to him in the course of his work; and independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result. An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent to the extent of the agency depending upon the duties or position of the servant."

The same principles of law are reiterated in slightly different words by the Supreme Court in *Shivnandan* v. *Punjab National Bank*, (3). Therefore, the important test whether

(3) A.I.R. 1955 S.C. 404.

or not there is a relationship of master and servant is the existence of right of controlling the manner in which the other does the work. The mode of payment for service, the time for which the servant is engaged, the nature of those services or the power of dismissal may have some relevance as pointed out by the Bombay High Court in *Goolbai* v. *Pestonji*, (4), but the right of control as to the manner in which the other does the work is the conclusive test. On this test it cannot be said that accused No. 1 was in the service of the Gujarat University. It is also not possible to say that he was 'in the pay' of that University. The word 'pay' here must be construed in the light of the context and would mean wages or money given for service. 'In the pay of' construed in the light of the context of the whole clause would carry the meaning "in the employment of". If that is so, accused No. 1, who received on agreement remuneration for certain agreed work, cannot fall in that category. *In our opinion, "the Twelfth clause as it stood before amendment of December* 1964 *was not attracted."*

(10) The counsel for the respondent on the other hand contended that the expression "in the service or pay of" used in sub-clause (a) and (b) of clause 12 of Section 21 of the Penal Code was not intended by the legislature to be construed in the narrower sense as referring only to a person who stands in the position of a servant *qua* the Government or the local authority and the corporation etc., and the latter in the position of master *qua* him. According to him, the legislature intended to bring in the category of public servants the persons who are either in the regular pay of the aforesaid institutions or they hold some office in those institutions which make them liable to serve those institutions. It was argued that the interpretation that he sought to put on the aforesaid institutions was in consonance with the spirit of the legislation and would tend to achieve the objective which the legislature had in view.

(11) At this stage a review of the evolution of clause 12th as it stands now would be desirable in order to comprehend the objectives that the legislature had in view in enacting

(4) AI.R. 1935 Bom. 333.

this clause. Clause 12th of Section 21 was for the first time introduced in the Indian Penal Code by Criminal law Amendment Act No. 2 of 1958. It then read as under:—

> "Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act, 1956."

Section 21 of the Penal Code was again amended by Criminal law Amendment Act No. 40 of 1964. This Amending Act while omitting the expression "every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty" from clause 9th also effected a radical change in the phraseology of clause 12th by splitting it into two sub-clauses and substituting the expression "every officer" by the expression "every person" besides omitting the existing explanation 4 to clause 12th.

(12) The question that arises for consideration is as to what were the objectives which the legislature had intended to achieve by effecting the aforesaid amendments. Was it to narrow down the concept of the public servant, or was it intended to be enlarged ?

(13) Criminal law Amendment Act of 1958 brought within the category of public servants the officers of the statutory corporations and local authorities. 1964 Criminal Law Amendment Act, when it substituted the expression "every officer" by "every person", in my view, instead of excluding any person, who stood already included in the category of the public servants by virtue of the later part of unamended clause 9th and clause 12th, sought to bring within the sweep of expression "public servant" those who could not have been considered strictly either in the pay of those institutions or in the service of those institutions.

(14) Prior to the Criminal law Amendment Act of 1964, the Chief Ministers and Ministers of the Government were considered to be public servants by virtue of the expression "every officer in the service or pay of the Government" used in clause 9th of Section

21 of the Penal Code, as would be evident from the following observations of the Judicial Commissioner of Peshawar in *Ramditta Mal L. Duni Chand* v. *Emperor*, (5), and that of the Supreme Court in *Rao Shiv Bahadur Singh and another* v. *The State of Vindhya Pradesh*, (6) respectively:—

A. I. R. 1939 *Peshawar*

"Learned counsel for the petitioner has contended that S. 539-A has no application to the facts of this case as the Honourable the Chief Minister is not a public servant within the meaning of this Section. The expression "public servant" is defined in S. 21, I.P.C. and under S. 4(2), Criminal P.C., has the same meaning in that Code. One of the definitions of "public servant" is an officer in the service or pay of Government. It is clear that the Honourable the Chief Minister is covered by the definition of "public servant."

