

Emperor Vs. C.E. Ring

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SooperKanoon Citation : sooperkanoon.com/327900

Court : Mumbai

Decided On : Jan-31-1929

Reported in : (1929)31BOMLR545

Judge : Mirza and; Murphy, JJ.

Appeal No. : Criminal Appeals Nos. 487, 503, 504 and 518 of 1928

Appellant : Emperor

Respondent : C.E. Ring

Judgement :

Mirza, J.

1. The appellants-accused and the original accused No. 8 were tried jointly before the Sessions Court at Belgaum, accused Nos. 1, 2 and 8 on charges under Sections 120 B, 161 Indian Penal Code, and accused Nos. 4 to 10 on charges under Section 120B, 161 Indian Penal Code. The jury unanimously found accused Nos. 1 and 2 guilty on all charges, and accused No. 3 guilty on charges under Rs. 120B and 161 . The jury by a majority of three to two found accused No. 3 guilty under Section 163, Indian Penal Code, and accused Nos. 4 to 7 and 9 and 10 guilty on all charges; the jury found accused No. 8 by a majority of four to one not guilty of any offence. The Sessions Judge accepted the verdict of the jury, acquitted accused No. 8, and sentenced the remaining accused to various terms

of imprisonment and fines.

2. The appellants have urged that the trial was vitiated owing to (1) a misjoinder of charges and parties accused; (2) certain misdirections and non-directions amounting to misdirections to be found in the learned Judge's charge to the jury; (3) wrongful admission of certain matters in evidence; (4) refusal by the learned Judge to allow accused No. 1 to annex to his written statement at his trial a synopsis of his service record in the police force.

3. The charges framed at the trial were as follows:-

That between 28-8-1926 and 1-12.1926 at Belgaum and at Jugul

(1) you accused 1 to 3 agreed together to receive a gratification other than legal remuneration from both the parties concerned in the complaint of Sanmalappa Narsappa ftaik against accused Nos. 4 to 9 and Adivappa Mai-gauda,

(2) that in pursuance of the said conspiracy, each of you accused 1 to 3, being public servants in the Police Department, accepted such illegal gratification in the shape of Rs. 500, Rs. 200 and Rs. 200 respectively from the said Sanmalappa, as a motive for yourself showing favour to him or for inducing the others among you by the exercise of personal influence to show favour to the said Sanmalappa in the exercise of official functions.

(3) that further in pursuance of the said conspiracy you accused No. 3 accepted for yourself and for accused 1 and 2 such illegal gratification in the shape of Bs 1000 in cash from accused 4 to 10 and Adivappa Malgauda as a motive for showing favour in the exercise of official functions to accused 4 to 9 and Adivappa in respect of the said complaint filed by the said Sanmalappa.

(4) that you accused 4 to 10 agreed together to offer gratification other than legal remuneration to accused 1 to 3 as a motive for showing in the exercise of official functions favour to accused 4 to 9 and Adivappa in respect of the said complaint either personally or by inducing one another among these three accused by exercising personal influence and actually paid Rs. 1000 to accused No. 3 in pursuance of the said conspiracy and that thereby, accused 1 to 3 committed

offences punishable under Sections 120B, 161, and 163 of the I.P.C.,

and

accused 4 to 10 committed offences punishable under Sections 120B, 161, 163 and 114 of the I.P.C.

and within the cognizance of the Court of Session of Belgaum.

4. It is contended that a simultaneous trial on all these charges contravenes Sections 233, 234, and 235 and does not fall under Section 239(d) of the Criminal Procedure code. It is urged that the transactions set out in the charges cover a period between August 28ⁱ 1926, and December 1, 1926, and are alleged to have occurred some at Belgaum and some at Jugal. Some of the transactions, it is contended, were between the accomplice Sanmalappa on the one hand and accused No. 3 acting for himself on the other; that some transactions were between Sanmalappa and accused No. 1 acting for himself. Certain other transactions it is contended were between Sanmalappa and accused No. 2 acting for himself. Similarly, it is further contended that certain transactions were between accused No. 3 acting on his own behalf on the one hand and accused Nos. 4 to 10 acting on behalf of themselves on the other. It is contended that at least two different conspiracies are charged, the common object of one conspiracy being subversive of the common object of the other. The charges, it is urged, are tantamount to this that accused Nos. 1, 2 and 8 are charged with having conspired with one another to accept illegal gratification from Sanmallappa and are charged also with having conspired with one another to accept illegal gratification from accused Nos. 4 to 10. Accused Nos. 4 to 10, it is urged, are at the same time charged with having conspired with one another to offer illegal gratification to accused Nos. 1, 2 and 8 and to aid and abet them in their conspiracy to receive illegal gratification. Thus it is contended there are several distinct conspiracies. It is also contended that the common object of the takers of illegal gratification is not the same as that of the givers, It is urged that accused Nos. 4 to 10 cannot *Vie* said in any sense to share in the common object and purpose of accused Nos. 1, 2 and 3 and vice versa.

