Public Prosecutor Vs. Shaik Sheriff

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Court : Andhra Pradesh

Decided On : Jul-17-1964

Reported in : AIR1965AP372; 1965CriLJ585

Judge : Basi Reddy and ;Anantanarayana Ayyar, JJ .

Acts : Prevention of Corruption Act, 1947 - Sections 3, 5A, 5(1) and 5(2); Code of Criminal Procedure (CrPC) , 1898 - Sections 4, 5, 12(1) and 155(2); Indian Penal Code (IPC), 1860 - Sections 165 and 165A; Criminal Law (Amendment) Act, 1952 - Sections 6(1) and 6(2); General Clauses Act, 1897 - Sections 6, 7, 15, 21 and 26; Constitution of India - Article 14

Appeal No. : Criminal Revn. Case Nos. 712 and 713 of 1962 and Cri. Revn. Petn. Nos. 660 and 601 of 1962

Appellant : Public Prosecutor

Respondent : Shaik Sheriff

Advocate for Def. : T.V. Sarma, Adv.

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

Anantanarayana Ayyar, J .

(1) In special cases Nos. 1 and 2 of 1962 , which were pending on the file of the Assistant Sessions Judge, Cuddapah (special Judge) Shaik Sheriff, who had originally been Municipal Commissioner of Proddatur, was the sole accused. The State represented by the Inspector of Police, Crime Branch, C . I. D. Hyderabad was the complainant. In each of the charge-sheets, it was mentioned that the accused had committed offences under S. 5(2) read with Section 5(1)(c) and (d) of the Prevention of Corruption Act (Central Act II of 1947) (hereinafter referred to as the Act). The accused filed Cr. M. P. No. 139 of 1962 praying for being discharged in S. C. No. 1 of 1962. He filed a similar petition, Crl. M.P. No. 140 of 1962, praying for being discharged in S. C. No.2 of 1962. The learned Assistant Sessions Judge (Shri P. Anjaneya Raju), after full hearing, allowed the two petitions and passed a common order dated 12-9- 1962 discharging the accused under Section 251A(2) Crl. P. C. Against that order, the learned Public Prosecutor has filed Crl. R. C.. No. 712 of 1962 and Crl. R. C. No. 713 of 1962 so far as it relates to the discharge in S. C. No. 2 of 1962 . Both the revision petitions, being against a common order, were heard together by common consent.

(2) The relevant facts are as follows:

The accused was working as the commissioner of the Proddatur Municipality during the period 30-9-1956 to 10-4-1958 and was a 'Public Servant' as defined in S. 21 I. P. C. The Secretary to Government preferred a complaint against the accused to the Inspector General of Police Andhra Pradesh. The Circle Inspector of Police Crime Branch, C. I. D. Hyderabad, applied to the Judicial First Class Magistrate, Proddatur buy a letter dated 2-3-1959 requesting for permission to investigate into the offence which came under S. 5(1) of the Act. In that letter, he mentioned that, on a complaint preferred by the Municipal Commissioner, Proddatur (who was a successor of the shroff for misappropriation of one of the items mentioned in the complaint against the present accused, a case had been registered y the local Polices Proddatur in Crime No. 431 of 1958 under section 408 I.P. C. of Proddatur I town Police Station and was under investigation. The learned judicial First Class Magistrate passed an order dated 4-3-1959 authorising the Inspector of Police to investigate into the said offence. The case was duly investigated.

Subsequently, the Government of Andhra Pradesh passed G.O. Ms. no. 543 dated 19-4-1960 for institution of Criminal Proceedings against the accused and ordered that he be tried in a Court of Law of competent jurisdiction. The G.O. has also stated as follows:

'Separate orders will issue regarding the appointment of a Special Judge for the purpose under section 6 of the Criminal Law Amendment Act, 1952'.

Accordingly Government passed G. O.. Ms. No. 2242 Home (Courts-B) dated 27-10-1960 stating as follows:

'In exercise of the powers conferred by sub-section(1) of section 6 of the Criminal Law Amendment act, 1952(Central Act 46 of 1952), the Governor or Andhra Pradesh hereby appoints the Sub Judge, Cuddapah to be a Special Judge for the trial of the cases against Shri Shaik Sheriff, ex-Municipal Commissioner, Proddatur and Sri D. Venkateswarlu, formerly Head Master, Government Basic Training School, Aluru'.

This G. O. was duly published as a notification.

The Inspector of Police, Crime Branch, Hyderabad filed two charge sheets on 25-11-1960 before the Special Judge, Cuddapah referred to above. The learned Special Judge registered them as C. C. Nos. 1 and 2 of 1960 and proceeded to hear the cases. Accused filed Cri. R. C. Nos. 109 and 110 of 1961 in this Court to quash the proceedings of the Special Judge. Our learned brother, Kumarayya, J., heard those petitions and passed a joint order dated 12-8-1961 holding that the original of G. O. of appointment was invalid and that proceedings started by the Special Judge were vitiated. He allowed the Crl. R. Cs. and quashed the proceedings in C. C. Nos. 1 and 2 of 1960.

Meanwhile the Government passed G. O. No. 595 (Home) Courts-B dated 25-3-1961 and duly notified it. The G. O. ran as follows:

'.....the Governor of Andhra Pradesh hereby appoints the District and Sessions Judges and the Sub Judges-cum-Assistant Sessions Judges mentioned in column 1 of the Table below as Special Judges to try the offences mentioned in

section 6 and 7 of the said Act (Criminal Law Amendment Act, 1952) in respect of cases arising in the District noted in column 2 of the table and investigated by the Anti Corruption Bureau of Andhra Pradesh.

This was also duly published as a notification. It was brought to the notice of Kumarayya, J., during the hearing of Crl. R. C. Nos. 109 and 110 of 1961 that G. O. No. 253 of 1961 had been passed appointing the same Judge as Special Judge for cases coming from Cuddapah District and that the defect alleged in G. O. No. 2242 of 1960 had been cured. Thereupon, the learned Judge (Kumarayya, J.) observed as follows:

'..... But, when it is clear that whatever the Assistant Sessions Judge has done in taking cognizance of the cases and framing charges without any lawful authority, those proceedings cannot be allowed to stand. Of course, it may still open to the prosecution to start proceedings afresh. But that foes not mean that previous proceedings started without any lawful authority, will gain any legal efficiency.'

After the above judgment was passed, the Special Judge, Cuddapah returned the chargesheets in C. C. Nos. 1 and 2 of 1960 to the complainant on 26-9-1961 and closed the cases.

Subsequently, the Government passed G. O. Ms. 281 dated 12-2-1962 amending G. O. No. 595 of 1961 as follows:

'In the preamble to the said notification, the words 'And investigated by the Anti Corruption Bureau of Andhra Pradesh' occurring at the end shall be omitted.'

This G. O. was duly notified. Later on the quoting G. O. No. 595 of 1961 and G. O. No. 281 of 1962. The learned Special Judge numbered the cases as S. C. Nos. 1 and 2 of 1962 afresh and started proceedings. Accused then appeared in Court on 6-8-1962 raising various grounds. The three main grounds raised by him were as follows :

(i) (a) the constitution of the Court as a special Judge under Act 46 of 1952 was not valid because G. O. No. 595 of 1961 was invalid; and (b) the amendment G.

