

The State Vs. Laldas and ors.

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Court : Mumbai

Decided On : Apr-14-1952

Reported in : AIR1953Bom177; (1952)54BOMLR955; ILR1953Bom55

Judge : Gajendragadkar and ;Chainani, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197, 197(1), 239, 428, 532 and 537; [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 120(B), 218, 379, 409, 466 and 477(A); [Government of India Act, 1935](#) - Sections 270; Constitution of India Act - Sections 270(1); Drugs Control Order, 1943

Appeal No. : Criminal Appeal Nos. 454 and 968 of 1951 with Cri. Revn. Appln. No. 799 of 1951

Appellant : The State

Respondent : Laldas and ors.

Advocate for Def. : Hiralal M. Mehta & Co., ;R.A. Jahagirdar and ;S.B. Kotwal, Adv.

Advocate for Pet/Ap. : H.M. Choksi, Govt. Pleader

Judgement :

FACTS

The prosecution case was that one Laldas and six other persons (accused Nos. 1 to 7) had entered into a conspiracy to commit theft by illicitly cutting and removing Government trees in the Walheri Bari reserved forest between the villages of Walheri and Sojarbara. Laldas, Parashabhai and Jangubhai (accused Nos. 1-3) were partners of the firm Laldas Onkardas Company and had taken on contract the trees in private survey Nos. 1 to 6 at Sojarbara. In December 1946 these three partners entered into a criminal conspiracy to commit the theft of adjoining Government trees of the Walheri forest. In pursuance of this conspiracy, they did commit the theft as intended and thereby committed an offence under S. 120-B read with S. 379, Penal Code. This was the first charge framed at the trial against accused Nos. 1 to 3. The four other accused were Forest Officers and according to the prosecution case, they also joined this conspiracy. Andrade (accused No. 7) who was an Assistant Divisional Officer, Nandurbar Division, was alleged to have joined this conspiracy sometime between 9th and 13th February 1947. At this time he was camping at Walheri in connection with an inquiry into the illicit cuttings and, having joined the conspiracy, he aided and abetted the three accused persons in committing theft of the Government forest trees. Accused No. 7 was, therefore, charged with having committed an offence punishable under S. 120-B read with S. 379, Penal Code. This was the second charge framed at the trial.

Accused Nos. 1 to 3 were further charged with having committed an offence under S. 379, Penal code, in that they had dishonestly cut Government trees extensively in the reserved forest at Walheri between the beginning of December 1946 to the end of April 1947. the prosecution case was that, as a result of this illegal activity, wrongful loss had been caused to Government to the extent of Rs. 50,000. this was the third charge framed at the trial.

The fourth charge was against all the Forest Officers, accused Nos. 4 to 7 in respect of the intentional aid and facility which they had given to accused Nos. 1 to 3 in committing the offence under S. 379. This charge was under S. 379 read with S. 109.

The fifth charge was that, in pursuance of the said criminal conspiracy, accused No. 7, who was a public servant and who being charged with the preparation of

the record in connection with the enquiry about the illicit cuttings as such public servant, made a false panchnama in collaboration with accused Nos. 1 to 6 on 11-2-1947, and made other false papers which were ancillary to the said panchnama with the dishonest intention or knowledge as required by S. 218, Penal Code. In other words. By this charge accused No. 7 was alleged to have committed an offence under S. 218, Penal Code. A similar charge was made against accused No. 4 in respect of the panchnama made by him and in respect of the statements recorded by him during the course of the same enquiry. This was charge No. 6 and it was framed against accused No. 4.

Accused No. 6 was likewise charged under S. 218 for having framed incorrectly the first offence report and other documents mentioned in the charge. This was charge No. 7, and the last charge was that, in pursuance of the aforesaid criminal conspiracy, accused Nos. 1 to 3 and 5 along with Dagdu Mohamad aided and assisted accused Nos. 4, 6 and 7 in the commission of the above offences under S. 218 and thereby they themselves committed an offence punishable under S. 218 read with S. 109, Penal Code.

