

Kamini Kumar Deb Barma Vs. State

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Court : Guwahati

Decided On : Jun-18-1970

Judge : R.S. Bindra, J.C.

Appellant : Kamini Kumar Deb Barma

Respondent : State

Prior history : R.S. Bindra, J.C. 1. The appellant Kamini Kumar Deb Barma was tried on charges Under Section 161 Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947, hereinafter referred to as the Act, along with one Hari Mohan Choudhary, who was hauled up under the said two provisions read with Section 109 Indian Penal Code. The Special Judge Shri T. K. Pal found the appellant guilty on both the charges and sentenced him to one year's rigorous imprisonment on each count with the dire

Judgement :

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direction that the sentences shall run concurrently. In addition, he sentenced him to a fine of Rs. 100 Under Section 5 (2) of the Act or in default two months' rigorous imprisonment. The other accused was acquitted. Kamini Kumar challenges the validity of his conviction and sentence in the instant appeal.

2. The occurrence culminating in the prosecution of the two persons, each one of whom was then an Assistant Tahasildar, took place on 2nd of December, 1962, at Mohan-pur Bazar, Police Station Kotwali. In those days, according to the prosecution story, Kerosene oil was in great scarcity and so could be had only on the basis of permit issued by the Government. Such permits were given to the citizens on production of Adda tax receipts. Sachindra Chandra Deb Nath, P.W. 1, a resident of the village Ranirgao, went to the shop of Manindra Sarkar P, W. 4 in Mo-hanpur Bazar on 2-12-1962, on learning that Tahasildars were camping there for issuing the Adda tax receipts. He found, on reaching that shop, that the accused Kamini Kumar, the appellant, was sitting outside that shop, while the other accused Hari Mohan had taken seat inside the shop. He enquired from Kamini Kumar the amount he had to pay for getting Adda tax receipt. The accused in turn enquired from the witness if he had any landed property and on getting a reply in the negative, he (the accused) told the witness that 8 annas had to be paid by way of Adda tax and in addition he would be charged Re. 1/- by way of costs. Sachindra Deb Nath pleaded his inability to pay the additional sum of Re. 1/, Kamini Kumar then told him bluntly that without payment of that Re. 1/-no Adda tax receipt could be issued to him with the consequence that he would not get any coupon for purchase of kerosene. Sachindra Deb Nath felt downcast and so left for his house from where he returned a short while after with Re. 1/8/- on his person. This time he noticed that P.W. 6 Bir Chandra Deb Nath, a member of the Panchayat of his village, was standing close to the two accused. He, therefore, took Bir Chandra into confi--dence and requested him to prevail upon the two accused not to charge him the extra amount of Re. 1/-. Bir Chandra obliged him by approaching Kamini Kumar with the request to issue Sachindra Debnath the Adda tax receipt only on charging him 8 annas, the amount of the tax, but the only concession which Kamini Kumar could make on account of intercession of this witness was that he showed willingness to charge in all Re. 1/- for issuing the Adda tax receipt. Sachindra then paid Re. 1/- to Kamini Kumar and the latter

issued the receipt Ext. P-I showing that Sachindra had been charged only 8 annas by way of Adda tax.

3. Sachindra did not feel reconciled to the illegal charge of 8 annas levied by Kamini Kumar. He, therefore, went on the next day, 3-12-1962, to Mohanpur Bazar to contact Jatindra Majumdar P.W. 2, an Homoeopathic practitioner, who was then Pra-dhan of the Gram Panchayat of village Purba Noagao. However, he could not meet the Doctor on that day. He, therefore, revisited his shop on the 4th of December and found him present on the premises. The occurrence of 2nd December was narrated before the Doctor and the latter drafted the report Ext, P-2 at the instance of Sachindra, who then went to the police station Kotwali and made over that report to the Sub-Inspector. A case was registered on the basis of that report. The Sub-Inspector collected the Adda-tax receipt Ext. P-I produced before him by Sachindra.

4. On 542-1962 the Sub-divisional Magistrate, Sadar, permitted Shri Ramanuj Bhattacharjee, the Circle Inspector, Kotwali, to investigate into the case, registered against the two accused. On 6th of November, 1963, the District Magistrate, Tripura, sanctioned the prosecution of both the accused Under Section 161, Indian Penal Code and Sections 5 (1) (a) and 5 (2) of the Prevention of Corruption Act. On completing the investigations the two accused were charge-sheeted with the result already indicated above.