5. The accused No. 1 was a Deputy Superintendent of Police and the senior officer of accused Nos. 2 and 3 who were both Police Inspectors in the same District. Sanmalappa had made a complaint that accused Nos. 4 to 9 and one Adivappa Malgauda had extorted from him a certain valuable document. It was his desire that accused Nos. 4 to 9 and Adivappa should be prosecuted and punished in respect of the alleged act of extortion. Accused Nos. 4 to 9 were interested in refuting such charge and accused No. 10 and Adivappa were helping them in the matter. It is urged therefore that the interests of the two parties were adverse to each other and there was no common object in which they could be said to have joined.

6. The objection to the trial on the ground of misjoinder of charges and parties if upheld would vitiate the trial. In *Subrahmanya Ayyar v. King-Emperor* I.L.R.(1901) Mad. 61. their Lordships of the Privy Council have ruled that the disregard of an express provision of law as to the mode of trial is not a mere irregularity such as could be remedied by Section 537 of the Criminal Procedure Code.

7. Section 233 of the Criminal Procedure Code provides that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236, and 239. The prosecution rely upon the exception contained in Section 239(d), which provides that persons may be charged and tried together where they are accused of different offences committed in the course of the same transaction. What the Court has to determine, therefore, is, as was laid down by a Divisional Bench of this Court in *Emperor v. Ganesh Narayan* : (1912)14BOMLR972 whether there was a complete unity of project, and the whole series of acts were so linked together by one motive and design as to constitute one transaction. In *Emperor v. Madhav Laxman* 20 Bom. L.R. 607 another Divisional Bench of this Court has given a similar ruling to the effect that in offences committed in the same transaction within the meaning of Section 239 of the Code of Criminal Procedure there should be clear proximity of time and space, clear continuity of action, and sufficiently specific community of purpose. In *Emperor v. Sejmaj Poonamchand* 29 Bom. L.R. 170 Crump J, has made the following observations (pp. 325-26):-

Each case must (in my opinion) be considered on its merits, and, therefore, it is peculiarly true here that no case can be an authority except upon its own facts. The test, I take it, is whether the two persona concerned are engaged in one transaction, and to determine that it is necessary to regard the facts from the point of view of those two persons. If they are animated by a common purpose, and there is continuity in their action, then surely there is one trans action so far as they are concerned. It may even be that community of purpose is not necessary, but I speak strictly with reference to the alleged facts of this case.

8. The four charges are capable, in the first instance, of being resolved into two separate groups. The first three charges have reference to the alleged conspiracy among accused Nos. 1,2 and 3 to receive illegal gratification from Sanmalappa and from accused Nos. 4 to 10 and Adivappa in the course of the investigation of the alleged offence of extortion. The fourth charge relates to abetment by accused Nos. 4 to 10 of offences under Sections 120B, 161, 163, Indian Penal Code, as well as the commission by them of offences under those Sections. So far as the first three charges are concerned, in my opinion, they present no difficulty and may be combined in the same trial under the provisions of Section 239(b) The main ingredient of these three charges is that the three police-officers, accused Nos. 1, 2 and 3, conspired together to receive illegal gratification from both the opposing parties in the police investigation, and in pursuance of such conspiracy they received illegal gratification from both parties in different sums and at different times and places. That the sums received were different and were received at different times and places would not, in my opinion, split up the transaction into so many separate transactions so as to require separate trials in respect of each of them. The fourth charge does not appear to be happily worded but clearly enough conveys the meaning that accused Nos. 4 to 10 conspired together to offer illegal gratification to accused Nos. 1 to 3 and in pursuance of that conspiracy paid to accused No. 3 Rs. 1,000. The law punishes the giver as well as the taker of the bribe, and the transaction must be regarded as one although there are two parties to it and separate offences may be said to be committed in respect of it. The common object which all the accused had in view was that the police investigation which accused No. 3 had in hand should be conducted by him not on its merits in the discharge of his public duty but corruptly in accordance with the illegal

gratification paid. The prosecution in my opinion were justified in combining the four charges in one trial.