The case was tried by the Sessions Judge, West Khandesh, with the aid of assessors. At the end of the trial, the assessors were unanimously of the opinion that the offences charged had not been proved against any of the accused. The Judge agreed with the assessors in regard to accused Nos. 5 and 7. He held that the prosecution has failed to prove their case against them. He accordingly acquitted these two accused of all the offences charged. As regards the other accused, the Judge differed from the opinion of the assessors and held that the charges framed against them had been proved beyond a reasonable doubt. He therefore, convicted accused Nos. 1 to 3 of the offences punishable under S. 120-B read with S. 379 and sentenced them to suffer rigorous imprisonment for six months and to pay a fine of Rs. 1,000 each. Substantive sentences passed against them were ordered to run concurrently. Accused No. 4 was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 1,000 under S. 120-B read with S. 379. He was also convicted of the offences under S. 218 and sentenced to suffer rigorous imprisonment for six months. Substantive sentences were to run concurrently. Accused No. 6 was convicted under S. 120-B read with

S. 379 and sentenced to suffer rigorous imprisonment for three months. He was also convicted under S. 218 and sentenced to suffer rigorous imprisonment for three months. Substantive sentences were to run concurrently. The Judge did not pass any order as to conviction and sentence in regard to the third and fourth charges. It was against these orders of conviction and sentence that the present appeals were preferred to the High Court by all the accused. The State of Bombay preferred an appeal against the order of acquittal passed by the Judge in respect of accused No. 7. An application was made on behalf of the State for enhancement of sentences passed against accused Nos. 1 to 4 and 6.'

Gajendragadkar, J.

1. [His Lordship, after narrating the facts, proceeded :]

2. At the hearing of this appeal Mr. Jahagirdar has raised two points of law and it would be convenient to deal with them before proceeding to consider the merits of the case. Mr. Jahagirdar says that the course adopted by the prosecution in the present case is unusual in that two separate cases have been filed against the accused virtually in respect of the same conspiracy. Sessions Case No. 13 of 1950 from which the present appeal arises is based upon the conspiracy between the four partners of the firm and four forest officers. The object of this conspiracy was that the partners of the firm should illegally cut the trees in the Government forest and remove them, and in accomplishing this object the forest officers had agreed to assist the partners by making false panchnamas and by abetting the illegal cutting and removal of Government trees. The prosecution case is that this conspiracy was formed between the members of the firm themselves in the beginning of December 1946 and the forest-officers joined this conspiracy later. The scene of operation of this conspiracy was in the Walheri Bari reserved forest, Hill Working Circle, between the villages of Walheri and Sojarhara. That is why the members of the firm have been substantively charged with the offence of committing theft under Section 379 and the forest officers have been charged with the offence of framing false record under Section 218. There are besides the charges of conspiracy and abetment against all the accused.

Another criminal case was started against the partners of the same firm and two forest officers, Haribhan Sanaf and Mahadev Vedu, who are accused NOS. 4 and C in case No. 13 of 1950. This case was Sessions Case No. 14 of 1950. In this case the prosecution alleged that all the accused had entered into a conspiracy to commit thefts of Government trees in Gloramal and Rapapur forests. The time when this conspiracy was formed is the same as the other conspiracy and the modus alleged to have been adopted by the conspirators is also the same. Mr. Jahagirdar says that the procedure thus adopted by the prosecution in starting two criminal cases against the accused was not only unfair, but is illegal. His contention is that in substance the prosecution case must be taken to be that there was one general conspiracy and that in pursuance of this conspiracy Government trees were cut by some of the conspirators in all the places covered by the two respective cases and the forest officers abetted the commission of this offence by framing false official record; if that is so, it was the duty of the prosecution to have put all the evidence against the accused in one case and not to have exposed them to two different cases. In this connection Mr. Jahagirdar has also referred to the fact that both the sessions cases were decided on the same day. Sessions Case No. 13 of 1950 ended in the conviction of the accused, whereas Sessions Case No. 14 of 1950 ended in their acquittal. The present appeal arises from the order of conviction and sentence passed by the learned Sessions Judge against the accused in Sessions Case No. 13 of 1950, and there has been no appeal by the State against the order of acquittal passed by the learned Sessions Judge in favour of the accused in Sessions Case No. 14 of 1950.