O. No. 281 of 1962 was invalid as Government had no power under S. 6 of the Criminal Law Amendment Act to make the said amendment;

(ii) the court could not validly take cognizance of the two charge sheets as there was no fresh sanction by the Government; and

(iii) the investigation of the cases by the Inspector of Police, Special Branch was not in accordance with law as it had not been done with valid sanction required under S. 5A of the Act.

The learned Special Judge accepted all these contentions as tenable. In the result, he passed the order of discharge under S. 251-A (2) Cr. P. C. He held that the other grounds raised in the petitions did not bear any substance and did not deserve or require to be considered.

When these revision cases came up for hearing before our learned brother, Mohammed Mirza J. he passed an order dated 5-8-1963 as follows:

'In these revision cases, a question arises as to the interpretation of the word 'person' used in S. 6 (2) of the Criminal Law Amendment Act. 1952. These revision cases are therefore referred to a Branch for decision.'

In consequence, these cases came to be heard by this Bench.

(3) The main contention raised by the learned Public Prosecutor are as follows:

(a) The assumption of the learned Special Judge that notification of the learned Special Judge that notification of G. O. No. 595 of 1961 was bad is baseless and wrong.

(b) The finding by the learned Special Judge that the amendment G. O. No. 281 of 1962 was invalid was untenable because S. 21 of the General Clauses Act (Central Act X of 1897) gave power to make amendments.

2. The sanction already made by the Government was in force and there was no need for a fresh sanction as held by the learned Special Judge.

3. The order of the Magistrate authorising investigation by Inspector of Police was valid and effective and did not contain any incurable defect which could not be rectified or any omission which could not be supplied by admissible evidence properly adduced during the trial.

(4) Shri T. V. Sarma, the learned counsel for the respondent, has raised fresh point of law before us as follows:

4. The appointment order, which is G. O. No. 595 of 1961 is not valid and lawful and did not confer jurisdiction because special Judge can be validly appointed only by name and not by office.

(5) Contention No. 3: - Sri T. V. Sarma contends that, in his order, the Magistrate has not considered or given adequate reason as to why the Dy. S. P. or other higher in rank than Inspector could not hold the investigation. He also urges that the offence concerned in the charge-sheet under S. 5(2) of the Act is non-cognizable as it was investigated by the Inspector of Police and that, therefore, separate sanction of competent Magistrate under S. 155(2) Cr. P. C. was necessary for a valid investigation and that such sanction was no granted in this case.

(6) Section 155(2) Cr. P. C. runs as follows:

Non-cognizable offence means an offence for, and 'non-cognizable case' means a case in which a police officer, within or without a presidency town, may not arrest without warrant.'

Section 4(1) runs as follows:

'Cognizable offence means an offence for, and 'cognizable case' means a case in which a police officer, within or without the presidency towns, may, in accordance with the Second Schedule or under any law for the time being in force, arrest without warrant.'

As we have already mentioned, the charge-sheets in the cases concerned before us cite S. 5(2) read with S. 5(1) (c) and (d) of the Act. Section 5(2) is the punishing

Section and Section 5(1) (c) and (d) are the sections which define the offence. The body of the charge-sheets and also the letter of the Inspector dated 2-3-1959 requesting for permission to investigate mention that the offence consisted of the accused, who was Commission of Municipality, i.e., a public servant, dishonestly or fraudulently misappropriating the amounts entrusted to him. It is an offence which is also defined in S. 409 I. P. C. In Schedule 11, offence under S. 409 I. P. C. is shown in column 3 as cogniziable (entry is 'may arrest without warrant'). But, section 409 I. P. C. is not specifically mentioned in the charge-sheet. At the end of Schedule II, in the portion relating to 'offences against other laws,' entry are cognizable. Section 5(2) of the Act comes within the second entry as it is punishable with imprisonment which may extend to seven years. But S. 5A of the Act runs as follows:

'Section 5-A. Notwithstanding anything contained in the Code of Criminal procedure 1898 (Act V of 1898), no police officer below the rank-

(a) . . . . . .

(b) . . . . . .

(c) . . . . of a Deputy Superintendent of Police shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code (Act XLV of 1860) or under sub-section (2) of Section 5 of this Act, without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant.'

This section contains a proviso but we are not concerned with it in this case.

(7) To deal with the present question, it is necessary to deal with the history of the provision contained in S. 5-A. When the Prevention of Corruption Act was originally passed in 1947, section 3 ran as follows :

'An offence punishable under S. 161 or Sec. 165 of the Indian Penal Code (XLV of 1860), shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, V of 1898, notwithstanding anything to the contrary contained therein ;

Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the First Class or make any arrest therefor without a warrant.'

At that time, S. 5-A did not exist ; but it was introduced by the Prevention of Corruption Second Amendment Act (Central Act 59 of 1952). By Section 2 of the same amendment Act, Section 3 was amended by adding the words 'or section 165A' after the portion 'section 165' and by omitting the proviso. Thus, Sections 161, 165 and 165A became cognizable offences because of Section 3 of the Act in spite of the fact that these three sections were shown as non-cognizable in Schedule II of the Cr. P. C. and the proviso to section 3 was substituted by Section 5-A. The new section 5-A covered not only Section 161, S. 165 and Section 165A, which were the offences made cognizable by S. 3 of the Act as it stood after amendment by Act 59 of 1952 and before the amendment by Act 50 of 1955 but also S. 5(2) of the Act. Subsequently, the Code of Criminal Procedure Amendment Act (Central Act 26 of 1955) was passed. It received the assent of the President on 10-8-1955. Section 114(b) of the Act ran as follows :

'Section 114(b). In the entries relating to sections 161, 162, 163, 164, and 165, in the 3rd column, for the words 'shall not arrest without warrant' wherever they occur, the words 'May arrest without warrant' shall be substituted.'

As a consequence of this amendment, S. 161 and S. 165 I. P. C. which up to then had been shown as non-cognizable offences in schedule II Cr. P. C. , came to be shown henceforth as cognizable offences in that schedule. Therefore, there was no need for their being made cognizable offences by S. 3 of the Act. When the Prevention of Corruption Act was amendment by Amendment Act of 1955 (Central Act 50 of 1955) which received the assent of the President on 24-12-1955, Section 3 of the Act was amended by omitting the words and figures 'section 161 or section 165 or'. The result was that section 3 makes S. 165A alone cognizable in spite of the Code or Criminal Procedure. Thus, of the four offences to which Section 5-A is applicable, Section 161 and section 165 are cognizable by virtue of Schedule II Cr. P. C. Originally they had been shown as non-cognizable in the Schedule to the Cr. P. C. , but made cognizable by section 3 of the Act. Still, S. 5-

a expressly applies to those three offences which are cognizable offences unconditionally and under all circumstances. It is obvious that they cannot be treated as non-cognizable offences when investigated by an officer below the rank of Deputy Superintendent of Police simply on the ground that such investigation cannot be done without the order of a Presidency Magistrate or a Magistrate of the First Class. In the same way, offence under Section 5 of the Act cannot be treated as non-cognizable even when investigated by low rank officer. Thus, the provision in S. 5-A is of the nature of a special provision which applies to offences specified therein which are cognizable offences including those under Section 5 under all circumstances .

