

Prem Shanker Misra Vs. State

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Court : Allahabad

Decided On : Aug-23-1956

Reported in : 1957CriLJ108

Judge : Oak, J.

Appellant : Prem Shanker Misra

Respondent : State

Advocate for Pet/Ap. : Mr. V. K. S. Chaudhry

Judgement :

Oak, J.

1. This is an appeal by Prem Shankar Misra, who has been convicted by the learned Special Judge (Anti Corruption) for U. P., Lucknow under Section 468, I. P. C. and under Section 5 of the Act II of 1947. For each offence he has been sentenced to rigorous imprisonment for three years. The two sentences have been ordered to run concurrently. According to the prosecution, the appellant was a clerk in the accounts section in the office of the District Executive Engineer at Izatnagar in district Bareilly in the employment of O. T. Railway in the year 1950.

The accused forged three payment orders (Exs. P-3, P-4 and P-5) during the period from April to June 1950. The forged payment orders were in favour of a

fictitious person Sarju Mal. Soon after preparing the forged payment orders, the accused presented these documents for payment at Railway Station, Bareilly. The accused on each occasion succeeded in obtaining payment of a sum of Rs. 107/- upon each payment order.

The fraud was detected by an officer of the Special Police Establishment, Lucknow. The payment orders in question were sent to the Government Examiner of Questioned Documents. It was found that the documents in Question had been forged. The accused was, therefore, prosecuted for forging the three payment orders, and for fraudulently obtaining money on the basis of the forged payment orders.

2. The case was tried by the learned Special Judge Anti Corruption, U. P., Lucknow. The accused pleaded not guilty. He denied having forged any of the three payment orders. He also denied having received any money on the basis of those payment orders. The learned Special Judge was satisfied about the forgery of the three payment orders, and about the receipt of money on the basis of the forged payment orders. Prem Shankar was, therefore convicted under Section 468, I. P. C. and Section 5(2) read with Section 5 CD (d) of Act II of 1947.

3. I noticed that the case was tried by the learned Special Judge, Lucknow. I entertained some doubt as to whether this appeal ought to be heard at Allahabad or at Lucknow. The learned Counsel for the parties were agreed that, this appeal ought to be disposed of at Allahabad. It was pointed out that, although the case was heard at Lucknow, the case really relates to district Bareilly. It was, therefore, urged that, this appeal ought to be disposed of at Allahabad, and not by The Lucknow Bench.

4. Clause 14 of the U. P. High Courts Amalgamation Order, 1948 deals with the jurisdiction of the Lucknow Bench. According to proviso (1) to Clause 14, the Judges sitting at Lucknow have to deal with cases arising in Oudh. Although this case was tried at Lucknow, the case did not arise in Oudh. Again, proviso (2) to Clause 14 states:

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad.

This appeal was listed before me. I, therefore, take it that, Hon'ble the Chief Justice has directed that, this case should be heard at Allahabad. It is, therefore, permissible to dispose of this appeal at Allahabad. On any view of the matter, it is permissible to dispose of this appeal at Allahabad.

5. The prosecution relied upon Ex. P-19, which purports to be a confessional statement made by the accused to Sri J. K. Mehta, Railway Sectional Officer, Special Police Establishment, Lucknow. The learned Special Judge has relied upon this confession (Ex. P-19). But I find that this is a confession made to a police officer. Mr. Katju appearing for the State urged that, Sri J. K. Mehta was not a police officer, but was an officer belonging to some other department temporarily attached to the Special Police Establishment. Ex. P-47 is the first information report furnished by Sri J. K. Mehta.

In Ex. P-47 Sri Mehta wrote that, he made efforts to detect frauds and catch defaulters red-handed. Sri Mehta appeared before the Court as P. W. 8. He gave his designation as Railway Sectional Officer of Special Police Establishment, Lucknow. From this description also, it appears that Sri Mehta belongs to the police establishment. Sri Sarpal (P. W. 4) is the District Executive Engineer at Izatnagar. He too gave evidence with respect to confession (Ex. P-19). But the document itself shows that, it was addressed to Sri J. K. Mehta, Railway Sectional Officer, Special Police Establishment, Lucknow.

Under Section 25 of the Evidence Act a confession made by an accused person to a police officer is inadmissible in evidence. The prosecution, therefore, could not rely upon Ex. P-19. The accused stated before the Court that, this document was obtained from him under coercion and pressure. In support of this contention, two witnesses were examined in defence. But I have already held that, Ex. P-19 is not admissible in evidence. It is, therefore, unnecessary to discuss the defence evidence as to whether the document was Obtained under pressure.

6. Mr. V. K. S. Chaudhry appearing for the appellant pointed out that, the charge framed by the trial court was defective. The charge framed by the learned Special Judge ran thus:

That you on or about the months of April to June 1950 obtained for yourself... the amount of Rs. 321/- on the basis of Exs. P-3, P-4, P-5, and thereby committed the offence punishable under Section 5(1)(d) read with Section 5(2) of Act II of 1947; ... and secondly, that you ... forged the documents Exs. P-3 to P-5 and that you thereby committed an offence punishable under Section 468, I. P. C...