Mr. Jahagirdar has attempted to rely upon some of the findings of the learned Sessions Judge in Case No. 14 of 1950. In fact, he has applied to us for leave to adduce as additional evidence the record of the said case and the judgment in particular, in the appeal before us. It is true that in Sessions Case No. 14 of 1950 the learned Sessions Judge took the view that the trial of the accused in the said case was vitiated by reason of the fact that the charge in the said case was not included in the earlier case No. 13 of 19-50. In his opinion there was only one conspiracy charged against the accused, and it was illegal to have split up this conspiracy into two different charges presented in two different cases. It is also true that on the merits the learned Sessions Judge has made several findings

which are in favour of the accused. In fact, the learned Sessions Judge was not satisfied at all that the prosecution had proved their case against the accused even on the merits and so he acquitted them of the offences charged. We do not think that we can allow this judgment or the evidence on which it is based to be tendered as additional evidence under Section 428, Criminal P. C. The two cases were separately tried, evidence was led separately in both of them and obviously the conclusions of the learned Sessions Judge in both the cases are based upon the evidence recorded in each of these cases. In our opinion, the application for additional evidence purporting to have been made under Section 428 is clearly misconceived and must be rejected. It is, therefore, unnecessary for us to consider whether the learned Sessions Judge was right in holding that the result of the splitting up of the conspiracy was to vitiate the second trial. There has been no appeal against the judgment of acquittal and we are not called upon to consider the propriety or correctness of the said conclusion of the learned Sessions Judge. But, whatever may be the position with regard to the second case, we do not see how the trial of the first case can be said to be vitiated. We are prepared to assume that according to the prosecution case there was one general conspiracy between the accused and in pursuance of this conspiracy Government trees were illegally cut and removed and false documents were prepared in regard to such cuttings both in the area covered by the present case and in the area covered by the other case. Even so, if in proving the charge of conspiracy under Section 120B read with Section 379 and 218 the prosecution choose to rely upon some acts of the conspirators committed by them in pursuance of the conspiracy, they would be entitled to ask for a conviction of the accused if they succeed in proving the charge. It is clearly not incumbent upon the prosecution to make all the acts committed by the conspirators the subject-matter of the charge. It is open to them to select some of the acts and charge the accused in respect of them. The argument that the splitting up of a conspiracy into two cases is bad may at best affect the second trial. It cannot affect the validity of the first trial at all. We must, therefore, hold that there is no substance in the argument urged by Mr. Jahagirdar that the present trial is vitiated by reason of the fact that some of the acts committed by the accused in pursuance of the alleged conspiracy were not included in the charge in the present case.

3. The second point of law which Mr. Jahagirdar has urged is based upon the charge framed against accused No. 7 under Section 218, Penal Code. This is charge No. 5 in the charges framed by the learned Sessions Judge and under it the prosecution case was that accused No. 7, who is the Assistant Divisional Forest Officer, was a public servant and had been charged as such public servant with the preparation of the record in connection with the inquiry of the illicit cuttings in the Walheri forest; according to the prosecution while making this inquiry accused No. 7 'in collaboration with accused NOS. 1 to 6 framed the panchanama of us trees only and appendices thereto, dated 11-2-1947 and other ancillary papers, viz., the two statements and the receipt of Balkisan Nathubhai of even date,' and his two reports, dated 24-3-1947, in an incorrect manner with the necessary knowledge and intention as required by Section 218. Mr. Jahagirdar's contention is that the learned Sessions Judge had no jurisdiction, to take cognizance of the charge thus framed under Section 218, because the requisite sanction under Section 197 (1) (b), Criminal P. C., has not been obtained by the prosecution. If that is so, not only is the trial of accused No. 7 in respect of this particular charge void, but the whole of the trial of all the accused persons in respect of all the charges is rendered void by the absence of the requisite sanction, says Mr. Jahagirdar. We must, therefore, first consider whether the sanction obtained by the prosecution against accused No. 1 is valid under Section 197 (1) (b).

4. On 31-8-1949, by the order of the Governor sanction was granted to the prosecution of accused No. 7 (Exh. 404). This document in its preamble no doubt refers to the material facts on which the sanction was asked for. It is stated in the preamble that accused No. 7 held the office of the Assistant to the Divisional Forest Officer, West Khandesh, in 1946-1947, that in or about December 1946 accused NOS. 1 to 3 and Dagdu entered into a criminal conspiracy with the other forest officers (accused NOS. 4 to 6) who have been charged in this case, that in furtherance of this aforesaid criminal conspiracy the partners of the firm had committed theft of 165 cartloads of timber from the Walheri forest area, that accused No. 7 himself had been entrusted with the inquiry into a pseudonymous petition, dated 27-1-1947, concerning the said conspiracy and theft, that accused No. 7 had camped at Walheri between February 9 and 13, 1947, for conducting

the said inquiry and he had then purposely suppressed the true facts and framed a panchanama that only 118 trees had been cut in the said forest, though it had been specifically brought to his notice that the trees had been cut in that area on a much larger scale; that he facilitated between February 9 and 13, 1947, and also thereafter, the removal of the trees which had been cut in pursuance of the aforesaid criminal conspiracy; that thereby he joined the conspiracy himself; that as a public servant accused No. 7 had framed the aforesaid panchanama, in a manner which he knew to be incorrect with the intention and knowledge mentioned in Section 218, Having recited all these facts, the document goes on to say that