(8) Under the cr. P. C. Section 155(2), a non-cognizable case cannot be investigated without the order of a Magistrate specified in that section. It cannot be said that the converse principle also must hold good as a law in force namely, that if a case cannot be investigated without the order of a specified Magistrate then it is a non-cognizable case. Section 155(2) Cr. P. C. applies to every non-cognizable case and does not apply to every non-cognizable offence. It has been held by one of us in Kutumba Rao v. State of Andhra Pradesh, (1961) 1 Andh WR 153 ; : AIR 1961 AP448 that a case would be non-cognizable case only if every one of the offences concerned in it was a non-cognizable offence, and that if a case included at least one cognizable offence, it would be a non-cognizable offence and that S. 155(2) Cr. P. C. would not be applicable to such a case. Section 5(2) of the Act is a cognizable offence under Schedule II of the Cr. P. C. and it is on the same footing as S. 161 and S. 165 I. P. C. as they stand after amendment by Cr. P. C. Amendment Act (Central Act 26 of 1955). Cognizable offences under Section 161 or Section 165 I. P. C. and a cognizable offence under S. 165A, I. P. C. , which is made specifically cognizable by S. 3 of the act, stand as cognizable, unaffected by the provision in s. 5-A of the act. In the same way, offence under S. 5(2) stands cognizable under Schedule II of the Cr. P. C. , unaffected by the provision in S. 5-A of the Act.

(9) Shri T. V. Sarma, strongly relies on the decision in Union of India v. Mahesh Chander, : AIR 1957 MP43 wherein, it was observed as follows : (at 45)

' ..... An offence under S. 161, I. P. C. or one under sub-s. (2) of s. 5(2), Prevention of Corruption Act is cognizable so far as officers of the rank of a Deputy Superintendent of Police and above are concerned. But so far as the officers below the rank of a Deputy Superintendent of Police are concerned, the said offences are non-cognizable 'in so far as they cannot investigate them without the permission of a Magistrate of the first class'.'

The portion which we have underlined (here into ' ') in the above passage makes it clear that what the learned Judges meant by saying that the offences were non-cognizable was limited to the aspect that they could not be investigated by officers below the rank of a Deputy Superintendent of Police without permission of the specified Magistrate. The learned Judges made the above observation when dealing with the question as to whether it was necessary for a Magistrate, who was giving permission to investigate, to satisfy himself that a deputy Superintendent of Police is unable to conduct the investigation before giving permission to an officer of lower rank under S. 5-A of the act.

The learned Judges traced the evolution of s. 5-A including the fact that, under S. 3 of the Act originally in 1947, an offence under S. 161 I. P. C. was made cognizable with a proviso added. They observed regarding section 3 as follows : (at p. 44) :

'Thus, it is clear that although S. 3, Prevention of Corruption Act made an offence under S. 161 I. P. C. cognizable in effect it remained non-cognizable as far as officers below the rank of a Deputy Superintendent of Police were concerned. By the same Act, new offence called criminal misconduct was created. For the investigation of an offence of criminal misconduct, the same restriction was placed on officers below the rank of deputy Superintendent of Police by S. 5(4) of the Act.'

Finally, the learned Judges answered the question as follows (at p. 46) :

' Consequently all that the Magistrate has to see before granting permission is, whether there is a prima facie case or not. If he considers that the information is frivolous or vexatious, he should refuse permission to investigate. There is no warrant for the proposition that he can give permission to an officer below the rank

of a Deputy Superintendent of Police only if it is proved to his satisfaction that a Dy. S. P. is unable to undertake the investigation ..... In the present case the Magistrate, who granted permission, perused the F. I. R. before giving permission. It cannot be said, therefore, that the Magistrate did not satisfy himself regarding good and sufficient reasons to conduct the investigation. In our opinion, the Magistrate did exercise judicial discretion in granting permission to the Inspector of Police.'

Shri T. V. Sarma does not agree with the above finding of the learned Judges. In fact, he relies on the observations to the contrary in the decision of the Supreme Court in State of M. P. v. Mubarak Ali, : 1959 CriLJ920 , to which we are making reference later in this judgment. A perusal of the judgment in : AIR 1957 MP43 (supra) shows that, when the learned judges referred to the offences under Section 161 Indian Penal Code and section 5(2) as non-cognizable, they only meant to refer to the provision in the proviso to S. 5(2) as it existed before the act was amended by Central Act 59 of 1952 and which provision was substantially the same as the provision in s. 5-A which was introduced by amendment Act 59 of 1952. They did not goo to the extent of saying that when investigated by officer below the rank of deputy Superintendent of Police, the offence under S. 5(2) or S. 161 I. P. C. was non-cognizable in all respects or in particular to the extent of attracting the application of S. 155(2) Cr. P. C. The question of applicability of s. 155(2) Cr. P. C. to an offence under s. 5(2) of the act or S. 161 I. P. c. was not raised before or considered by the learned Judges.

In their judgment, the learned Judges referred to various passages which are contained in H. N. Rishbud v. State of Delhi, (S) : 1955 CriLJ526 and interpreted those passages. The learned Judges, when making a reference to various passages, observed as follows (at p. 46) :

'Reading the paragraph as a whole, there is no doubt whatsoever that Jagannadhadas, J. was dealing with the offences of corruption comprised in the act as cognizable offences ..... This leaves no doubt whatsoever that His Lordship was dealing with the offences comprised in the Prevention of Corruption Act as cognizable offences. He was not dealing with that aspect of offences in

which investigation cannot be carried on without the permission of a Magistrate.'

We find that the learned Judges only intended to emphasise the provision in S. 5-A and chose to refer to it as a non-cognizable aspect of the offences comprised in the Act and to describe that aspect also as non-cognizable for the limited purpose of the provision in S. 5-A. The above decision does not support the contention of Shri T. V. Sarma that the offence under S. 5(2) of the Act is a non-cognizable offence for all purposes and in particular for the purpose of attracting the application of S. 155(2) Cr. P. C.

(9a) In (S) : 1955 CriLJ526 (supra) the relevant facts were stated in the judgment as follows: (at p. 199)

'It appears from the evidence taken in this behalf that such investigation was conducted not by any Deputy Superintendent of Police but by Officers of lower rank and that after the permission was accorded little or no further investigation was made. The question, therefore, that has been raised is, that the proceedings by way of trial initiated on such charge-sheets are illegal and require to be quashed.'