A. I. R. 1953 *S. C.*

It is true that Ordinance No. 48 of 1949 amended the Indian Penal Code by substituting for the previous first clause of S. 21 thereof relating to the definition of a "public servant" the phrase "Every Minister of State". But it does not follow that "a Minister of State" was not a public servant as defined in S. 21, Indian Penal Code even before this amendment. Clause 9 of S. 21, I.P.C. shows that every officer in the service or pay of the Crown for the performance of any public duty is a "public servant". The decision of the Privy Council in — '*Emperor* v. *Sibnath Banerji*, A. I. R. 1945 P.C. 156 at pp, 162 and 163(I), is decisive to show that a Minister under the Government of India Act is "an officer" subordinate to the Governor. On the same reasoning there can be no doubt that the Minister of Vindhya Pradesh would be an "officer" of the State of Vindhya Pradesh".

(15) If the expression "officer in the service of the Government" is to be construed in the narrow sense of implying the relationship of master and servant between the officer and the Government which in term envisages the right of control of the manner in which such servant was to work, the time for which he was to remain engaged,

(5) A.I.R. 1939 Peshawar 38.

(6) A.I.R. 1953 S.C. 394.

the power of dismissal over him, then by no stretch of imagination, a Chief Minister or a Minister could be considered to be the servant of the Government and thus an officer in the service of the Government. So one will have to see as to whether such a person would be covered by the expression "in the pay of the Government". If a narrower view of the expression "in the pay of the Government" as referring to one, who is in the employment of the Government is not taken and a broader view implying that anybody who receives pay by virtue of his office, is taken, then the Chief Minister and the Ministers too would be considered as public servants. But a situation can arise when a Chief Minister or a Minister decides not to take any pay, then would it mean that he would escape from being considered a public servant as he would not then be covered by expression "in the pay of the Government" ? If the receiving of pay is a decisive factor which in any case it is, then such a person would not have fallen within the category of public servants as envisaged by the then unamended clause 9th of Section 21 of the Penal Code, though the public interest makes it very necessary and desirable that such persons should also fall within the category of public servants. So, it must have been felt that in that view of law such persons could take bribe and indulge in corruption with impunity. Hence, in my view, it was to see that none who holds an office in the Government or a local authority or a statutory corporation etc., which position he could abuse to feather his own nest or otherwise, should escape from the sweep of such penal provisions as are envisaged in Section 161 of the Penal Code and Section 5 of the prevention of Corruption Act, 1947, which offences were socially and economically becoming increasingly relevant as a result of the escalation of such crimes, that it became necessary to widen the scope of Section 21 by effecting the amendment in question whereby *inter alia,* the expression "every Officer" was substituted by a more comprehensive expression "every person".

(16) Their Lordships of the Supreme Court have struck a balance in construing the provisions of such socially relevant legialations, even though such legislations create criminal liability, in *M. Narayanan* v. *State of Kerala,* (7) and the following passage from their judgement is instructive in this regard:—

> "No doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an

(7) A.I.R. 1963 S.C. 1116.

offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument. Earlier the Supreme Court refers to the object of the statute under the prevention of Corruption Act and the provisions it makes for carrying out that object, and goes on to observe:

"As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object i.e., to prevent corruption among public servants and to prevent harassment of the honest among them".

Applying the aforesaid principle laid down by their Lordships, I am clearly of the view that the expression "every person in the service or pay of" does bring within its ambit not only the persons who stand in the relationship of a servant qua the Government, the local authority and a statutory Corporation as also persons who could be considered in the employment of such institutions, but also such persons as were in the regular pay of such institutions or by virtue of the office that they held under such institutions, were liable to render service to such institutions.

(17) Now coming to the second category of the public servants envisaged in the later part of sub-clause (a) of clause 12th of Section 21, it may be observed that since such persons could neither be considered in the regular pay of the Government, nor hold any office under the Government, so they stood in a different category

from the persons envisaged in the first category and, therefore, they had to be brought specifically within the definition of the public servant.

(18) As for the omission of such category of persons from clause 12(b), it may be observed that it means only this that the legislature did not wish to bring them within the purview of the definition of a public servant.