'the Governor of Bombay is pleased to sanction the prosecution of the said Mr. Andrade for the offences punishable (1) under Section 120B read with Section 379 and (2) Section 218, Penal Code.'

Now, this document has been criticised by Mr. Jahagirdar as having been drawn carelessly and in a casual manner. Mr. Jahagirdar says that it does not appear from this document that the sanctioning authority had applied his mind to the material placed before him before granting the sanction. The document refers to the theft of 165 cartloads of timber, whereas the prosecution case is that 210 cartloads of timber have been stolen by the conspirators. The document refers to a bribe of Rs. 500 as being alleged to have been paid by the partners of the firm to the Range Forest Officer, when in fact the pseudonymous application does not make any such allegation. The two statements on which Mr. Jahagirdar has relied are no doubt inaccurate; but we do not think that these inaccuracies would affect the validity of the sanction. But the more serious infirmity in this document on which Mr. Jahagirdar has relied arises from the fact that the sanction refers only to one document as having been falsely framed by accused No. 7, and that is the panchanama made by him in respect of 113 trees. It is clear that the sanctioning authority gave sanction to the prosecution of accused No. 7 only in respect of one document and that is the panchanama about 118 trees (Exh. 115). It is quite clear that in respect of the charge under Section 218 this document does not refer either directly or indirectly to any other document falsely made by accused No. 7. On the contrary, the charge framed against accused No. 7, under Section 218 refers to as many as eight documents. It refers to the panchanama and its appendices and five

other documents as having been falsely made by accused No. 7.

Mr. Jahagirdar says that the learned Sessions Judge had no jurisdiction to try the charge framed against accused No. 7 under Section 218 in respect of documents not covered by the sanction. We think Mr. Jahagirdar is right. It may be that the other documents included in the charge are in a sense ancillary; the prosecution case is that the panchanama which has been falsely made by accused No. 7 is the principal document and the other documents included in the charge are merely subsidiary. But if accused No. 7 was charged with falsely framing these other documents as well, it was necessary to obtain the sanction in respect of these documents before the learned Sessions Judge could take cognizance of this charge. It is not disputed that accused No. 7 is a public servant not removable from his office save by or with the sanction of the Provincial Government and as such he is entitled to the protection of Section 197, Criminal P. C. The prosecution themselves have obtained sanction for the charge under Section 218, and so it cannot be seriously urged by them that no sanction was required at all. Accused No. 7 was asked to hold an inquiry into the pseudonymous petition received and he was clearly holding this inquiry as an Assistant Divisional Forest Officer. He had to make the panchanama as such public officer, and the other documents which are alleged to have been falsely made were made in the course of this inquiry. The reports that he sent at the end of this inquiry were clearly made by him as such public officer, and there can be no doubt that with regard to these reports sanction was required under Section 197, Criminal P. C.

The learned Government Pleader has faintly attempted to suggest that the inquiry which accused No. 7 held and the documents which were framed in the course of this inquiry would not attract the provisions of Section 197 since it was not a part of the official duties of accused No. 7 to hold such an inquiry. But we do not think there is any substance in this contention. We have no doubt that the offence with which accused No. 7 stands charged was committed by him while acting or purporting to act in the discharge of his official duty. The test which has to be applied in deciding such questions has been recently laid down by the Privy Council in *Gill v. King*, 50 Bom. L. R. 487 :

'..... A public servant', observed Lord Simonda in delivering the judgment in this case, 'can only be said to act or to purport to act in the discharge of his official duty, if his act is suet as to lie within the scope of his official duty . . . The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.'

Applying this test we must hold that the act with which accused No. 7 stands charged attracts the provisions of Section 197. Therefore, in our opinion, sanction was required for the prosecution of accused No. 7 in respect of the documents which are alleged to have been falsely made by him.