The appellant was Rishbud. The charges against him were under S. 5(2) of the Act and also under Ss. 120B, I. P. C. and 420 I. P. C. which two charges were also against other accused who were not public servants. Section 420 I. P. C. is a cognizable offence as per Schedule II to the Cr. P. C. So, the case was cognizable case. To such a case, S. 155(2) Cr. P. C., would not apply even if S. 5(2) were non-cognizable as contended by Shri T. V. Sarma. The Special provision in the Act in s. 5(2) applied to the case as the investigation had been done before the Prevention of Corruption Amendment Act 59 of 1952 was passed. Their Lordships stated that omission of S. 5(4) and substitution by S. 5 A made no difference. Their Lordships observed as follows : (at p. 199)

'The 'offence of criminal misconduct' which has been 'created by the Act', it will be seen, 'is in itself a cognizable offence' having regard to item 2 of the last portion of Schedule II of the Criminal Procedure Code under the head 'offences against the other laws. 'In the normal course, therefore, an investigation' into the offence of

criminal misconduct under S. 5(2) of the Act and an investigation into the offence under Ss. 161 and 165 I. P. C. which have been made cognizable by S. 3 of the Act would have made cognizable by S. 3 of the Act would have to be made by an officer in charge of a police station and no order of any Magistrate in this behalf would be required'. But the proviso to Section 3 as well as Sub-section, (4) of S. 5(4) of the Act specifically provide 'that a police officer below the rank of a Deputy Superintendent of Police shall not investigate such offence without the order of a Magistrate of the First Class or make any arrest therefor without a warrant' '

The order of Magistrate referred to in the words underlined (here into '.....') by as in the above passage is obviously an order under S. 155(2) Cr. P. C. The above observation is a dictum directly laying down that no order of Magistrate except an order under S. 5(4) of the Act before amendment of 1952 or under S. 5-A of the Act is required for investigation of offence under Section 5(2) of the Act and in particular that no order S. 155(2) Cr. P. C. is necessary. Their Lordships also observed as follows: (at p. 200):

'..... Therefore, it is clear that when the Legislature made the offence in the act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act.' (At p. 202):

'To appreciate that policy it is relevant to observe that under the Code of Criminal Procedure most of the offences relating to public servants as such, are non-cognizable . . . . . The underlying policy in making these offences by public servants non-cognizable appears to be that public servants who have to discharge their functions - often enough in difficult circumstances - should not be exposed to the harassment of investigation against them on information levelled, possibly, by persons affected by their official acts, unless a Magistrate is satisfied that an investigation is called for, and on such satisfaction authorities the same. This is meant to ensure the diligent discharge of their official functions by public servants, without fear or favour.

When, therefore, the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the offences of

corruption comprised in the Act, by making them cognizable, it may be presumed that it was considered necessary to provide a substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated high rank.'

So this passage makes clear the following:

(1) Offences under Sec. 5(2) and offence under S. 165A, I. P. C. made cognizable by specific provision like S. 3 of the act are cognizable offences, pure and simple.

(2) The provision in the original S. 5(4) and the present S. 5-A was a substitute for the original safeguard to a public servant from undue harassment.

(3) The above safeguard under the original Section 5(4) and the present S. 5-A was a substitute for the original safeguard which existed under S. 155(2) Cr. P. C. regarding investigation and regarding arrest without warrant when the offences concerned against the public servant (before the passing of the Prevention of Corruption Act) were non-cognizable offences, so far as such offences were concerned.

(4) When there is provision of substituted safeguard under S. 5-A of the Act, it alone applies to offences like s. 161 and S. 165 I. P. C. and there cannot be a need for safe-guard by an order under S. 155(2) Cr. P. C. which has been substituted.

(10) We find that the offence under S. 5(2) of the Act is a cognizable offence whether it is investigated by officer of rank not below Deputy Superintendent of Police or by Police Officer of lower rank with valid order of a Magistrate under S. 5-A and that there was no need for an order of a competent Magistrate under S. 155(2) Cr. P. C. apart and distinct from an order contemplated by s. 5-A of the Act.

(11) Shri T. V. Sarma points out that in this order dated 4-3-1959 the learned Magistrate has merely mentioned that he gave the authorization because 'information has been laid' and because 'it is stated that the offence has got to be investigated into for ascertaining the offenders'. In (S) : 1955 CriLJ526 (supra) it was held as follows (at p. 205):

'. . . . . When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it.

In our opinion, therefore, when such a breach (breach of a mandatory provision regarding investigation such as contained in Section 5-A) 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 such violation and pass appropriate orders for such reinvestigation 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.'

(12) In : 1959 CriLJ920 (supra) it was observed as follows (at p. 709) :

'But in the year 1952, by Act 59 of 1952, presumably on the basis of the experience gained, S. 5-A was inserted in the Act to protect the public servants against harassment and victimization .....To achieve this object, Ss. 5-A and 6 introduced the following two safeguards .....These statutory safeguards must be strictly complies with, for they were conceived in public interests and were provided as a guarantee against frivolous and vexatious prosecutions. While in the case of an officer of assured status and rank, the legislature was prepared to believe them implicitly, it prescribed an additional guarantee in the case of police officers below that rank, namely, the previous order of a Presidency Magistrate or a Magistrate of the first class, as the case may be. The Magistrate's status gives assurance to the bona fides of the investigation. In such circumstances, it is self-evident that a magistrate cannot surrender his discretion to a police officer, but must exercise it having regard to the relevant material made available to him at that stage. He must also be satisfied that there is sufficient reason, owing to the exigencies of administrative convenience to entrust a subordinate officer with the investigation .'

In the present case, the order of the learned Magistrate does not expressly show that he felt satisfied that there was sufficient reason to entrust an officer

subordinate in rank to the Deputy Superintendent with the investigation. But, their Lordships also observed as follows (at p. 710) :

' ..... it is desirable that the order giving the permission should ordinarily, on the face of it, disclose the reasons for giving the permission. For one reason or other, if the said 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 has taken into consideration the relevant circumstances before granting the permission to a subordinate police officer to investigate the case.' Thus, it is open to the prosecution to establish that the Magistrate in fact took into consideration relevant circumstances before granting permission to the Inspector of Police to investigate the offence. The learned Public Prosecutor points out that the learned Magistrate has been cited as a witness in the charge-sheet. It was open to the Special Judge to consider, with reference to the evidence let in, whether the permission had been , in fact granted by the learned Magistrate after properly taking into consideration the relevant facts and circumstances . Even if ultimately he found that the order had not been granted properly and that there was a breach of the provisions of s. 5-A, he would have to consider the nature and extent of the violation and pass appropriate orders for re-investigation such as contemplated in (S) : 1955 CriLJ526 (supra). But, in any case, it was not open to the learned Special Judge to discharge the accused under S. 251-A (2), Cr. P. C. on the ground of breach of provision of S. 5-A regarding investigation by appropriate police officer. We find accordingly that this contention is tenable.

(13) Contention No. 4 : Section 6 (1) of the Criminal Law Amendment Act contemplates appointment of Special Judges. Section 6 (2) mentions the qualification of a person for appointment as a Special Judge. If a person, who is appointed, has the qualifications prescribed in S. 6 (2), the requirement of s. 6 would be satisfied. In the present case, by G. O. No. 595/ 61, the Special Judge-cum-Assistant Sessions Judge for Cuddapah District has the requisite qualification. The Special Judge-cum-Assistant Sessions Judge is a 'person'.