5. Both the accused entered the plea of not guilty. Their defence in substance was that they had been falsely implicated at the instance of Doctor Jatindra Kumar, who exercised influence both on the first informant Sachindra and the alleged ocular witness Bir Chandra. Doctor Jatindra Kumar bore a deep grudge against the two accused, it was suggested during the cross-examination of the prosecution witnesses, because they (the accused) had taken steps for realisation of arrears of revenue extending over several years and amounting to a large sum respecting a big jote in village Purba Noagao of which that Doctor is a co-sharer. The accused, however, did not lead any evidence in support of their defence.

6. The prosecution examined 7 witnesses in all. The learned Special Judge held that Kamini Kumar had actually extorted 8 annas from Sachindra by way of illegal

gratification for issuing the Adda tax receipt Ext. P-I in his favour. In support of that finding reliance was primarily placed on the testimony of Sachindra and Bir Chandra.

7. The 1st point urged by Shri B. C. Deb Barma, the learned Advocate representing the appellant, was that the Special Judge had seriously erred in law in placing reliance on the uncorroborated testimony of Sachindra and Bir Chandra, who, he contended, were no more than accomplices in the crime alleged, ly committed by Kamini Kumar. In support of that contention he placed reliance on the decision in *Pyarey Mohan v. State* : AIR1956 All358 , in which it was held that where several Railway servants were prosecuted Under Section 120-B, Indian Penal Code and Section 5 of the Prevention of Corruption Act for having entered into a conspiracy not to allot wagons or book goods without exacting bribes at a time when there was great shortage of wagons, the Forwarding Agents and the Commission Agents or Merchants, who were alleged to have paid bribes to the accused, in order to get as many wagons or booking as possible, cannot be considered as the victims of bribery and that they having taken full advantage of the alleged corruption to enrich themselves cannot be treated but as accomplices. Shri H. C. Nath, the learned Government Advocate, submitted, on the other hand, that there was absolutely no justification for branding Bir Chandra as an accomplice and that the first informant Sachindra also did not fall in that category inasmuch as he was reluctant to pay the extra 8 annas but was relieved of that amount by Kamini ,&' Kumar under the pressure that the latter would not issue him the Adda tax receipt and so he would not be able to get the Kerosene permit. He cited the cases of *Srinivas Mall v. Emperor* A.I.R. 1947 PC 135; *K.S. Nirmal-kumar Sinhji v. State* A.I.R. 1954 Sau 55 and *P. K. Subbiah v. The State* A.I.R. 1952 Tripura 1, to reinforce his submission respecting Sachindra.

8. The term 'accomplice' is not defined in any of the Indian Acts and so it has to be presumed that it has been used in the Evidence Act in its ordinary sense, or in other words according to the Dictionary meaning thereof. The New Oxford Dictionary says that 'accomplice' may be spelt as 'a complice', meaning a partner in crime, an associate in guilt. The words 'partner' and 'associate' have their apparent connotation. Obviously, when bribe is extorted and the giver is not a

willing participant but a victim, he cannot be appositely described as an accomplice for he is neither a partner nor an associate in the crime committed by the bribetaker. Actually, he resisted the illegal gratification demanded from him but could not ultimately stand the pressure put on him. Not quite unoften such a giver of money or other valuable article seriously and genuinely resents when he is called upon to pay but nevertheless finds no way out of the situation and the circumstances he is confronted with. A distinction may, therefore, well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under threat of pecuniary loss or harm or under coercion. Persons falling under the latter category can hardly be called accomplices as they were only victims of the coercive measures to which they were subjected and not willing participants in offering illegal gratification. The Privy Council held in the case of *Srinivas Mall A.I.R. 1947 PC 135 (supra)* that no doubt the evidence of accomplices ought, as a rule, to be regarded with suspicion but the degree of suspicion which will attach to it must, however, vary according to the extent and nature of the complicity. Sometimes, their Lordships observed further, the accomplice is not a willing participant in the offence but a victim of it. With these observations the Privy Council rejected the plea of the appellant Srinivas that reliance should not be placed on the uncorroborated evidence of accomplices with the finding that when 'the accomplices act under a form of pressure which it would require some firmness to resist, reliance can be placed on their uncorroborated evidence.'