(19) I find unable to persuade myself that part-time Member of the Board enjoying a fixed tenure, with his powers and functions expressly delineated, with a right to enjoy such travelling allowance and medical facilities as are admissible to officers of Grade I under the Punjab Civil Services Rules and Rs. 100 per meeting by way of remuneration, would have fallen within the expression "remunerated by fees or commission for the performance of any public duty" if the said expression had also been used in clause 12(b) of Section 21 as well. The position of a part-time Member of the Board, in my view, is clearly covered by the expression "every person in the service of" used in sub-clause (b) of clause 12th of Section 21, for in my view, he holds regular office for a fixed period under the Board and on account of that he is liable to serve the Board. The expression "in the service of" is to be liberally construed, for if the intention of the legislature had been to restrict the sweep of clause 12th of Section 21 only to the servants of the local authority or a statutory Corporation etc., as the case may be and if the existing expression "every officer" prior to the Criminal Law Amendment Act, 1964 was apprehended to be too narrow to bring within its scope all the employees of such institutions and the unamended clause did not include within its purview such servants as could not be considered officers, then the said expression could have been replaced by the expression "every employee", which would while retaining the relationship of master and servant, have brought every employee of such institutions within the purview of the said clause. But the legislature chose to use the expression "every person" in place of the expression "every officer". The use of this expression was deliberate and was designed to enlarge the ambit of the clause so as to include not only such persons as could be strictly construed as the servants of those institutions, but also all such persons, who by virtue of their regular office under such institutions, were liable to serve the said institution. It was for this reason that the legislature refrained from using the expression "in the service of the local

authority or a corporation etc." but used a more comprehensive expression "in the service of" for the former expression would have tended to restrict the ambit of the clause to such persons, who answered the relationship of servants *qua* such institutions. We normally employ the expression 'in service of' for such persons who stand in the position of servant *qua* some other person. One normally does not use the expression that "so and so" is in the service of "so and so". More particularly when the master is not an individual, but a public institution, such as the Government or a local authority or a statutory corporation, to which service can be rendered in many capacities not necessarily restricted to the capacity of a servant strictly so called. For the aforesaid reasons, I record my respectful dissent from the narrow view that Sarela, J., had taken of the expression of "in the service of" in the passage quoted above in *Manshanker Prabhashanker Dwivedi's* case (supra) (2). In any case as the underlined portion of the observations quoted above would show that the view expressed by the Gujarat High Court in this judgment was confined to the interpretation of clause 12th of Section 21 of the Penal Code as it stood before it was amended in December, 1964 by Criminal Law Amendment Act No. 40 of 1964 which, here we are concerned with the clause as it emerged after the said amendment.

(20) As for the ratio of the Supreme Court decision in *Pradyat Kumar Bose's* case (7) (supra), it may be observed that as to the status of the employee in question, there was no uncertainly. The question for consideration in that case was as to whether the Chief Justice was bound to refer to the Public Service Commission for its opinion the case of a High Court employee before taking the disciplinary action against him. It was argued before their Lordships that the provisions of Article 320(3)(c) of the Constitution of India envisaged the reference to the Public Service Commission the case of every person 'serving under the Central or State Government'. Their Lordships, after referring to the provisions of Article 229 of the Constitution of India and the fact that a separate Chapter in the Constitution was earmarked to deal with the employees serving under the High Court as a distinct class as also the fact that the framers of the Constitution had used, under Articles 320, 209 and 210 different expressions obviously in order to convey different senses from each other, held that the expression "serving under the State or Central Government" in the context in which it was used referred to the persons over whom the executive exercised control and since over High Court employees, it is the High Court through the Chief Justice, which

exercised control, so for the purposes of disciplinary jurisdiction, they could not be considered to be the employees serving under the State or Central Government.