Section 15 of the General Clauses Act, 1897 runs as follows :

'Where by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.'

In view of the above section, the appointment in G. O. No. 595 of 1961 by virtue of office is therefore, valid.

(14) In Public Prosecutor v. Sri Rambhadrayya, : AIR 1960 AP282 , the question arose whether Sanitary Inspectors appointed under S. 9 of the Food Adulteration Act had power under S. 20 of the Act to file written complaints. Section 9 of that Act ran as follows : -

'Section 9 (1). Subject to the provisions of Sec. 14, the State Government may, by notification in the official Gazette, appoint persons ..... to be Food Inspectors.'

Section 20 (1) ran as follows : -

'No prosecution for an offence under this Act shall be instituted except by, or with the written consent of ..... a person authorized in this behalf by the State Government or local authority ;'

It was held that , in view of S. 15 of the General Clauses Act, Sanitary Inspectors could be appointed by virtue of their office under S. 9 of the Food Adulteration Act as Food Inspectors.

(15) In State of Bombay v. Parshottam Kanaiyalal, : [1961]1SCR458 where prosecutions were filed on the basis of written consents granted by the competent person or authority, it was held that the omission of specification of the name of the complainant did not vitiate the proceedings as such specification was not a statutory requirement as the consent required and contemplated was only to a specified prosecution. In the present case, S. 6 does not require that the person should be specified by name or that the person should not be specified by office.

(16) We find that the appointment by office is sufficient compliance with s. 6 of the Criminal Law Amendment Act read with S. 15 of the General Clauses Act. The contention of Shri T. V. Sarma in this behalf is untenable.

(17) Contention No. 2 : The learned Special Judge has observed as follows :

'While according sanction under s. 6 of the Prevention of Corruption Act, it is not only the evidence that has to be considered but also the circumstances. In the present case, the present circumstances after quashing the old report were not allowed to be considered by the Government as sanctioning authority, as there was no approach by the complainant to obtain a fresh sanction from the Government in the light of the unexpected developments and the undue delay by lapse of time.'

Shri T. V. Sarma says that the relevant developments which have taken place after the order of sanction by the Government in G. O. No. 543 dated 19-4-1960 and which, according to him, are to be taken into account for a fresh order of sanction are : - (1) the observation in the judgment of this Court by Kumarayya, J. in Cri. R. C. Nos. 109 and 110 of 1961 (Andh Pra.) and (2) the fact that the shroff and manager, who were cited as witnesses in the complaint against the accused, have been convicted of offences which they had committed. The observation of this Court in the Judgment in Cri R. C. Nos. 109 and 110 of 1961 (Andh. Pra) which we have already extracted, does not mean that a fresh order of sanction by a Government for prosecution is necessary or that the original order of sanction, G. O. No. 543 dated 19-4-1960 had ceased to be in force. The observation only contemplated starting of proceedings afresh after filing of a report in accordance with law. The police have duly filed charge sheets (reports) and thus started proceedings afresh. It is not shown that the original G. O. 543 of 1960 was not valid or that it has ceased to be in force. The fact that the shroff and the manager have been convicted does not in any way affect the validity of g. O. 543 of 1960.

(18) Shri T. V. Sarma seeks to rely on the decision in S. A. Venkataraman v. State, : 1958 CriLJ254 . Therein, it was held that in giving effects to the ordinary meaning of the words used in Section 6 of the Act, when a Court was asked to take cognizance, not only must the offence have been committed by a public servant

but the person accused must also still be a public servant removable from his office by competent authority if the provisions of S. 6 were to apply. Accused concerned in these cases is still a public servant. That decision does not in any way apply to this case or help the accused. The order of sanction G. O. 543 of 1960 cannot cease to be in force by mere lapse of time. We find that there is no need for a fresh sanction by the Government and that the G. O. 543 of 1960 is now in force and is sufficient.

(19) CONTENTION No. 1 : Section 21 of the General Clauses Act runs as follows :

'Where, by any Central Act or Regulation, a power to issue notifications, orders rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to amend, vary or rescind any notifications, orders, rules or bye-laws so issued.'

Government certainly had power to issue a notification of appointment which was in conformity with the law. Shri T. V. Sarma readily conceded that if the Government had issued a fully-worded notification, the substance of which was in express terms the same as the original unamended G. O. 595 of 1961 after omitting the portion which was directed in amendment G. O. 281 of 1962 to be omitted, then that G. O. being self-contained, would be valid and lawful and would be sufficient compliance with the law. But he contends (1) that the original unamended G. O. was illegal, and, therefore, a nullity, (ii) that the Government had no power to amend the g. O. 595/ 61 as it was an order of appointment and that S. 21 did not apply so as to give them any such power ; (iii) as the original G. O. was a nullity, it did not exist, and, therefore, could not be amended.

(20) In support of his contention that S. 21 does not give power to amend an order of appointment, he relies on the decision in Kanta Devi v. Rajasthan State, . The relevant facts in that case were as follows :

The Municipal Board of Pokaran consisted of eight elected and two nominated members. All the seats became vacant. Eight persons were elected and the Government made two nominations under the provisions of section 9 of the Rajasthan Town Municipalities Act. The District Magistrate fixed a date for election

of chairman and issued notice to members including the nominated members. Subsequently. Government issued another notification dated 24-2-1956 in which they cancelled the earlier notification relating to the appointment of the two members and nominated two fresh persons to the same two seats. The two persons, who had been originally nominated, filed an application in the High Court under226 226 of the Constitution. They contended that, after the Government had nominated them on 28-1-1956, it was not open to the Government to cancel that notification and nominate other persons as shown in notification dated 24-2-1956. The learned Judges held as follows (at p. 135) :

'It (S. 21 General Clauses Act) applies to those cases of notifications, which are in the nature of orders, rules or bye-laws or are of a general nature. The present is a notification which, in our opinion, comes under S. 16 of the General Clauses Act, 1897 because the nomination of certain persons to a Municipal Board amounts to their appointment as members of the Board.'

Section 16 of the General Clauses Act runs as follows ;

'Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or by any other authority in exercise of that power.'

The learned Judges held that the intention of the Rajasthan Town Municipalities Act, as could be gathered from S. 14, was that no member of the Board should only take place after certain procedure had been gone into.

In the instant case, we have to see the intention of S. 6 of the Criminal Law Amendment Act ; the intention of Section 6, so far as the appointment as a special Judge was made of a person who was already holding office as Assistant Sessions Judge, is only that the Assistant Sessions Judge who already had the extensive jurisdiction and power as such officer should also have in addition the powers and jurisdiction as Special Judge under S. 6 and was therefore, being appointed. The amendment by G. O. 281 of 1962, in effect, does not amount to

suspending or dismissing the person originally appointed altogether or even from office of Special Judge. It only removes a portion in the original G. O. which amounted to a sort of restriction of the jurisdiction of the Judges as Special Judges to cases investigated by Anti-Corruption Bureau. Thereby, the amendment enlarged the jurisdiction of the Special Judge. Therefore, S. 16 of the General Clauses Act will not apply and S. 21 certainly applies. The decision in does not apply to the facts of this case.