9. It is contended on behalf of the appellants in the alternative that although there may be no illegality, the accused were prejudiced by having three charges combined in one trial as they necessitated the production of a mass of evidence directed to many different matters tending by its mere cumulative effect to create an undue suspicion and prejudice against the accused. Reliance is placed in this connection on the ruling in *Queen-Empress v. Fakirapa* I.L.R.(1890) 15 Bom. 491 and it is claimed that in the exercise of our discretion we should set aside the conviction and order a re-trial on certain modified lines. We have been taken in great detail over the record with a view to show that the joint trial of the accused must have prejudiced them owing to the mass of evidence led by the prosecution, parts of which were connected with some of the accused only and parts with others. I am satisfied from a perusal of the record that none of the accused has been materially prejudiced by this joint trial. When the main charge is one of conspiracy it is not possible always to have proof of direct meeting, of combination, or that the parties have been brought into each other's presence. To establish a charge of conspiracy, the agreement is very often to be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. See *Barindra Kumar Ghose v. Emperor* I.L.R(1909) .Cal, 467. It is unavoidable in such cases to have a large mass of evidence which taken separately may not appear to be relevant against every person accused of the offence, but taken in conjunction with the other evidence in the case may establish the conspiracy.

10. Taking a superficial view of the case, it would appear reasonable to hold that the dealings between accused Nos. 1, 2 and 3 on the one hand and Sanmalappa on the other stood in a different category from the dealings between accused Nos. 1, 2 and 3 on the one hand and accused Nos. 4 to 10 on the other and that the evidence of one set of such dealings might very well prejudice the case of the accused who are involved in the other set of dealings. It has been urged before us that the case of accused Nos. 4 to 10 could not but be prejudiced in this trial where the evidence of illegal gratification was gone into as between accused Nos. 1, 2

and 3 on the one hand and Sanmalappa on the other. No doubt if there were a separate trial of accused Nos. 4 to 10 from that of accused Nos. 1 to 8, on a modified charge some portions of the evidence which have gone on the record as relevant against accused Nos. 1 to 3 might not be considered to be relevant as against accused Nos. 4 to 10. In such a trial accused Nos. 4 to 10 would probably be charged with the offence only of having given illegal gratification to accused Nos. 1, 2 and 3 and possibly also with the offence of having abetted them in the receipt of such illegal gratification, But if the charge against accused Nos. 4 to 10 were that of having in addition to giving illegal gratification to accused Nos. 1, 2 and 3 also abetted them in the conspiracy to receive illegal gratification both from them and accused Nos. 1, 2 and 3, as are the charges in this trial, I fail to see what difference a separate trial on such charges would make to the accused in respect of the evidence that could properly be placed before the Court and the jury against them. In my opinion all the evidence given in this case would be necessary and relevant in such a separate trial on the same charges On the charges as framed I am of opinion that the admission of the various classes of evidence has not resulted in prejudice to any of the accused and there is no need for this Court to set aside the verdict and direct a new trial.

11. The misdirection complained of is that the learned Judge in his charge to the jury gave expression to his own opinion regarding certain parts of the evidence, It is admitted on behalf of the appellants that the Judge throughout his charge has several times cautioned the jury that they are not to accept his view of the evidence but should form their own appreciation of the evidence as they were the sole judges of facts. In view of the caution given by the learned Judge I do not see much force in this complaint, The complaint of non-direction to the jury relates to the various points which were urged in relation to the joinder of charges and parties. It is contended that the learned Judge should have directed the jury that the charges were multifarious and that the various transactions alleged had no connection one with the others. That would not have been a proper charge for the Judge to give to the jury. The main charge here being one of conspiracy it was the province of the jury to ascertain from the facts proved before them whether the conspiracy alleged by the prosecution was established by evidence. I fail to see any error in the learned Judge's charge to the jury on the ground of non-direction.

12. The next ground of complaint is that the learned Judge erroneously admitted certain evidence to the prejudice of the accused. Apart from the argument that the joint trial has resulted in the admission of evidence not directly relevant to the case of each accused in several particulars, counsel for the appellants have not been able to point to any evidence which has been wrongly admitted during the trial.