(21) Mr. Anand Swaroop sought to press the ratio of the aforesaid Supreme Court decision to construe the expression "every person in the service of" to mean to include only such persons as over whom the institutions exercise control and since control is exercised on the manner of functioning etc. of a person by another person only if that former person stands in the relationship of a servant qua the latter person. So, the learned counsel canvassed, that only such persons as stood in the position of a servant qua the Board that could be considered public servants in terms of sub-clause (b) of clause 12 of Section 21 of the Penal Code. According to him, decidedly Onkar Chand petitioner was subject to no such control of the Board, hence he could not be considered as a public servant in terms of the aforesaid sub-clause (b) of clause 12 of Section 21. As already observed, the ratio of the aforesaid Supreme Court decision in no way supports the contention advanced by Mr. Anand Swroop. Hence, it is held that Onkar Chand at the relevant time was a public servant in terms of clause 12(b) of Section 21 of the Penal Code.

(22) For his second contention, Mr. Anand Swaroop sought to draw support from three decisions of the Supreme Court in: (i) *The State of Ajmer (now Rajasthan)* v. *Shivji Lal* (8), (ii) *The State of Maharashtra* v. *Jagatsing Charansing Arora and another* (9), and (iii) *Dalpat Singh and another* v. *State of Rajasthan*, (10), while on the other hand, counsel for the State banked heavily on *Mahesh Prasad* v. *State of Uttar Pradesh* (11), in refuting the second contention advanced on behalf of the petitioners.

(23) In *Shivji Lal's case* (supra), the facts were that the accused was a teacher in the railway school at Phulera; complainant was known to him. The complainant, who was in search of a job, was assured a number of times by the accused that he would secure a job in the Railway Running Shed if the complainant paid him Rs. 100. A part of this amount was paid to the

(8) AIR 1959 S.C. 847.
(9) AIR 1964 S.C. 492.
(10) AIR 1969 S.C. 17.
(11) AIR 1955 S.C. 70.

accused. When the balance came to be paid, the complainant informed the Police; a trap was laid and the accused was caught red handed. The accused was charged under Section 161 of the Penal Code as also with an offence arising under Section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act. Three questions arose for consideration: (i) whether the accused was a public servant, (ii) since he was to get the job done by approaching another public servant as he himself was not to do the needful, whether an offence was made out under Section 161 of the Penal Code when there was no allegation that any specified public servant was to be approached by the accused in order to render service to the complainant and (iii) whether any offence is made out under Section 5(2) read with Section 5(1)(d) of the prevention of Corruption Act in that the accused having nothing to do with the Railway Running Shed, whether could be considered to have misconducted himself in the discharge of his duty.

(24) The Supreme Court held him to be a public servant, but answered the other two questions in favour of the accused. While dealing with the second contention Wanchoo, J., observed as follows:—

> "Now we turn to the charge under Section 161 of the Indian Penal Code. The relevant part of that section (omitting the unnecessary words) for the purpose of this case is in these terms:
>
> "Whoever, being a public servant, accepts from any person for himself any gratification whatever other than legal remuneration as a motive or reward for rendering or attempting to render any service or disservice to any person with any public servant."
>
> This requires that the person accepting the gratification should be (1) a public servant, (2) he should accept gratification for himself, and (3) the gratification should be as a motive or reward for rendering or attempting to render any service or disservice to any person with any other public servant. The charge under Section 161 of the Indian Penal Code which was framed in this case stated that the accused being a public servant accepted on 6th October, 1954, a sum of Rs. 50 from

Prem Singh "as illegal gratification as a motive for securing a job for him in the Railway Running Shed". Now the first two ingredients set out above are clearly established in this case; but the third ingredient, (namely, that the gratification should have been taken as a motive or reward for rendering or attempting to render any service with any public servant) is not even charged against the accused. The charge merely says that he took the money as a motive for securing a job for Prem Singh in the Railway Running Shed, Abu Road. It does not disclose who was the public servant whom the accused would have approached for rendering or attemmpting to render service to Prem Singh in securing a job for him. Even in the complaint made by Prem Singh to the Deputy Superintendent Police all that was said was that the accused told Prem Singh that he would secure a job for him at Abu Road because he had considerable influence there. It was not disclosed as to who was the public servant on whom the accused had influence and whom he would approach in order to render service to Prem Singh. In his statement also Prem Singh did not say that the accused had told him that he had influence on any particular public servant at Abu Road whom he would influence in order to render this service to Prem Singh, namely procuring him a job. It is true that the application was addressed by Prem Singh to the Divisional Mechanical Engineer and was given to the accused who said that it was all right; but Prem Singh did not even say that the accused had asked him to address the application to the Divisional Mechanical Engineer. It seems that the application was addressed to the Divisional Mechanical Engineer, simply because he was obviously the officer in-charge of the Railway Running Shed at Abu Road. Thus Prem Singh did not say either in his complaint or in his statement that the accused had told him that he would render service to him by approaching a particular public servant. In the charge-sheet submitted by the police as well as in the charge framed by the court, it was not disclosed whether any public servant would be approached to render service to Prem Singh, i.e., by securing him a