(21) Shri T. V. Sarma also relies on the decision in Bherumal v. Motimal, AIR 1956 Ajmer 67. Therein, the question arose whether the word 'order' occurring in S. 21, General Clauses Act included judicial order. The learned Judge held that it did not. In doing so, he observed as follows (at p. 67) :

'The word 'order' occurring in S. 21 obviously refers to subordinate legislation and not to the judicial orders which by their own nature are incapable of revision, amendment or alteration by the same court unless so permitted by some express provision of the Code of Criminal Procedure.'

The above decision cannot be held to be an authority to the effect that the word 'order' in S. 21 does not include an order appointing a Judge under s. 6 of the Criminal Law Amendment Act or any order of an Administrative nature.

(22) Reliance is also placed by Shri T. V. Sarma on the decision in Gopi Chand v. Delhi Administration, : 1959 CriLJ782 . The relevant facts of that case were as follows.

The East Punjab Public Safety Act, 1949 (Punjab Act 5 of 1949) came into force on March 29, 1949. Its purpose was to provide for special measures to ensure public safety and maintenance of public order. Section 36 of the Act prescribed procedure for the trial of specified offences. Under Sub-section (1) all offences under this act or under any other law for the time being in force in a dangerously disturbed area, and in any other offences under this Act and any other offence under any other law which the Provincial Government may certify to be triable under this Act, 'shall be tried' by the Courts according to the procedure prescribed by the Code, provided that in all cases the procedure prescribed for the trial of

summons cases by Ch. XX of the Code 'shall be adopted'. Sub-section (2) provided that the provisions of Sub-s. (1) shall apply to the trial of offences mentioned therein. Under S. 20, Provincial Government is authorised by notification to declare that whole or any part of the Province as may be specified in the notification to be a dangerously disturbed area, for notification under Section 20. By the first notification issued on July 8, 1949 the whole of the province of Delhi was declared by the competent authority to be a dangerously disturbed area. On September 28, 1950 the authority issued a second notification cancelling the first notification with effect from October 1, 1950. This notification was followed by the third notification of October 6, 1950 which purported to modify it by inserting the words 'except as respect things done or omitted to be done before the date of this notification 'after the words' with effect from October 1, 1950' ; in other words, this notification purported to introduce an exception to the cancellation of the first notification caused by the second. The last notification was issued on April 7, 1951. This notification was issued by the Chief Commissioner of Delhi in exercise of the powers conferred by Sub-section (1) of S. 36 of the Act, and by it he certified as being triable under the said Act in any area within the State of Delhi not being a dangerously disturbed area, the following offences, viz. , any offence under any law other than the aforesaid Act of which cognizance had been taken by any Magistrate before October 1, 1950 and the trial of which was pending in any Court immediately before the said date and had not concluded before the date of the certificate issued by the notification. F. I. R. against the appellant was filed on June 30, 1948. The trial commenced on July 18, 1949 and it was conducted according to the procedure by Chapter XX of the Code. The whole of the prosecution evidence was recorded before August 14, 1951. The judgment was pronounced on December 22, 1951. The Magistrate convicted the accused of offence under S. 409 and other offences under the I. P. C. Appeal was filed and the conviction was confirmed by the High Court. Various contentions were raised on behalf of the accused before their Lordships of the Supreme Court. The main question was whether the trial was vitiated by following summons procedure. Their Lordships observed as follows (at p. 616) :

In other words, the adoption of the summons procedure would be justified only so long as the area in question could be validly treated as a dangerously disturbed

area and it is therefore pertinent to enquire whether at the relevant time the area in question was duly and validly notified to be a dangerously disturbed area.' Their Lordships further observed as follows (at p. 616):

'The Provincial Government is not authorised to issue a notification in regard to the trial of any specified case or cases; and since it is clear that the notification in question covers only pending cases and has no reference to offences or class of offences under the Indian Penal Code, it (notification No. 3) is outside the authority conferred by the Second part of S. 36 (1).'

A contention was raised on behalf of the Delhi Administration that under S. 19 of the Punjab General Clauses Act (Equal to S. 21 of the General Clauses Act, 1897) the competent authority was entitled to modify the notification issued by it. Their Lordships observed as follows (at p. 617) :

'. . . . . .the said power (to cancel or modify the notification) must inevitably be exercised within the limits prescribed by the provisions conferring the said power.'

They also held as follows (at p. 617) :

'The power to cancel or modify must be exercised in reference to the areas of the Province which it is competent for the provincial Government to specify as dangerously disturbed. The power to modify cannot obviously include the power to treat the same area as dangerously disturbed for persons accused of crimes committed in the past and not disturbed for other accused of the same or similar offences committed later. That clearly is a legislative function which is wholly outside the authority conferred on the delegate by S. 20 or S. 36 (1). We must, therefore, hold that the third and the fourth notifications are invalid and as a result of the second notification the whole of the Province of Delhi ceased to be dangerously disturbed area from October 1, 1950.'

In that case, the first and second notifications were hold to be valid. The second notification completely cancelled the first notification with effect from a particular date i.e., 1st October 1950. The third notification dated 6-10-1950 purported to modify the second notification by introducing an exception which was in the form

of a restriction. That exemption and restriction were held by their Lordships to be invalid as being outside the scope of the powers given under the Act. In effect, they held that the Second notification by itself was good and was valid but the second notification, was invalid. In the present case, the unamended g. O. conferred territorial jurisdiction regarding the cases triable by the Special Judge concerned. This restriction was by way of exclusion of a certain category in cases tried by agencies other than Anti Corruption Bureau. The amendment G. O. 281 of 1962 removed the restriction. The amended G. O. 595 of 1961 in effect amounted to giving territorial jurisdiction as Special Judge over area concerned in full to cases investigated by any particular agency alone, without any restriction. In that case, the notification No. 2 had ceased to be in force on 1-10-1950 and notification No. 3 was issued only on October 6, 1950 (Their Lordships did not decide the question whether it was competent for the authority to modify the second notification under those circumstances.)

In this case, apart from the question of the legal effect of the unamended G. O. No. 595/1961 it stood uncancelled on the date of the amendment G. O. No. 281/1962. It was open to the Govt. to pass an order at any time expressing in full the effect of the amended G. O. Instead of passing a fresh G. O. with entirely self-contained wording which would have the same meaning in substance and effect as the amended G. O., the Government chose to pass an Amendment G. O. making reference to the original unamended G. O. which they had already passed namely, 595/1961. In effect, they passed the amended G. O. on 12-2-1962, though the procedure they adopted was to pass an amendment G. O. 281/1962 (instead of a fresh G. O. which was self-contained in wording). In the amending G. O. 281 of 1962, wording was adopted by making reference to an earlier G. O. (unamended G. O.) which had been already notified and could be available to any one concerned, interested or affected. We find that the validity of the amended G. O. is unaffected by the procedure and wording adopted for passing it, notifying it and giving effect to it.