13. The next complaint made is that the learned Judge refused counsel's request on behalf of accused No. 1 to be allowed to put in a synopsis of his services in the police force as an annexure to the written statement he was allowed to put in at the end of the case for the prosecution. The procedure on this point is governed by Sections 289 and 342 of the Criminal Procedure Code. Section 289(1) provides that 'when the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence'. Section 342(1) provides that 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial,...put each questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence'. It is nowhere provided in the Criminal Procedure Code that the accused is entitled as a matter of right to put in a written statement in lieu of any answers he may give to questions put to him under Section 342 of the Criminal Procedure Code. Paragraph. 43, of our High Court Circular Orders (Criminal), is as follows :-

43. A practice seems to prevail in some Districts of accepting a written statement from an accused instead of examining the accused orally under Section 342, Criminal Procedure Code. This is clearly not contemplated by that section and such a practice is deprecated. The only case where the Code authorizes a written statement by an accused, is when he pleads to a charge in a 'warrant case under Section 256 of the Code. Even if the Magistrate accepts a written statement, it does not relieve him of his obligation to put questions to the accused under Section 342,...

This was evidently an attempt on the part of the first accused to place before the jury a synopsis of his service sheet with a view to base an argument on his behalf that he was a man of good character and not likely to have committed the offence with which he was charged. It was open to the accused to have relied on his good character in the main part of his written statement which he was allowed to put in. He could have relied on it in the oral answers he gave to the Court. He could have adduced evidence of good character at the close of the case for the prosecution. Mr. Kidd, the superior officer of the first accused, was examined as a prosecution witness, but no question was put to him on behalf of accused No. 1 with regard to his alleged good character in the service. The accused called no evidence. If he had called evidence to prove his good character the prosecution would have had a right to rebut that evidence. It is not shown that by refusing leave to counsel for the first accused to put in this synopsis as an annexure to the accused's written statement the learned Judge has contravened any provision of the law. It is not shown that the refusal of the learned Judge has prejudiced accused No. 1 in the trial. Accused No. 1 could have thereafter adduced evidence to prove the synopsis.

14. The next complaint made on behalf of the appellants is that the learned Judge treated the written statement of accused No. 2 as a confession and directed the jury to take it into consideration against him as well as his co-accused. It is urged that for an admission to amount to a confession it must clearly be a confession of the guilt of the accused and not an admission of certain facts from which the guilt of the accused may be inferred. Balance is placed in this connection on the ruling of the Allahabad High Court in *Queen-Empress v. Jagrup* I.L.R.(1885) All, 646 and rulings of this Court in *Empress v. Daji Narsu and Govinda Natha* I.L.R.1(1882) 6Bom. 288 and *Emperor v. Sanfya Bandu* (1909) 11 Bom. L.R. 633 It is clear from accused No. 2's written statement that it is self-exculpatory and should not, therefore, be taken into consideration against his co-accused.

15. Although, in my opinion, there has been a misdirection to the jury on the interpretation of accused No. 2's written statement, the misdirection has not in my judgment, in the light of the other evidence in the case, led to a miscarriage of justice or otherwise prejudiced accused No. 2 or his co-accused no as to vitiate

the trial. The learned Judge warned the jury not to take the explanation of accused No. 2 into consideration against his co-accused unless it was corroborated by the other evidence in the case.

16. The next complaint made is that the learned Judge left it to the jury to consider whether the witness Mallappa was or was not an accomplice. He says in his charge to the jury :-

And although Adivappa is clearly an accomplice, I am not at all sure whether you could look upon Mallappa Hanjgi as an accomplice, If therefore Chandorkar's story bears support from Mallappa, then this part of the case that accused No. 3 accepted bribe at Jugal for himself and accused No. 1 from accused Nos. 4 to 9 through the instrumentality of accused No. 10 is sufficiently borne out.

The first sentence taken by itself is capable of the construction placed upon it by counsel for the appellants; but what follows makes it clear that the learned Judge gave it as his opinion that Mallappa Hanjgi was not an accomplice. In that view of the matter it is further contended that the learned Judge was in error when he considered that Mallappa Hanjgi was not an accomplice. The evidence shows that Mallappa Hanjgi was consulted by accused Nos. 4 to 10 after they had agreed among themselves to pay the bribe of Rs. 1,000 to accused No. 3. Mallappa's evidence on this point is as follows:-

Sometime after midnight Adivappa came to me. He told me that it was agreed to pay Rs. 1000 and the work would be done and asked me to say if it should be done in that way. I told him if they could get the matter finished they may get it done. Next day Adivappa told me that the matter was finished after the payment of Rs. 1000.