job. In the circumstances one of the ingredients of the offence under Section 161 was neither alleged nor charged nor proved against the accused. The mere fact that a person takes money in order to get a job for another person some where would not by itself necessarily be an offence under Section 161 of the Indian Penal Code unless all the ingredients of that section are made out. As in this case one of the main ingredients of that section has not been made out, the accused would be entitled to acquittal."

This decision insofar as it held that before the provisions of Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act could be pressed into service against an accused, it had to be held that the misconduct was in the discharge of his duty, was expressly reversed by a larger Bench of the Supreme Court in *Dhaneshwar Narain Saxena* v. *The Delhi Administration* (12). The second aspect dealt with *Shivji's Lal's case* (supra), was not wholly approved in *Jagatsing Charansing Arora's case* (9) (supra) when their Lordships observed that in *Shivji Lal's case* (8) (supra) the Court did not lay down that if the other public servant was not specified in the charge, the trial would be bad. It was pointed out that where the public servant was not specified in the charge that would only mean that there was defect in the charge and such a defect would be curable under Section 537 of the old Code of Criminal Procedure unless such error or omission or irregularity or misdirection had in fact occasioned a failure of justice. Their Lordships no doubt underscored the view expressed in *Shivji Lal's case* (8) (supra) in the following passage:—

"that besides the omission to indicate the other public servant in the charge there was nothing in the complaint, in the charge-sheet submitted by the police and in the evidence to show who was the other public servant with whom service or disservice would be rendered by Shivji Lal. It was in these circumstances that the Court held that one of the main ingredients of that part of S. 161 which applied to that case had not been proved."

Even so, in *Jagatsing Charansing Arora's case* (9) (supra) the Court, despite extending formal approval to the view expressed in *Shivji*

(12) AIR 1962 S.C. 195.

Lal's (8) (supra) case as shown by the above passage, in the circumstances which were not different from *Shivji Lal* case (supra), did not apply the ratio of that case.

(25) The facts of *Jagatsing Charansing Arora's case* (9) (supra) were that bribe had been taken from Dongarsing, a discharged truck driver from the army, by Jagasting, who was in the service in the Department of Divisional Controller of the State Transport Corporation at Dhullia for securing to the former service as a driver in that department. Jagatsing was unable to secure the job. When asked to return Rs. 50/- which he had already received from Dongarsing, Jagatsing told him that he could not return money as the amount had already been passed on to other persons, but again held out a hope for securing the job if he was paid another sum of Rs. 50/-. It was thereafter that Dongarsing got suspicious, informed the police and got Jagatsing trapped red-handed. To his case, the following part of Section 161 of the Penal Code was held to be applicable:—

> "Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions; favour or disfavour to any person".

Although their Lordships accepted the fact that Jagatsing was not directly in a position to make the appointment himself, but it was observed that since he worked in the office, which was to make appointment of Dongarsing, so it was held that his case fell within the aforesaid part of Section 161 and not in the following part of section 161 of the Penal Code:—

> "Whoever being a public servant accepts from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for rendering or attempting to render any service or disservice to any person with any public servant".

in which *Shivji Lal's* case (8) (supra) was held to be falling.