9. The Allahabad authority cited by Shri Deb Barma is clearly distinguishable on facts. There the Forwarding Agents, the Commission Agents and the Merchants, who were cited as prosecution witnesses, were alleged to have paid bribes to the accused in order to get as many wagons or as much booking of goods as possible, with a view to enrich themselves during a period when there was great shortage of wagons and consequent difficulty in getting the goods booked. In our case, on the contrary, Sachindra made attempts to avoid paying illegal demand made on him firstly by his personal entreaties and then through the intercession of Bir Chandra, who then enjoyed the status of a member of the Panchayat, but had to part with money being left with no alternative. Therefore, it cannot be urged that Sachindra had paid the bribe willingly or with a view to make any profit out of the

official act, done by Kamini Kumar, viz., issuing him the Adda tax receipt on charging him the requisite fee of 8 annas. Hence, strictly speaking, Sachindra falls in that category of witnesses which the Privy Council had to deal with in the case of Srinivas cited above and the conviction of appellant can be sustained on the basis of his uncorroborated testimony. At any rate, the statement of Sachindra gathers corroboration in all material particulars from the testimony of Bir Chandra who, as I will presently show, cannot be described as an accomplice by any accepted interpretation of that expression.

10. Bir Chandra deposed, as P.W. 6, that on the date of occurrence at about 3-30 or 4 P. M. Sachindra P.W. 1 came to the shop of Mahindra Sarkar in Mohanpur Bazar where the two accused were issuing Adda tax receipts, that when Sachindra requested Kamini Kumar for issuing him such receipt the latter demanded a total sum of Rs. 1-8-0, that Sachindra consequently requested him to intercede on his behalf so that he had not to pay more than 8 annas, the legal charges, and he consequently requested Kamini Kumar to issue the Adda tax receipt to Sachindra against the payment of 8 annas only, that Kamini Kumar told him in reply that since he (the witness) had made a request to him he would charge Sachindra Re. 1/- in all instead of Rs. 1-8-0, and that thereafter Sachindra paid Re. 1/- to Kamini Kumar in his presence and that amount was pocketed by that accused. Shri Deb Barma urged during the course of arguments that the statement of Bir Chandra indicates clearly that he had requested Kamini Kumar to charge Sachindra 8 annas instead of Re. 1/- by way of illegal gratification and not that the accused should charge only 8 annas, the legal fee, for issuing the Adda tax receipt. I challenged Shri Deb Barma to take me through the statement of the witness with a view to establish that it can bear the interpretation placed by him on it. The statement was read in Court but Shri Deb Barma was unable to satisfy me that it was capable of bearing such interpretation. After going through the testimony of Bir Chandra once again I feel satisfied that he had never offered to Kamini Kumar anything more than the legal charges of 8 annas on behalf of Sachindra. The mere fact that he was present when Kamini Kumar charged 8 annas by way of illegal gratification from Sachindra would not make Bir Chandra an accomplice. I may add that the burden of proving that a particular witness answers the description of an accomplice squarely rests upon the party alleging it.

Therefore, it was for the accused Kamini Kumar to convince this Court that on the basis of his own testimony or some other materials, available on the record, the witness Bir Chandra could aptly be described as an accomplice. He clearly failed in discharging that burden and so I hold that Bir Chandra is not an accomplice.

11. Shri Deb Barma, I would like to mention, did not urge even casually that Bir Chandra was an undependable witness. Nothing could be elicited from the witness during his cross-examination to show that he had any motive or purpose in falsely involving Kamini Kumar in the present case. The statement of Sachindra himself also does not suffer from any infirmity. Though it was contended in this Court that Sachindra was under the thumb of Doctor Majumdar and the latter had availed of his services and those of Bir Chandra to wreak his own vengeance against the two accused, but not a suggestion was made to Sachindra, or for that matter to Bir Chandra, during cross-examination that either of them had implicated the accused falsely at the instance of Doctor Majumdar. Hence, I feel safe in relying upon the testimony of Sachindra and Bir Chandra in reaching the conclusion that the former had been illegally charged 8 annas by Kamini Kumar.