17. It is contended on this evidence that Mallappa himself was an instigator to the bribe and must, therefore, be regarded as an accomplice. Mere knowledge that a bribe was to be given would not, in my opinion, make a person who has the knowledge a participator in the giving of the bribe. The part Mallappa played in this transaction was that of a passive recipient of the information, and his acquiescence in what had already been decided upon by the parties themselves

would not in the absence of an active instigation on his part make him, in my opinion, a participator in the offence. The learned Judge was right, in my judgment, in directing the jury to consider Mallappa's evidence as not being tainted by reason of his being an accomplice.

18. The result, in my judgment is that no substantial error of law is shown in the conduct of the trial. The Judge and jury having concurred in the verdict it is not open to the appellants to invite us to go through the record with a view to come to a different finding from what they have done. As we were taken through a greater part of the record on the law points relied on by the appellants, I may say that the evidence given by the accomplice witnesses Sanmalappa and others appears to be amply corroborated by independent evidence and the guilt of the accused seems to be satisfactorily established. We will not as a rule interfere with the verdict of a jury except when it is shown to be clearly and manifestly wrong. See *Queen-Empress v. Mania Dayal* I.L.R.(1886) 10 Bom. 497. In the circumstances of the present case where on the one side there were three police-officers acting in conspiracy with one another to demand and receive illegal gratification and were ready to make use of their official position to enforce such demand, the testimony of accomplices who were really victimised by them into offering them illegal gratification and had not willingly done so would require a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices. See *Deo Nandan Perahad v. Emperor* I.L.R(1906) . Cal, 649 . Sanmalappa, in my opinion, held such a position in relation to accused Nos. 1, 2 and 8.

19. So far as accused Nos. 1, 2 and 3 are concerned their appeals entirely fail and must be dismissed. The sentences passed on them by the learned Judge are lenient considering the betrayal of the trust reposed in them as public servants. Their convictions and sentences must be confirmed.

20. With regard to accused Nos. 4 to 7 and 9 and 10 they have been sentenced : accused Nos. 4 to 7 to six months' rigorous imprisonment and accused No. 10 to one year's rigorous imprisonment and a fine of Rs. 1000 or in default further six months' rigorous imprisonment. There is evidence to show that on August 22,

1926, when the document was alleged to have been extorted from Sanmalappa, accused No. 4 and Adivappa borrowed Rs. 600 from Dhulappa for the purpose of bribing, if necessary, the police-officers in any investigation that the offence in connection with the extortion of the document might necessitate-That would show preparation on the part of accused No. 4, and the co accused on whose behalf he was acting, to bribe the police if and when it became necessary to do so. As against this consideration it must be remembered that the police-officers of this District, accused Nos. 1, 2 and 6, were known to the parties to be corrupt and amenable to receiving bribes. Farther, it must be conceded in their favour that accused Nos. 4 to 9 have not yet been tried and convicted for having extorted the document from Sanmalappa as alleged by him. The Sub-Divisional Magistrate first dismissed the complaint on the report made to him by accused No. 3. He afterwards restored it to his file on an application made in that behalf by Sanmalappa but again dismissed it after taking some evidence. The accused Nos. 4 to 7 and 9 and 10 have paid accused Nos. 1, 2 and 3 Rs. 1000; they have had to stand a long and expensive trial, and have already served part of their sentences. In their case, in my opinion, the ends of justice would be met if we remit the remainder of their sentences of imprisonment. Their convictions are confirmed but sentences of imprisonment are altered to what they have undergone. The sentence of fine of Rs. 1000 or in default further six months' rigorous imprisonment on accused No. 10 to stand. The appeals of accused Nos. 1, 2 and 3 are dismissed and their convictions and sentences confirmed.

Murphy, J.

21. Appellants were tried jointly by the Sessions Judge of Belgaum with the aid of a jury, and, in accordance with the verdict, have been convicted under Sections 120B and 161 and Sections 120B, 161, 163, and 114 of the Indian Penal Code, and have been sentenced, in the former case, to two years' rigorous imprisonment and a fine of Rs. 1000, or six months' further rigorous imprisonment in default of its payment, and in the latter, to six months' rigorous imprisonment and a fine of Rs. 1000 or two months rigorous imprisonment in default of its payment.

22. In the circumstances, an appeal is only competent in so far as there have been illegalities in the trial which vitiate it, or misdirections in the charge to the jury.