5. The next question which arises for decision is, what is the effect of the infirmity introduced by the absence of sanction in respect of some of the documents which are the subject-matter of the charge under Section 218. It is now well settled that if a public officer is tried without obtaining the sanction required under Section 197, the whole of the trial in respect of that offence is void. In *Basdeo Agarwalla v. Emperor*, 47 Bom. L. R. 392 the Federal Court had to deal with the absence of sanction required under Clause 16, Drugs Control Order, 1943. It was held that the requirement as to sanction was not a more technical matter and that it was essential that the provisions with regard to such sanction should be observed with complete strictness. Spens C. J. in delivering the judgment of the Court observed that (p. 395) :

' where, prosecutions have been initiated without the requisite sanction . . . they should be regarded as completely null and void, and if sanction is subsequently given, . . . new proceedings should be commenced ab initio.'

The same view was expressed by the Privy Council in *Gokulchand Dwarkadas Morarka, v. The King*, 50 Bom. L. R. 399. In this case the sanction was required under Section 33, Cotton Cloth and Yarn (Control) Order, 1943, and the Privy Council held that the sanction which had been obtained was not a valid sanction, with the result that the whole of the trial was held to be void. Thus there can be no doubt that the trial of accused No. 7 with regard to the offence under Section 218, Penal Code, in respect of all documents other than the panchanama about 118 trees, must be held to be wholly void.

6. Mr. Jahagirdar, however, contends that this infirmity makes the trial of all the accused persons in respect of all the offences void. In other words, the whole of the trial is void and the order of conviction and sentence passed by the learned Sessions Judge against the other accused in respect of the other offences also must be set aside for that reason. We find it difficult to accept this contention. There is no doubt that so far as the other accused persons are concerned, they were properly charged and have been properly tried. The joinder of the persons, and the joinder of the charges against them, are wholly consistent with the provisions of the Criminal Procedure Code. The learned Sessions Judge had jurisdiction to try the other offences charged against all the accused including accused No. 7. If the trial of accused No. 7 in respect of the offences under Section 218 along with the trial of the other charges is shown to have caused any prejudice to the other accused or even to accused No. 7 in respect of the other charges framed against him, it would be a different matter. But without the proof of prejudice we do not see on what principle the whole of the trial could be treated as void merely because a part of the trial of one of the accused persons has become void under Section 197.

But Mr. Jahagirdar argues that this point is covered by decisions of this Court by which we are bound. The first decision on which Mr. Jahagirdar has relied is *Emperor v. Rudragonda Rachangouda*, 39 Bom. L. R. 70. In this case accused No. 1, who was found to be a public servant, was charged with offences under Sections 466 and 400, Penal Code. As regards the offence under Section 466 it was necessary to obtain the sanction under a. 197 before prosecuting him, and since no sanction had been obtained, his prosecution under Section 466 was found to be illegal. Mr. Justice Sen, who delivered the principal judgment of the Bench, came to this conclusion and added (p. 72):

' . . It, therefore, becomes unnecessary, in our opinion, to examine the question whether the other act of accused No. 1 alleged, to constitute an offence under Section 409 was also done or purported to be done by him in the discharge of his official duty. It is clear from *Queen-Empress v. Marion*, 9 Bom. 288 as well as from the principle enunciated in *Subramania Iyer v. King-Emperor*, 25 Mad. 61 that where the Court has acted without jurisdiction with regard to a part of the trial, the

whole proceedings are vitiated by the illegality committed and that any conviction based on such proceedings cannot stand.'

Accordingly it was held that this principle would apply not only to the trial of accused No. 1 under Section 400, but also the trial of accused No. 2 in the said case. Broomfield J. was content to express his concurrence with this conclusion by merely-observing that sanction was necessary to the trial of accused No. 1 on the charge of forgery at any rate, and that no sanction having been obtained the whole trial must be considered to be invalid. This decision undoubtedly supports Mr. Jahagirdar's contention, because it was held by the learned Judges that the trial of accused No. 1 in respect of Section 409 was vitiated even though no sanction may be required for the trial of the said charge and that the trial of his co-accused was also vitiated for the same reason, though there was no question of obtaining any sanction for prosecuting the said co accused. This view was accepted in *Emperor v. Ramchandra Ranga*, 41 Bom. L. R. 93 by Wassoodew and Sen JJ. It may, however, be added that neither Wassoodow J. nor Sen J. has given any reasons in support of the view accepted by them. Both the learned Judges merely refer to the earlier decision and express their agreement with it. Even in the earlier judgment, with respect, we do not find any discussion of this question at all. In fact, as I have just mentioned, Sen J. refers to two earlier judgments and concludes that the said judgments support the view which he was disposed to take.