12. The next point, raised by Shri Deb Barma, was that the sanction for the prosecution of the appellant given in terms of Section 6 (1) of the Act was legally defective and as such the trial stands vitiated. In support of that submission reliance was placed on the Supreme Court decision in the case of *Jaswant Singh v. State of Punjab* : 1958 CriLJ265 . Section 8 (1) of the Act provides that no Court shall take cognizance of an offence punishable Under Section 161 or Section 164 or Section 165 of the Indian Penal Code or Under Section 5 (2) of the Act, alleged to have been committed by a public servant, except with the previous sanction of the authorities mentioned therein. It was not disputed by Shri Deb Barma that the District Magistrate, Tripura, could have given the sanction for the prosecution of the appellant. The prosecution, placed on the record the letter Ext. P-12, addressed by the District Magistrate to the Superintendent of Police, Tripura, in proof of the sanction for prosecution. The subject mentioned in the heading of the letter is: 'Sanction to the prosecution Under Section 161, Indian Penal Code read with the Sections 5 (1) (a) and 5 (2) of the Prevention of Corruption Act, 1947 (Act of 1947).' In the body of the letter it is mentioned that the District Magistrate has

'Gone through the case records' and that he was satisfied 'that the prima facie case Under Section 161, Indian Penal Code read with Sections 5 (1) (a) and 5 (2) of the Prevention of Corruption Act (Act II of 1947) has been made out against the accused (1) Kamini Kumar Deb Barma and (2) Hari Mohan Choudhury, Assistant Tahsildars.' In the second para of the letter it is stated that 'Sanction to the prosecution Under Section 161, Indian Penal Code read with Sections 5 (1) (a) and 5 (2) of the Prevention of Corruption Act, 1947 against the aforesaid accused is hereby-accorded'. The last para of the letter, comprising a short single sentence, reads: 'Case records are returned herewith'.

13. Shri Deb Barma urged that it was obligatory for the District Magistrate to outline, in the letter of sanction itself, the facts constituting the offence, on the basis of which he had sanctioned the prosecution. In the case of Jaswant Singh (supra) the Supreme Court observed that the sanction under the Act is not 'intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. It was stated further that the object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden and that it should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution. Lastly, it was observed that the facts should be set out in the sanction itself indicating that the sanctioning authority had applied its mind to the facts and the circumstances of the case. However, it was added that it could also be proved aliunde that the sanctioning authority had taken the evidence into consideration before sanctioning the prosecution. In support of these observations reliance was placed on the Privy Council case Gokulchand v. The King A.I.R. 1948 PC 82. There Clause 23 of the Cotton Cloth and Yarn (Control) Order of 1943, which almost corresponds to Section 6 (1) of the Act, had to be interpreted. The Privy Council held that 'it is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential since Clause 23 does not require the sanction to be in any particular form, nor even to be in writing,' However, the Privy Council added, 'if the facts constituting the offence charged are not shown on the face of the sanction,

the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority.' It would appear from these two authorities, one of the Supreme Court and the other of the Privy Council, that the sanction for prosecution is not a mere formality and that to clothe the sanction with legality it is essential that the prosecution should establish that the facts constituting the offence, for which the sanction was granted, had been considered by the authority before sanctioning the prosecution. At the same time it looks abundantly clear that no particular form of sanction is either prescribed by Section 6 (1) of the Act or is enjoined by any of the judicial pronouncements.

14. It is in the background of the principles stated above that the sanction given by the District Magistrate in the present case has to be examined to determine its legality or otherwise. In the opening sentence of the letter, Ext. P-12, it is unequivocally mentioned that the District Magistrate had gone through the case records, and in the last para of the letter it is stated that the case records were returned to the Superintendent of Police. The Investigating Officer Ramanuj Bhattacharjee, P.W. 7 affirmed that on 4-10-1963 he moved the District Magistrate, Tripura, through the Superintendent of Police for giving sanction for the prosecution of the two accused and that he happened to send all the relevant papers including the case diary to the Superintendent of Police. This statement of the witness was not challenged in cross-examination, Hence, the testimony of the Investigating Officer and the recitals in the letter Ext. P-12 constitute between themselves convincing evidence of the fact that all the materials collected during the investigation had been sent to the District Magistrate when the latter was requested for sanctioning the prosecution of the two accused. Further, the first para of the letter reciting that the District Magistrate had gone through the case records and he felt satisfied that a prima facie case Under Section 161, Indian Penal Code read with Sections 5 (1) (a) and 5 (2) of the Act had been made out leaves no room for doubt that all the material facts had been examined by the District Magistrate before he gave the sanction. Hence, all the requirements of Section 6 (1) of the Act as interpreted by the Supreme Court are proved to have been complied with. I would, therefore, hold, repelling the argument to the contrary raised by Shri Deb Barma, that there was valid sanction for the prosecution of both the accused.