(26) The learned counsel for the petitioners drew support from the following observations in *Dalpat Singh's case* (10) (supra) in which

their Lordships delineated the requirements of Section 161 of the Penal Code:—

> "Before an offence is held to fall under Section 161 IPC, the following requirements have to be satisfied: (1) the accused at the time of the offence was, or expected to be a public servant, (2) that he accepted, or obtained, or agreed to accept, or attempted to obtain from some person a gratification, (3) that such gratification was not a legal remuneration due to him, and (4) that he accepted the gratification in question as a motive or reward, for (a) doing or forbearing to do an official act; or (b) showing, or forbearing to show favour or disfavour to some one in the exercise of his official functions or (c) rendering, or attempting to render, any service or dis-service to some one, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant."

(27) A common feature in all the three cases that have been cited on behalf of the petitioners that strikes one as curious is that in none of these decisions, an earlier decision in *Mahesh Prasad's* case (11) (supra), which is directly on the point, has been noticed. The facts in that case were that the accused was a clerk in the office of the Running Shed Foreman of the East Indian Railway at Kanpur. The charge against him was that he had accepted illegal gratification of Rs. 150/- from Kurphekan, complainant—a retrenched cleaner in the Locomotive Department of the Railways. It was alleged that he was to get the complainant re-employed by approaching some superior officers in his Department. It was urged before their Lordships that the accused was not himself a person, who was in a position to give the job to the complainant, nor was it shown that he had any intimation or influence with any particular official who could give the job to the complainant.

(28) Two fold contention was raised before their Lordships:

> (i) that the offence was merely of cheating and (ii) that no offence under section 161 is made out as the public servant sought to be approached was not specified.

(29) The first contention was refuted with the following observations:—

> To constitute an offence under this section, it is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver "with any other public servant" and the giver gives the money under that belief. It may be that the receiver of the money is in fact not in a position to render such assistance and is even aware of it. He may not even have intended to do what he holds himself out as capable of doing. He may accordingly be guilty of cheating. Nonetheless he is guilty of the offence under Section 161 of the Indian Penal Code. This is clear from the fourth explanation to Section 161, I.P.C. which is as follows:
>
> "A motive or reward for doing". A person who receives a gratification as a motive for doing what he does not intend to do, (or as a reward for doing what he has not done) comes within these words."
>
> Illustration (c) to Section 161, I.P.C. which runs as follows also elucidates this:
>
> "A. a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus inducees Z to give A money as a reward for this service. A has committed the offence defined in this section."
>
> Thus where a public servant who receives illegal gratification as a motive for doing or procuring an official act whether or not he is capable of doing it or whether or not he intends to do it he is quite clearly within the ambit of Section 161, I.P.C."

Having failed on the first contention, the accused in that case sought to rest his case on the second contention to the effect that since the charge did not specify a particular public servant, who was intended to be influenced by the appellant in consideration of his receiving the money, offence under Section 161, of the Penal Code, was not made out. It was suggested that the phrase "with any public servant"

in Section 161 of the Penal Code must relate to a specified public servant. Their Lordships rejected this contention with the following observations:—

> "In the present case, the evidence of the complainant and the finding of the High Court is that the appellant "purported to attempt rendering of a service to the complainant with another public servant, viz., the Head-clerk at Allahabad". *But even apart from such a finding there is nothing in the terms of Section* 161, *I.P.C. requiring that the public servant contemplated therein must be a specified public servant.* The material portion of the section is as follows:
>
> "for rendering or attempting to render any service or disservice to any person, with the Central or Provincial Government or Legislature, or with any public servant as such."
>
> The phrase "Central or any Provincial Government or Legislature" does not contemplate any specified individual or individuals. There is no reason why the phrase "any public servant" used in the same context should be taken to mean any specified public servant. The gist of the offence under Section 161, I.P.C. (in so far as it is relevant here) is the receipt by a public servant of illegal gratification as a motive or reward for the abuse of official position or function, by the receiver himself or by some other public servant at his instance. There is, therefore, no substance in this argument."