7. Now, if we examine these two earlier decisions, they do not seem to support the conclusion drawn by Sen J. In *Queen Empress v. A. Morton*, 9 Bom. 288 it was found that Colonel Dobbs had no jurisdiction to commit the case against Morton, who was a public officer. Even so, the principles of Section 532 were pressed into service and it was held that the High Court could accept an irregular commitment and proceed with the trial if it considers that the accused had not been injured thereby. Accordingly the Full Bench directed that the Judge presiding 'over the Court of Criminal Sessions had power in his discretion under the provisions of Section 532 to accept the commitment and proceed with the trial. In other words, this decision was concerned more with Section 532 than Section 197 of the Code. Along with Mr. Morton, who was a public officer, another accused had been charged, and the Full Bench ultimately directed that if the Judge presiding over the

Sessions decides to proceed with the trial of Mr. Morton, then his Co-accused may also be tried ; but if the commitment of Mr. Morton was quashed, the commitment of the co-accused must also be quashed. With respect, this decision, in our opinion, may not necessarily lead to the conclusion that if the trial of one of the accused is vitiated by absence of sanction under Section 197, the trial of the co-accused is also vitiated, even though no prejudice against him may be proved. In this case even the public officer against whom the requisite sanction had not been obtained was ordered to take his chance before the Judge presiding over the sessions and the direction was to proceed with the trial unless it was found that the irregular commitment had caused prejudice to the accused.

The other case to which Ken J. has referred is the well-known case of *Subramania v. King-Emperor*, 3 Bom. L. R. 310, where a large number of charges had been joined in one trial and the Privy Council treated this joinder as vitiating the trial. As I have already mentioned, the present case cannot be regarded as one of misjoinder at all, The joinder of the several accused persons and the joinder of the several charges against them are fully justified by the provisions of the Code. The defect in the trial arises in respect of one of the charges against one of the accused and this defect is caused by the absence of the requisite sanction. It would not, in our opinion, be correct to treat the trial which suffers from this defect as analogous to a trial which is vitiated by mis-joinder. Even so, since there are two decisions of this Court which have taken a contrary view, we were ourselves thinking of referring this question to a larger Bench so that it should be examined on the merits again. In fact, the case had been adjourned for this purpose. Meanwhile, before the question was referred to a larger Bench Mr. Jahagirdar himself in fairness invited our attention to a decision of the Federal Court which supports the view which we were ourselves disposed to take.

In *Hori Bam Singh v. The Crown*, 1939 3 F. c. R. 159, the Federal Court had to deal with the case against a Sub-Assistant Surgeon who had been charged under Sections 409 and 477A, Penal Code The Federal Court held that the Sub Assistant Surgeon was a public servant entitled to the protection of Section 270(i), Constitution Act ; they also held that the consent of the Governor was not required for the institution of the proceedings against him under Section 409, but that such

consent was required for the institution of the proceedings under Section 477A. The Sub-Assistant Surgeon had been convicted by the Magistrate of both the offences, but had been acquitted by the Sessions Judge on appeal solely on the ground that the previous consent of the Governor had not been obtained under Section 270 (i), Constitution Act. The High Court of Lahore took the view that no consent was necessary and remitted the case to the Sessions Judge to be disposed of on the merits. That is how the matter had gone to the Federal Court. In view of their conclusion that the consent was required for the offence under Section 477A but not for the offence under Section 409, their Lordships of the Federal Court ultimately directed that the order of acquittal passed by the Sessions Judge be set aside, all the proceedings, so far as they related to the charge under Section 477A, be quashed and the case with regard to that offence dismissed on the sole ground of want of consent of the Governor, without acquitting the accused of the charge, leaving the door open for a fresh prosecution under Section 477A if consent of the Governor in his discretion was obtained thereafter. With regard to the charge under Section 409, their Lordships sent back the appeal to the Sessions Judge for re-hearing as regards the said charge leaving it open to the Sessions Judge to order a retrial if he came to the conclusion that the joinder of the two Charges had occasioned a failure of justice. Thus it is quite clear that the Federal Court did not take the view that the absence of sanction with regard to the prosecution for the offence under Section 477A rendered the whole of the trial void; it was only the trial with regard to the said offence under Section 477A that was rendered void by the absence of sanction. It is true that the decisions of the Bombay High Court which have taken a contrary view were not cited before the Federal Court. But the question of law has been considered in the judgment of Sulaiman J. The learned Judge has pointed out that in the case of a jury trial he would have had no hesitation in holding that the whole trial was illegal inasmuch as the accused would have been gravely prejudiced by the production of evidence relating to the offence under Section 477A for which the Court had no jurisdiction to try the accused. But the case with which the Federal Court was dealing had not been tried by a jury and under Section 537, Criminal P- C., the appellate Court had to be satisfied whether the defect in question had in fact occasioned a failure of justice before altering the order,