23. The proceedings have been attacked on both these grounds, and we have to see whether the contentions on these points have been made out. [His Lordship after narrating the facts proceeded: The Sessions Judge and the jury have believed the story as a whole, that there was a conspiracy between the three policemen to stifle the investigation and to make both sides bribe them; and a conspiracy between accused Nos. 4 to 10 to bribe the policemen and so to obtain their support in the matter, and that these acts were carried out. The objections taken are technical. It is urged that the charge was illegal, because of the plurality of offences it alleges, and the trial consequently bad, and also because of the number of persons charged jointly.

24. We have been taken through the greater part of the evidence by Mr. Velinker. The distinct offences he alleged are:-

(1) the bribe of Rs. 200 received by accused No. 3 only,

(2) that of Rs. 500 received by accused No. 1 only,

(3) that of receiving Rs. 200 by accused No. 2 only,

(4) that of receiving Rs. 1000 by accused No. 3 only, from accused Nos. 4 to 10,

(5) Sanmalappa's conspiracy with accused Nos. 1, 2 and 3,

(6) accused Nos. 1, 2, and 3's conspiracy, and,

(7) accused Nos. 4 to 10's conspiracy.

25. It has been argued that accused Nos. 1 and 2 could not have been parties to the bribe of Rs. 200 taken by accused No. 3 and similarly in each case.

26. As to the illegal plurality of accused, the argument is that there was no common meeting ground, for all their interests were opposed, and that the two groups were not really concerned in the commission of different offences in the

course of the same transaction, and that the joint trial has prejudiced both groups of accused.

27. We have been referred to the following authorities: Emperor v. Datto Hanmant Shahapurkar 7 Bom. L.R. 633; Emperor v. Sherufalli . 4 Bom. L.R. 930; Emperor v. Ganesh Narayan : (1912)14BOMLR972 ; Emperor v. Jethalal 7 Bom. L.R. 527; Emperor v. Madhav Laxman 20 Bom. L.R. 607; and Emperor v. Sejmal Poonamohand 29 Bom. L.R. 170. Though these authorities have been of very great help, as illustrating the application of the general principles underlying the statutory rules as to the trial of accused persons jointly, and for several distinct offences at the same trial, it is clear that the facts must be properly apprehended before the principles can apply.

28. It is true that all acts and events are Linked together in a series of causes and effects, and that each cause and its effect can be separated mentally from all others, but in reality there is no independent act or event, for every effect depends not only on the immediate cause, but also on its collocation which includes all past and present acts and events.

29. But, on the other hand, there is a practical unity in men's actions, which enables us to draw a mental circle round an act, or event, or a series of them, and to call it, for practical purposes, a single transaction, though theoretically this may not be a true description.

30. I think that this is the idea underlying the expression 'in the course of the same transaction' used in Section 239 of the Criminal Procedure Code, and that the expression must be understood as including both the immediate cause and effect of an act or event, and also its collocation, or relevant circumstances, the other necessary antecedents of its occurrence, connected with it, at a reasonable distance of time, space, and cause and effect.

31. If I am correct in my analysis, the question here is, can it be said, as has been argued, that the facts I have set out and accepted as being true, though comprising many distinct acts and events, are so bound together in the way I have indicated, as to form a single transaction, within the meaning of the section I think

the answer must be in the affirmative. The complicated facts here are of course susceptible of almost indefinite analysis and resolution into separate acts, but what we have to see is whether all these acts and the persons doing them, are so connected together by some common ties in time, space and causation, that they in fact form a single transaction within the meaning I have given to the expression.

32. The case is one, as the charge stated, of conspiracy, not between Sanmalappa and the first three accused, but between these three accused between themselves to fleece the parties to a dispute, suitable for such a purpose, as not involving serious crime, but in reality a difference of a civil nature and one unlikely to attract the attention of the District Superintendent of Police, and a conspiracy by the remaining accused to stifle the investigation sought by Santnalappa.

33. Sanmalappa eagerly desired an investigation to be made while ~~ accused Nos. 4 to 9 as ardently wished to prevent one, while it was accused's duty to carry one out, and on the prosecution case, their desire to make as much money out of the quarrel as could be extracted from the parties to it, while they did nothing which, in effect, was siding with the other accused who have been tried with them.

34. The central fact was clearly the question whether an investigation into the charge should be made or not and with this question all the accused included in the trial, and Sanmalappa, were connected, and to its answer one way or another, all their actions in respect of this matter were directed.