A perusal of the aforesaid underlined observations would show that their Lordships went to the extent of holding that Section 161 of Penal Code in terms did not require that public servant contemplated therein must be a specified public servant. Both the decisions, that is, *Shivji Lal's case* (8) (supra) and *Mahesh Prasad's case* (11) (supra), have been rendered by a Bench of three Judges each, while the other two decisions, that is, *Jagatsing Charansing Arora's case* (9) (supra) and *Dalpat Singh's case* (10) (supra), are by a Bench of two Judges each. The weight of the authority of *Shivji Lal's case* (8) (supra) stands considerably reduced for the reason that in its one aspect, it was expressly overruled by the decision in *Dhaneshwar Narain*

Saxena's case (12) (supra), while in regards to its other aspect, which is relevant for the present case, their Lordships in *Jagatsing Charan-Sing Arora's case* (a) (supra) observed that the Court did not lay down that the charge would be bad if the public servant was not specified and further, though on facts no distinction in fact, existed as in both the cases the accused themselves were not to do the work and had to approach some body else to get the work done, yet the ratio of *Shivji Lal's* case (supra) was not followed as already pointed out. In *Mahesh Prasad's case,* (1) (supra) the point directly arose and had been exhaustively dealt with.

(30) Apparently, the two portions of Section 161 of the Penal Code: (i) "as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person" and (ii) "as a motive or reward.....for rendering or attempting to render any service or disservice to any person, with any local authority, a corporation or a Government company referred to in section 21 or with any public servant" indicated two categories of public servants. The first category of persons, who accept illegal gratification as a reward for doing something which they could do on their own and the second category refers to the public servants who do the favour not on their own, but through the instrumentality of someone else. As to whether the case would be covered by the first portion or by the second portion would depend on the facts as to what was held out by the accused public servant, whether he asserted that it was he who himself had to do the job or he told the complainant that the needful had to be done by someone else, and he would merely be a go-in-between. As to whether that 'someone else' has to be specified or not in the charge would depend on such further fact as to whether the accused public servant had identified to the complainant 'that someone else', whom he had to approach as a go-in-between on behalf of the complainant, If 'that' someone else' is not so mentioned, then in the 'charge' framed by the court 'that someone else' is not required to be specified. In the case before us the facts disclosed in the First Information Report were that the job was to be secured in the Food Corporation of India, and a perusal of the charges by the Special Judge would reveal that the Food Corporation of India is specified in the Charge. Although, it is somebody in the Food Corporation of India, who had to do the job, but the requirement of Section 161 in terms is not this that besides the institution named therein, the public servant serving in such an institution who finally had to be approached

to do the favour or disfavour in question, had also to be specified, for the expression "or with any public servant" in Section 161 envisages him as forming a category distinct from the other institutional category which is comprised of the Central or any State Government or Parliament or Legislature of the State or any local authority, a corporation or a Government company, referred to in Section 21 of the Penal Code, with whom the accused public servant was to render any service or disservice to the complainant. Hence looked at from any point of view, the allegations contained in the First Information Report, when taken at its face value, do disclose an offence under Section 161 of the Penal Code and the charges framed by the Special Judge on the basis of the said allegations do not suffer from any infirmity of omitting any necessary ingredient of the offence under Section 161 of the Penal Code.

(31) Once it is held that Onkar Chand was a public servant at the relevant time and that from the allegations in the First Information Report, an offence under Section 161 is clearly made out, then the other offence dealt with in Section 5(1)(d), made punishable under Section 5(2) of the Prevention of Corruption Act, is clearly made out, as the Supreme Court in *Dhaneshwar Narain Saxena's* case (12) (supra) and later on in *Dalpat Singh's case* (10) (supra) has clearly ruled that the criminal misconduct envisaged under Sub-section (2) of Section 5 of the Prevention of Corruption Act, need not necessarily be committed during the discharge of his official duty in order to bring his case within the purview of the offence created by Section 5(1)(d) *ibid*. The following observations of the Chief Justice, who delivered the opinion for the Bench in *Dhaneshwar Narain Saxena's* case (12) (supra) are instructive in this regard:—

> "The offence under Section 5 is wider and not narrower than the offence of bribery as defined in S. 161 I.P.C. In order to bring the charge home to an accused person under cl. (d) of S. 5(1), it is not necessary that the public servant in question, while misconducting himself, should have done so in the discharge of his duty. It would be anomalous to say that public servant has misconducted himself in the discharge of his duty. "Duty" and "misconduct" go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. It is not necessary to constitute the offence under cl. (d) of the section that the public

servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his duty, he has not committed an offence under section 5(1)(d). It is also erroneous to hold that the essence of an offence under S. 5(2) read with S. 5(1)(d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage".