relating to the offence under Section 409.

In view of this clear statement of the law we must hold, with respect, that the two decisions of this Court on which Mr. Jahagirdar relied cannot be treated as binding on us. Their authority is considerably shaken and the general proposition accepted in these two decisions that the absence of sanction with regard to one of the offences charged against one of the accused renders void the whole of the trial in respect of all the offences charged against all the accused can no longer be treated as good law. Whenever it is discovered that more persons than one are tried for the commission of more offences than one, that sanction was required under Section 197 in respect of one of the offences alleged to have been committed by one of the accused persons and that such sanction has not been obtained, it would be necessary to consider in respect of the other offences charged against all the accused whether the trial of such offences has been prejudiced by the introduction of the evidence in regard to the offence for which sanction was required. If the trial of such a type was a jury trial, prejudice against the accused in respect of the other offences can ordinarily be held to be implicit and the whole trial can be safely set aside without any difficulty. But if the trial has been held by a Magistrate or a Sessions Judge without a jury, then the accused persons would not be entitled to contend that the whole trial should be deemed to be void without proof of prejudice. That was in terms the direction given by the Federal Court in *Hori Ram Singh's case*, 1939 3 F. C. R. 159 and we propose to adopt the principle underlying the said direction in dealing with the case before us. We may as well add that in this particular case the stage to consider whether the illegal trial of one charge has caused prejudice to the trial of the other charges would not arise because, for the reasons which we will presently set out, we have come to the conclusion that as regards these other charges on the merits the prosecution have failed to prove their case beyond a reasonable doubt.

8. Before we part with this topic, however, we would like to repeat the note of caution which has been already struck by Stone C. J. and Lokur J. in *Emperor v. Lumbhardhar Zutshi*, 49 Bom. L.r.609. 'Judges and Magistrates,' it was observed in this case,

'cannot be too strongly urged that whenever a Government servant is charged with an offence, they should consider at the very earliest possible stage whether sanction under Section 270, Government of India. Act, 1935, or Section 197, Criminal P. C., 1898, is in law necessary, and whether, if it is, it has been duly given, and they should express a definite opinion on the question.'

In the present case it, no doubt, appears that it was urged before the learned Sessions Judge on behalf of accused No. 7 that the sanction obtained against him in respect of the offence under Section 216 was defective. But the record does not show that the point was fully argued in the manner it has been done before us or that the decisions on which reliance has been placed before us on behalf of accused No. 7 were cited before the learned Judge. Naturally, the learned Sessions Judge did not seriously consider this point, particularly because he had come to the conclusion that on the merits the prosecution case had not been proved against accused No. 7. It is hardly necessary to emphasise that just as it is the duty of the Judges and Magistrates to consider the question of sanction whenever public servants are charged before them, it is also the duty of the lawyers to take the point about sanction at the earliest stage and invite the Judge or the Magistrate to decide it before proceeding to deal with the merits of the prosecution case.

[The rest of the judgment is not material to the report.]

9. [His Lordship concluded:] The result is that Criminal Appeal No. 454 of 1951 which has been preferred by the accused against the order of conviction and sentence passed against them succeeds, the orders under appeal are set aside and the accused are ordered to be acquitted and discharged. Criminal Appeal No. 968 of 1951, preferred by the State against accused No. 7 in respect of the order of acquittal passed by the learned Sessions Judge fails and must be, dismissed. Since the appeal filed by the accused against the order of conviction and sentence passed against them succeeds, the rule issued in Criminal Revision Application No. 799 of 1951 for enhancement of sentences must be discharged. Criminal Application No. 1102 of 1951 made by the accused for additional evidence is dismissed.

10. Order accordingly.

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