15. The last point, canvassed by Shri Deb Barma, was that the trial of his client is legally invalid and so his conviction as also the sentence imposed on him are unsustainable for the reason that the investigation of the case had been conducted in violation of Section 5-A of the Act. Undoubtedly, that Section provides, inter alia, that normally the investigation of the offence punishable Under Section 161, Indian Penal Code and Section 5 (2) of the Act should be done by a Deputy Superintendent of Police. But that provision is subject to an exception mentioned in the Section itself. A Police Officer below the rank of a Deputy Superintendent of Police can investigate such offence provided he secures an order to that effect from a Magistrate of the first class. Admittedly, in the present case the investigation was done by an Inspector of Police, and obviously he could have done so if he had been authorised by a Magistrate of the first class. It was contended by the learned Government Advocate that the Inspector Ramanuj Bhattacharjee had secured an order dated 5-12-1962, from the Sub-divisional Magistrate Shri K. P.C.hakra- barty, who exercised powers of Magistrate of first class, permitting him to investigate the case. In support of that submission reliance was placed on the testimony of the Inspector Ramanuj Bhattacharjee and the document Ext. P-10. This document is a letter which was addressed by the Superintendent of Police on 5-12-1962 to the Sub-divisional Magistrate, Sadar, Agartala, requesting that Shri Ramanuj Bhattacharjee, the Circle Inspector, Kotwali, be empowered to investigate case No. 5 registered on 4-12-1962 Under Section 161, Indian Penal Code at the Kotwali Police Station. On the same date the Sub-divisional Magistrate Shri K. P.C.hakraborty passed an order on the letter itself which reads: 'Sri R. Bhattacharjee C. I. Kotwali is empowered to investigate into the case'. Shri Deb Barma did not contest the facts that the letter Ext. P-10 had been addressed by the Superintendent of Police to the Sub-divisional Magistrate, Sadar, that the latter Officer had made the order just reproduced, and that Inspector Ramanuj Bhattacharjee started the investigations after the Sub-divisional Magistrate had passed the order. However, he urged on the authority of : 1959 CriLJ920 , The State of Madhya Pradesh v. Mubarak Ali, that before an order made by a Magistrate empowering police officer below the rank of a Deputy Superintendent to investigate a case can be declared valid, it is essential that the order should disclose on the face of it the reason for giving the permission, and

that if for any reason that salutary practice is not adopted in a particular case, it is the duty of the prosecution to establish, if that fact is denied, that the Magistrate in fact had taken into consideration all the relevant circumstances before granting the permission to a subordinate police officer to investigate the case. The Supreme Court held further that where it appears that the Magistrate in granting the permission did not realise the significance of his order giving permission, but only mechanically issued the order on the basis of the application which also did not disclose any reason in support of it, the provisions of Section 5-A of the Act are not complied with. The observations made by the Supreme Court in the earlier case of *H. N. Rishbud v. State of Delhi* : 1955 CriLJ526 , where it was held that the provisions of Section 5-A of the Act are mandatory and not directory and that the investigation conducted in violation thereof bears the stamp of illegality, were cited with approval in the case of *Mubarak Ali* A.I.R. 1959 SC 707. Therefore, there is no getting out of the conclusion that if the Investigating Officer had not been authorised to undertake the investigation according to the letter and spirit of Section 5-A of the Act as interpreted by the Supreme Court in the two cases of *H. N. Rishbud* and *Mubarak Ali*, the investigation shall be illegal.

16. However, that conclusion would not without more lead to the consequence that the trial, held on the basis of police report founded on such illegal investigation, must necessarily stand vitiated. Section 537, Criminal Procedure Code enacts that subject to the provisions contained in the Act, no finding, sentence or order, passed by a Court of competent jurisdiction, shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice. On the authority of this statutory provision the Supreme Court held in the case of *H. N. Rishbud* A.I.R. 1955 SC 196 (supra) that 'if cognizance is in fact taken on a police report in breach of a mandatory provision relating to investigation the results which follow cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice.' The Supreme Court observed in para 10 of its judgment that 'when such a breach is brought to the notice of the Court at an early stage of the trial the Court will have to consider the