(23) Shri T. V. Sarma contends that the unamended G. O. 595/1961 was not valid. On the other hand, the learned Public Prosecutor contends (Contention 1 (a)) that the unamended G. O. was itself not invalid and that the learned Special Judge

committed a mistake in assuming that it was not valid. Section 6 of the Criminal Law Amendment runs thus :

'Section 6. The State Government may, by notification in the Official Gazette, appoint as many Special Judge as may be necessary for such area or areas as may be specified in the Notification to try the following offences, namely-

(a) an offence punishable under Ss. 161, 161, S. 163, S. 174, S. 165, or S. 165A of the Indian Penal Code (Act XLV of 1960), or Sub-section (2) of S. 5 of the Prevention of Corruption Act, 1947 (II of 1947).

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

This Section does not specifically mention that every Special Judge, who was appointed for any area, should be given jurisdiction over all the cases i.e., each and every case contemplated by Sections 6 and 7 in that area. Section 6 (1) indicates that several Special Judge may be pointed for one area. Section 7 (2) runs as follows:

'Every Offence specified in sub-section (1) of S. 6 shall be tried by the Special Judge for the area within which it was committed, or where there are more Special Judge than one for such area, by such one of them one for such area, by such one of them as may be specified in this behalf by the State Government.'

Government can appoint one Special Judge for an area or more Special Judges than one for that area depending on how many they find necessary for that area. Government may, in the exercise of sound discretion, delimit an area and also decide on the number of Special Judges to be appointed for that area. Where Government appoints more than one Special Judge for such area. Government can specify regarding every offence as to which of the several Special Judges appointed for the area shall try that particular offence. This is not entirely a new type of provision or a radical departure from the general principles of Criminal Procedure. These are provisions in the Cr. P. C. as follows :

Section 12 (1). The State Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the Presidency towns; and the State Government or the District Magistrate, subject to the control of the State Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such districts.

Section 14 (1). The State Govt. may confer upon any person who holds ..... any judicial post ..... all or any of the powers conferred or conferable by or under or this Code on a Magistrate of the first, second or third class in respect to particular classes of cases, or in regard to cases generally in any local outside the presidency-towns.

(2) Such Magistrates shall be called special Magistrates and shall appointed for such term as the State Government may by general or special order direct.'

Concurrent jurisdiction to exercise the same judicial power is also found in other sections of the Cri. P. C. for example, S. 435 and S. 436.

(24) The learned Public Prosecutor draws out attention to G. o. No. 593 Home Courts-B Department dated 16-3-1959 which runs as follows :

'In exercise of the powers, conferred by S. 6 (1) of the Criminal Law Amendment Act, 1952 (Central Act XLVI of 1952), the Governor of Andhra Pradesh appoints Sri. M. B. A. Murthy as Special Judge, Hyderabad, with effect from the date of his taking charge to try the offences mentioned in Ss. 6 and 7 of the said Act in respect of cases arising in the State of Andhra Pradesh.'

He contends that this G. O. was in force at the relevant period simultaneously with unamended G. O. No. 595/1961 with the result that for the area concerned in this case namely, Cuddapah District more than one Special Judge had been appointed by the State Government under S. 6 (1) of the Criminal Law Amendment Act to try offences mentioned in Sections 6 and 7 of the said Act and that in particular Shri

M. B. A. Murthy had jurisdiction to decide cases which had been investigated by any agency whether Anti-corruption Bureau of Andhra Pradesh or not. It is not shown that this contention is wrong. We accept it.

(25) When there is only one Special Judge for an area, ordinarily, under s. 7 (2) Government would specify that every offence mentioned in S. 6 (1) shall be tried by him, when there are more Special Judges than one for an area, under S. 7 (2) the Government has power to specify as to which of those Special Judges shall try one of the offences specified in S. 6 (1). Section 6 does not specifically lay down that judges for one area should be appointed only in such a way as to enable every Judge to try all offences in that area which are described in clauses (a) and (b) of S. 6 (1). Though the main body of S. 6 (1) mentions that appointment may be to try the following offences, clause (a) mentions 'an offence' punishable under any of the section mentioned therein and clause (b) mention 'any conspiracy' in singular. The words 'following offences occurring in the main body of S. 6 91) in the plural obviously refer to 'an offence' mentioned in clause (a) and 'any conspiracy' occurring in clause (b). So, the term 'every offence' occurring in s. 7 (2) means any individual offence alleged to have been committed by alleged act concerned. The power given under S. 7 (2) to the Government being wide enough to allow the Government being wide enough to allow the Government to specify by which Judge any particular offence shall be tried, the power includes the power to indicate which particular category of offences (more than one) may be tried by one Special Judge out of many. So, it does not appear to be beyond the scope of the State Government to appoint a Judge for only some of the offences arising in that area. Thus when the Government has right to distribute the various offences in an area among various Judges who are Special Judges for that area there is no restriction imposed by law on the discretion of the Government to do the distribution and allotment so long as the appointment of each of Judge is for the area. In particular there is no indication in s. 7 (2) that apportionment of cases among the Special Judges appointed for one area should be done only by Sub division of the area among them and that allotment to each Special Judge should be for all the cases arising in a particular sub-area. The Government, in their G. O. 595/1961, chose to distribute the work by allotting to one Special Judge appointed for a particular area, cases investigated by a particular agency within that area. It

cannot be said that this allotment was not covered by the power given to Government under S. 6. There was to be tried by which special Judge and an order making such allotment is valid. The G. O. 595/1961 would not be invalid simply on the ground that it does not indicate as to which other specified Judge is to try other offences in other specified Judge is to try other offences in S. 6 (1) and S. 6 (2) which had been investigated by agencies other than the Anti-Corruption Bureau of Andhra Pradesh or by the fact that there is another special Judge for the same area. In this case, allotment of work to one special Judge, as in unamended G. O. 595/1961 with reference to the cases investigated by a particular agency is not in contravention of any provision in S. 6 and S. 7 of the Criminal Law Amendment Act or any other law.

(26) In the instant case, the original notification unamended g. O. No. 595/1961 cannot be said to be absolutely null and void. It was open to the State Government to appoint for the area of Andhra Pradesh State, as many Judges as may be necessary for that local area. It was also open to the State Government to consider various smaller areas within the big area of Andhra Pradesh State and appoint one or more Judges for each smaller area to try all the offences mentioned in clauses (a) and (b) of S. 6 (1). It was open to the State Government to confer jurisdiction on any particular special Judges by appointment to try some of the offences specified in clauses (a) and (b) of sub-section (1) of S. 6. The original unamended G. O. 595/1961 appointed each special Judge for an area as required by S. 6, i.e., there was an appointment of one Judge for each area specified in column 2. It also appointed each special Judge for trial of offences mentioned cls. (a) and (b). It only placed a restriction on the power to cases investigated by Anti-Corruption Bureau of Andhra Pradesh. This restrictive clause cannot be said to have made the G. O. a nullity. We agree with the contention of the learned Public prosecutor that G. O. 595/1961 originally passed on 25-3-1961 was valid and that the learned Special Judge wrongly assumed that it was not valid.