(32) Mr. Anand Swaroop, learned counsel for the petitioners, however, urged that the case under Section 5(1)(d) of the Prevention of Corruption Act would fall only if the public servant is alleged to have obtained for himself or for any other person any valuable thing or any pecuniary advantage by corrupt or illegal means by abusing his position as a public servant and not otherwise. He placed reliance on a D.B. decision in *Manshanker Prabhashanker Dwivedi and another* v. *The State of Gujarat,* (2) (supra) and drew pointed attention to the following passage there from:

"Now, bearing this in mind we have to consider whether the words 'abusing his position as a public servant' go only with the words 'by otherwise' or go also with the words 'corrupt or illegal means'. It will be noticed that the second part of the clause namely the one which relates to the obtaining of the valuable thing or pecuniary advantage relates to the object of the public servant namely the obtaining of a bribe. The first part concerns the manner of achieving that object. The manner is the use of means and use of position. As to the use of means the clause expressly mentions corrupt or illegal. But the legislature does not want to limit itself to these means only and so goes on to use the word 'otherwise'. If the meaning to be given to the word 'otherwise' is as earlier stated, the words 'by corrupt or illegal means, or 'by otherwise' form a single clause and do not form two clauses. If that is so the abuse of position as public servant that is referred to is the abuse by corrupt or illegal means or by otherwise

"In support of the construction which the learned Assistant Government Pleader seeks to put on the clause he relies on the use of the word 'by' before the word 'otherwise'. He says that thereby the legislature expressed the intention to separate two positions. According to him 'by otherwise' would be another manner and it is only in respect of this second manner that it is necessary to prove the abuse of position as a public servant. While the argument is not wholly divorced from the language of the clause the use of the preposition 'by' on which reliance is placed for deriving support to this argument is explainable even on the construction earlier mentioned. The preposition 'by' obviously indicates the manner of obtaining the bribe. If that is so the expression 'abusing his position' must go with both. This construction is consistent with the scheme of the section. As pointed out by the Supreme Court in Ram Krishan v. State of Delhi A.I.R. 1956 SC 176, bribery as defined in Section 161, Indian Penal Code, if it is habitual, falls within clause (a) of Section 5(1). Bribery of the kind specified in Section 165, if it is habitual, is comprised in clause (b). Clause (c) contemplates criminal breach of trust by a public servant and the wording takes us to Section 405 of the Code. Then follows clause (d). Clause (e) concerns the position of pecuniary resources or property disproportionate to his known sources of income for which the public servant cannot satisfactorily account. In clauses (a), (b) and (c) the abuse of position by a public servant is clearly implied. Clause (e) also carries the same implication. It would be reasonable to put on clause (d) a construction which is consistent with the other clauses of sub-section. Such a construction would also keep the offence within the limitation and within the object of the Act. The object is to prevent and deal with corruption and bribery amongst public servants. It is with reference to this object that the penal provisions must be construed and if so construed the abuse of position would be the necessary ingredient of the offence; the abuse being either by corrupt or illegal means or by otherwise. Such a construction would thus be within the spirit of the enactment."

I am afraid, with respect I find myself unable again to subscribe to the view taken in this decision by the Division Bench. In my opinion,

clause (1)(d) of Section 5 of the Prevention of Corruption Act clearly envisages two types of misconduct,—one consists in the obtaining of any valuable thing or any pecuniary advantage for himself or any other person by corrupt or illegal means and the other consists in the obtaining of any valuable thing or any pecuniary advantage for himself or any other person by abusing his position as a public servant even though means adopted may neither have been corrupt or illegal.

(33) No other point has been urged.

(34) For the reasons aforesaid, I hold that the offences with which the petitioners stand charged are clearly made out against them from the First Information Report and the Special Judge has jurisdiction to try them on the charges that have been validly framed by him. In the result, these revision petitions fail and are dismissed.

N.K.S.

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