nature and extent of the violation and pass appropriate orders for such re-investigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act.' It was held further that 'where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby'. All these observations were cited with approval in the case of *Munnalal v. State of U. P.* : 1964 CriLJ11 , as also recently in the case of *Sailendraixath v. State of Bihar* A.I.R. 1968 SC 1292. Therefore, assuming that the order Ext. P-10 suffers from any legal infirmity the precise question that arises for determination is what is the consequence that follows or what is the implication of that infirmity. The record does not indicate that Kamini Kumar had raised any specific objection in regard to the alleged invalidity of the investigation until the stage of arguments had been reached in the Court of Special Judge, which stage obviously was not 'an early stage in the trial' to use the words of Supreme Court in the case of *Rishbud* (Supra). Undeniably, the stage at which the objection was raised for the first time was so late that no useful purpose could have been served if the Special Judge had ordered fresh investigation, on keeping the case pending with him. The prosecution had by then committed itself so firmly as not to change its stand by a jot. Therefore, the only foot-hold which could be availed of by the accused is that the illegality in the investigation had occasioned him prejudice in the matter of his trial, Shri Deb Banna was, however, unable to satisfy this Court that any prejudice had been caused to the accused as a result of investigation done by Inspector Ramanuj Bhattacharjee; nor is any such prejudice discernible on the face of the record.) Therefore, I see no justification for the contention that the trial stands vitiated. Nevertheless, I must express my regret, as was done by the Supreme Court in the case of *Sailendranath*, that though the letter Ext. P-10 addressed by the Superintendent of Police to the Sub-divisional Magistrate, Sadar, did not recite the facts of the case or what led him to request the Sub-divisional Magistrate for permitting an officer below the rank of Deputy Superintendent of Police to investigate the case, the Sub-divisional Magistrate also, as is evident from his brief order written on the same letter, did not disclose the reasons which weighed with him in granting the permission asked for. The Magistracy cannot

surrender its discretion in the matter of making orders, Under Section 5-A of the Act, to the police as they are expected to exercise the same having regard to the relevant materials made available to them at the stage of granting permission, besides being satisfied that there are good reasons owing to exigencies of the administrative convenience to entrust a subordinate officer with the investigation in a given case. It was observed in the case of Mubarak Ali (supra) that the statutory safeguards provided by Section 5-A of the Act must strictly be complied with for they were conceived in public interest and were provided as a guarantee against frivolous and vexatious prosecutions. I hope various Magistrates working in this Territory would take note of these observations of the Supreme Court while passing orders Under Section 5-A of the Act in future. Anyway, in the instant case I hold that since the appellant has failed to establish that any prejudice had been occasioned to him consequent on the illegal investigation carried out by Inspector Ramanuj Bhattacharjee, the trial that followed that investigation cannot be said to have been vitiated.

17. This brings us to the consideration of the question whether the sentence imposed on Kamini Kumar is appropriate or excessive. The pecuniary advantage secured by him by abusing his position as a public servant is really paltry, being 50 paise. Undoubtedly, Sub-section (2) of Section 5 of the Act provides that a public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years, besides his liability to fine. But the proviso appended thereto enacts that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year. Sub-section (2-A) of Section 5 of the Act states that where a sentence of fine is imposed under Sub-section (2), the Court, in fixing the amount of fine, shall take into consideration the amount or value of the property which the accused person has obtained by committing the offence of criminal misconduct. Obviously, the Parliament does attach importance to the amount or value of the ill-gotten property in determining the sentence to be imposed on the person found guilty. Section 161, Indian Penal Code provides a sentence of imprisonment of either description for a term which may extend to three years, or of fine, or both. In view of the small amount involved in the instant case and in the background of the fact that the conviction shall

necessarily cost Kamini Kumar his service as also possibly the pension which he might have earned, I feel clear that sentence of fine of Rs. 100/- would be sufficient for the charge Under Section 161, Indian Penal Code. Since, however, Section 5 (2) of the Act makes some punishment by way of imprisonment compulsory for a charge Under Section 5 (1), I think the maximum benefit of the proviso to that Sub-section must be given to Kamini Kumar for the reasons just stated. Hence I reduce the sentence under that provision to imprisonment till rising of the Court and a fine of Rs. 100/- or in default one month's rigorous imprisonment. Another relevant consideration which has weighed with me in reducing the sentence is that the offence was committed more than 7 1/2 years ago and so it would look odd that the man should be sent to jail for a short period.

18. As a result of the conclusions recorded above, I reject the appeal subject to the reduction in the sentence to the extent indicated in the last paragraph.

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