35. There is thus a clear connection with a single transaction on the part of all the accused.

36. Coming to details, I think that the separate events of the bribing of accused Nos. 1 to 3 are also sufficiently connected. The argument that they were not so connected, rests on the assumption that accused Nos. 1 to 3 acted independently of each other. Three persons placed as were accused Nos. 1 to 3 may conceivably have done so, but on the evidence, it is extremely improbable that they did. They were all police officers of the same district, accused No. 1 being the senior. The evidence is that accused No. 1 was first approached through Dr.

James, and referred Sanmalappa to accused No. 3 after listening to his story. Accused No. 3 then, after a pretence at an investigation, extorted Kb. 200. Sanmalappa then went to the others and had to pay to each. In the circumstances, if as is alleged they were all dishonest, it is not possible to believe that they were not cognizant of each other's proceedings, and each bleeding Sanmalappa in turn with a common purpose. The organization of the police hierarchy of a district forbids the possibility that they were all acting independently and in ignorance of each other's doings, and the weight of the evidence, to all of which we have had our attention drawn in the very lengthy arguments addressed to us, also negatives any such possibility. I think there is no doubt that all three of the policemen accused were well aware of all the circumstances and of each other's actions, and that had this not been the case the business of bleeding Sanmalappa to the limits of his finances, and accused Nos. 4 to 9 to the extent of Rs. 1000, could not have been carried through. There is no doubt that accused Nos. 1 to 3 acted in concert throughout, and that the charge against them is proper.

37. The facts in respect of the charge of conspiracy against accused Nos. 4 to 9 are, I think, very similar. A police investigation was threatened against them and the charge is that they conspired together to prevent its being carried out by bribing accused Nos. 1 to 3 with a payment of Rs. 1000. This sum is said to have been paid to accused No. 3, but it is not necessary to show that it was intended for all three policemen. If there was a conspiracy among the policemen, payment of a lump sum to one of them would be enough, and on the evidence and the probabilities I think it is clear that the contestants here knew exactly what was happening on the other side.

38. I do not consider the charge of conspiracy against these accused is mistaken, or illegal.

39. The next question is, should they have been tried and charged with accused Nos. 1,2, and 3 The allegation is that they have been much prejudiced by a trial which involved the hearing of masses of evidence relevant as against their co-accused, but irrelevant to the charge against them, which is in reality that they abetted the policemen's offences Under Sections 161 and 168. I am doubtful if in

fact they had been tried separately any evidence now on the record could have been excluded as irrelevant. Speaking broadly, the evidence which might be said not to be directly in point is that relating to the bribes, paid by Sanmalappa. But the fact that Sanmalappa was bribing the police to start an investigation against them, would clearly have been provable by the prosecution as an explanation of the circumstances and of these accused's actions, and I do not accept the contention that the joint trial has affected them from this point of view, so as to invalidate the proceedings. The only plausible argument is that the evidence given in connection with Sanmalappa's bribe may perhaps have convinced the jury of the policemen's guilt in that connection, and so rendered its members too ready to accept the story that these accused also had bribed the policemen to secure, what did in fact happen, the report adverse to Sanmalappa and the dismissal of his complaint. But this is in fact the first allegation in another form, for if the evidence against accused Nos. 1, 2 and 8 in connection with Sanmalappa's efforts was relevant in connection with the charge against these accused, as I think it was to show the circumstances of the charge made against them, it would have had to be led in a separate trial, and the fact that accused Nos. 1, 2 and 3 were tried at the same time cannot, I think, be said to have prejudiced these accused. The learned Sessions Judge has, in fact, said that Sanmalappa's story mainly relates to the case against accused Nos. 1, 2 and 3 and has minimised this evidence against these particular accused at pp. 437-438 of the record. My conclusion is that the trial was neither invalidated by the plurality of offences charged, nor vitiated by the improper joinder and joint trial of the accused persons so charged.

40. I come now to the second line of criticism which consists of objections that the learned Judge misdirected the jury in his Bumming up of the case to them.