(27) Even assuming for arguments' sake, without admitting, that G. O. 595/61 was defective in the sense that it did not give full powers to try all cases in the concerned area mentioned in Sections 6 and 7 irrespective of whether they were investigated by Anti-Corruption Bureau or any other agency, but only an

incomplete G. O. nullity but only an incomplete G. O. and once the defect was rectified by a proper amendment lawfully made, the G. O. as amended was fully valid. We find that the Government had power to amend the unamended G. O. 595/1961 under S. 21 of the General Clauses Act and that the Government validly passed order in G. O. No. 281/1962 and that G. O. No. 598/61 as amended by G. O. No. 281/1962 has the same effect as if the amended G. O. were published in full.

(28) Shri. T. V. Sarma contends that the G. No. 281/1962 cannot have retrospective effect. We agree with this contention. The G. O. No. 281/1962 had effect only from the date on which it was passed namely, 12-2-1962 and the amended G. O. No. 595/1961 had effect only from 12-2-1962. The presentation of the two charge-sheets were validly presented at a time when they could be validly entertained.

(29) Shri T. V. Sarma contends that appointment in unamended G. O. 595/1961 offends Article 14 of the Constitution. His argument is that some cases coming under S. 6 (1) Criminal Law Amendment Act would be made triable by one Special Judge specified in that G. O. whereas other cases would be triable by some other Judge and that therefore there is unjust discrimination which offends Article 14 of Constitution. In M. K. Gopalam v. State of Madhya Pradesh, : 1954 CriLJ1012 it was observed as follows: (at p. 363).

'In the present case, the Special Magistrate under Section 14 of the Criminal Procedure Code has to try the case entirely under the normal procedure, and no discrimination of the kind contemplated by the decision in State of West Bengal v. Anwar Ali Sarkar, : 1952 CriLJ510 (wherein one the allotment of an individual case to a Special Court authorised to conduct the trial by a procedure specifically different from the normal procedure, discrimination was held to arise as between persons who had committed similar offences by one or more out of them being subjected to a procedure materially different from the normal procedure prejudicing them thereby) and the other cases following it, arises, here. A law vesting discretion in an authority under such circumstances cannot be said to be discriminatory as such, and is therefore not hit by Article 14 of the Constitution . . .

. . . . . .'

In this case, it is not shown that any person accused of offences covered by S. 6 (1) is made liable to be tried by a procedure different from the procedure for persons who are tried of offences coming under unamended G. O. 595/1961. Therefore, there is no unjust discrimination such as would offend Article 14 of Constitution.

(30) Shri T. V. Sarma, contends that the unamended G. O. 595/1961 is not valid as it offends Article 14 of the Constitution on the following other grounds also : (1) discrimination between cases in which the Anti-Corruption Bureau of Andhra Pradesh investigated them and was the effective complainant an cases in which other competent agencies investigated them and were the effective complainants; and (2) discrimination between accused in cases investigated by the Anti-Corruption Bureau and accused in cases investigated agencies.

In Asgarali Nazarali v. State of Bombay, (S) : 1957 CriLJ605 it was held by the Supreme Court that Article 14 did not forbid reasonable classification for the purpose of legislation. In this case, all the cases and all the accused are liable to be tried only by same procedure and only by Special Judges appointed under Section 6 (1) of the Criminal Law Amendment Act. We find that these grounds urged by Shri T. V. Sarma are untenable and that there is no unjust discrimination or contravention of Article 14 of the Constitution in unamended G. O. 595/1961.

(31) Shri T. V. Sarma contends that the amended G. O. 595/1961 is null and void because it discriminates between officers who are actually appointed and the other officers who are eligible to be appointed but were not appointed. In particular, he points out that only the Assistant Sessions Judge, Cuddapah was appointed as a Special Judge for the whole of Cuddapah though under S. 6 (2) of the Criminal Law Amendment Act, the Sessions Judge and Additional Sessions Judge who were working in Cuddapah were also qualified for appointment. The State Government had power and discretion to appoint the number of Judges necessary and for that purpose they are bound to select only from out of those who are qualified under section 6 (2). It was neither possible nor necessary that the State Government should appoint as Special Judges all the persons who were qualified

under section 6 (2). This contention is untenable.

(32) The validity of unamended G. O. 595/1961 was not gone into by our learned brother Kumarayya, J., in his judgment in Cri. R. G. Nos. 109 and 110 of 1961 (Andh Pra) though that G. O. was brought to his notice. The learned Public Prosecutor has relied on the Judgment of Gopal Rao Ekbote J. dated 15-10-1963 in Cri. M. P. Nos. 448 to 472 of 1963 (Andh Pra). In that case, the relevant facts were as follows.

After the G. O. 595/1961 and G. O. 281/1962 were passed, Government passed G. O. No. 1169 dated 18-6-1963, in exercise of the same power namely, under section 6 of the Criminal Law Amendment Act, appointing with effect from 24-5-1963 Sri. C. V. Avadhani, Subordinate Judge-cum-Assistant Sessions Judge as the Special Judge to try the offences mentioned in section 6 and 7 of the Criminal Law Amendment Act in respect of cases arising in the State of Andhra Pradesh and investigated by the S. P. E. at Hyderabad. That G. O. was amended subsequently by G. O. Rt. 2407 dated 19-8-1963. A contention was raised in that case by the learned Public Prosecutor, that, except Shri C. V Avadhani who was Special Judge at Secunderabad, no other Judge in the State was competent to hear cases investigated by the S. P. E. at Hyderabad. On the other hand, it was contended on behalf of the petitioner that other Special Judges appointed under S. O. 595/61 were also competent to hear such cases within the area mentioned against them in that G. O. The learned Judge observed thus :

'The necessary effect of the subsequent Notification is that to that extent the jurisdiction of the Special Judge constituted under G. O. Ms. 595 is taken away. The amendment to G. O. Ms. 1169 is meaningful implication of G. O. Ms. 1169 is that it is Mr. C. V, Avadhani alone who can hear cases under sections 6 and 7 of the Act which are investigated by the Special Police Establishment at Hyderabad.'

The learned Judge referred to G. O. 595/1961 and G. O. 281/1962 but did not consider or decide the question as to whether either of these G. Os. was invalid.

(33) We agree with the learned Public Prosecutor on this contention and find as follows :(1) the unamended G. O. 595/61 was in conformity with law and is,

therefore, valid; and (3) the amended G. O. 595/1961 is valid and effective.

(34) In the result, we hold that the grounds raised by the learned Public Prosecutor are tenable. The grounds on which the learned Special Judge thought that the three objections raised by the accused were tenable, the proper course for him would have been only to return the charge-sheets and not to discharge the accused under S. 251-A (2) Cr. P. C.

(35) The order of the learned Special Judge is set aside. The revision petitions are allowed and the learned Special Judge, Cuddapah is directed to proceed with the trial of the cases as expeditiously as possible.

(36) Petitions allowed.