41. The first point here relates to the accused No. 1's service sheet. What happened was that when the trial reached the stage of the statements of accused No. 1 being taken Mr. Azad, his counsel, asked the Judge to be allowed to put in a synopsis of his client's past service, which was ruled out. Mr. Azad also states that accused No. 1 tendered his service sheet as a police-officer, in the shape of a certified copy from the records of the Inspector General of Police, which was refused It contains a summary of rewards and punishments earned and Buffered,

by this accused in the course of his service. I do not see how the Synopsis of his career compiled by the accused was relevant to the charge, though there was nothing to prevent his putting in a written statement, which he, in fact, did, and it is Ex. 96 on the record. The matter of the synopsis is not now pressed, but it has been urged that the record of service, which is an official document, should have been allowed to be read and recorded. The law does not, however, provide for documents being tendered in this way. There was nothing to prevent the accused No. 1 calling evidence of his good character, but none was called, and if Mr. Azad wished to prove the statements in this document, I think he should have done so in the usual way. It, in fact, also contains statements adverse to accused No. 1.

42. Exhibits 17 to 20 were also objected to, but allowed to be read and recorded, These documents are accused No. 2's letter to accused No. 1 of November 9, 1926, and an envelope (Ex. 18), another letter from accused No. 2 to accused No. 1 dated December 1, 1926 and a second envelope.

43. These letters were written in connection with the conspiracy and are, I think, clearly relevant, The reference to them in the charge to the jury is at p. 442, When accused No. 2 was asked to make his statement he put in a written statement in which he admitted writing the two letters at the instance of his clerk, Shettu Patil, and that Shettu Patil had said that if the matter was successfully carried through, Mr. Ring would get a present of Rs. 100 which was the meaning of the expression, 'I would make him dib up' in the second letter. The learned Sessions Judge has said in the charge to the jury that it is in the nature of a confession, being an admission that accused No. 2 would obtain an illegal gratification for accused No. 1 if he did his clerk's relative's work. He then warned the jury not to accept the statement, unless they found it was corroborated, against either the maker or the other accused. Accused No. 2's statement is in fact a very lame explanation of a very damning circumstance against him, and not really a confession; but I do not think that the language in the charge referring to it is a serious misdirection, though it was an unfortunate view to take of these facts. The passage is in the middle of the part of the charge discussing the case against accused No. 2 only, and I think what was really emphasized was its importance against accused No. 2.

44. The claim that the jury was misdirected, in that it was not told that the first payment of Rs. 200 to accused No. 3 was apart from the knowledge of accused Nos. 1 and 2, and that accused No. 3 had no shares in payments to accused Nos. 1 and 2, and that accused Nos. 1 and 2 had no part in the payment of Rs. 1000 to accused No. 3 by accused Nos. 4 to 9, is really an argument on the merits, These misdirections are supposed to be on pp. 434, 435 and 437 of the record. These passages contain a plain statement of the facts, and I believe there was no non-direction on these points.

45. The last one is as to the caution to be exercised in receiving accomplice evidence, and directions as to the character in this respect of some of the witnesses. Section 133 of the Indian Evidence Act was explained at the head of the charge, and is again referred to at page 498. Sanmalappa is here held to be an accomplice, and so is witness Chandorkar, and the necessity for corroboration of this evidence is insisted on. The grievance made is really as to witness Vithalsingh, who was considered not to be an accomplice and Mallappa Hangji. On page 439, in a passage in the charge to the jury, the learned Sessions Judge has classed Vithalsingh among the non-accomplice witnesses. Vithalsingh is Exhibit 58, and a police head-constable, and his story is that he had known Sanmalappa for many years, and that that person had come and complained to him of his difficulties, and he introduced him to Shettu Patil, accused No. 2's reader, who according to the story thereafter acted as intermediary between Sanmalappa and accused Nos. 1 and 2. According to the witness, Sanmalappa told him of what happened in his subsequent dealings with accused Nos. 1 and 2, and finally the witness advised him to go to the District Superintendent of Police, and ultimately to Vaz to have a complaint drawn up. On the facts the witness took no real part in the offences, and mere cognizance of what was happening would not, I think, make him a real accomplice' Finally, I come to Mallappa Hangji, who the learned Sessions Judge said he was not at all sure was an accomplice, or not, and proceeded to say that his evidence corroborated Chandorkar, who was an accomplice. Mallappa's evidence is Exhibit 37. The passage alleged to show that he was an accomplice is on p. 336. It is to the effect that he was present at the discussion and cognizant of the arrangement to pay accused No. 8 Rs 1000 but he was not himself interested in the matter, and was only told of the final

arrangement, and I do not think he can really be said to have been an accomplice.

46. These are all the misdirections alleged. For the reasons given above I agree that the trial was regular and the convictions proper.

47. For accused Nos. 1, 2 and 3 nothing can be said in mitigation of punishment. The cases of the remaining accused are different. I agree with the order made by my learned brother, Mirza J.

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