7. Exhibit P-3 dated 3-4-1950. It is said to have been encashed on 4-4-1950. Exhibit P-4 is dated 2-5-1950. It appears to have been encashed on 3-5-1950. Exhibit P-5 is dated 1-6-1950, It appears to have been encashed on 3-6-1950. Thus from a perusal of these three documents it is possible to ascertain the dates of preparation of the payment orders and the dates of their encashment. The learned Special Judge, however, did not take the trouble to specify those dates in the charge framed against the accused. A single charge of. forgery was framed with respect to three payment orders Exs. P-3, P-4 and P-5.

A bare perusal of three documents is sufficient to show that the three documents were prepared in three different months. They cannot, therefore, be said to be parts of the same transaction. Three separate charges of forgery should have been framed with respect to the three payment orders. Similarly, three separate charges under Section 5(1)(d) read with Section 5(2) of Act II of 1847 should have been framed by the Court with respect to the three acts of enactment. I agree with Mr. Chaudhry that, the charge framed by the trial Court was defective.

8. Firstly, I take up the three counts relating to forgery. There are two witnesses on the charge of forgery. The first witness on the charge of forgery is Ram Gopal (P. W. 5). He was head clerk in the accounts section in the office of the District Executive Engineer at Izatnagar. He stated that the accused was also a clerk in the office. The witness said that he can recognise the appellant's handwriting. Ram Gopal deposed that Exs. P-3 to P-7 are in the handwriting of the accused. Exhibit P-3 purports to be a payment order issued by Sri M. Singh, Resident Engineer payable to Sarju Mal temporary post war clerk.

There is evidence to the effect that, Sri M. Singh did not issue any such payment Order. Thus, according to Ram Gopal head clerk (P. W. 5), the payment order (Ex. P-3) has been forged by the accused. Similarly, the accused forged the other two payment orders (Exs. P-4 and P-5). In cross-examination Ram Gopal stated that, there were nine clerks working under him. Ram Gopal is in a position to recognise the handwriting of all these nine clerks. Besides Exs. P-3 to P-7, Ram Gopal was questioned about Ex. P-8 also.

In his statement before the police Ram Gopal stated that, Ex. P-8 also is in the handwriting of Prem Shankar Misra. But Ram Gopal stated before the Court that, the handwriting of Ex. P-8 appears to be different from that of Exs. P-3 to Ex. P-7, The signatures at the foot of Exs. P-3, P-4 & P-5 bear a rubber stamp (Resident Engineer Izatnagar Division). Ram Gopal stated that there was no hard and fast rule for the safe custody of seals. The seals were not kept under lock and key. Ram Gopal stated that the forms of cash payment orders were kept in the establishment section of his office.

Har Narain Sharma was in charge of that section. Har Narain appeared before the Court as P. W. 7. He said that blank forms of cash orders were lying on an open rack. They did not bear any serial numbers. Har Narain thus suggests that, some unauthorised person might have picked up the cash order forms surreptitiously. According to the prosecution, the appellant signed on the stamps on Exs. P-3 to P-5 as Sarju Mal. Ram Gopal said that he is not in a position to say if the writing across the stamps on Exs. P-3 to P-8 is that of the accused or not. Since the accused was working under this witness, Ram Gopal is in a position to identify the appellant's writing. Ram Gopal's statement is reliable.

9. The second witness on the charge of forgery is Sri Sen (P. W. 6). He is the Government Examiner of Questioned Documents, Simla. He stated that several writings and signatures were sent to him for comparison. Exhibits P-17, P-18 and P-21 to P-29 are admittedly in the handwriting of the accused. Sri Sen stated that the writer of Exs. P-17, P-18, P-21 to P-29 and the writer of Q-1, Q-2 on Exs. P-3, Q-4 on Ex. P-4 and Q-7 on Ex. P-5 are the same person. Q-1 is the body of the payment order (Ex. P-3). Q-2 is the signature of the revenue stamp purporting to

be Suraj Mai's signature.

Q-4 is the body of the payment order (Ex. P-4). Q-5 is the signature on the revenue stamp purporting to be Sarju Mal's signature. Q-7 is the body of the payment order Ex. P-5. Q-8 is the disputed signature on the revenue stamp. According to Sri Sen, the body of the three payment orders (Exs. P-3, P-4 and P-5) was written by the accused. The signature Q-2 on Ex. P-3 was also written by the accused. As regards the two signatures Q-5 on Ex. P-4 and Q-8 on Ex. P-5, Sri Sen indicated that these two signatures were also probably made by the accused,

10. In his examination-in-chief Sri Sen gave briefly the reasons in support of his view. He explained that considering presentation, pen-pressure, spacing, relative sizing, terminal, slope, movement, location etc., the disputed writing appears to be the writing of the person who wrote Ex. P-17, Ex. P-18 etc. Mr. Chaudhry contended that the reasons given by Sri Sen in support of his opinion were inadequate. It is not necessary for an expert to give reasons at great length in support of his opinion. It is sufficient if the expert gives his reasons briefly. It is always open to the opposite party to require the expert to elaborate any particular point further in cross-examination.

11. Sri Sen gave out opinions from time to time. Exhibit D-4 is his opinion dated 30-6-1951. Exhibit P-30 is his opinion dated 10-12-1951. Exhibit P-31 is his opinion dated 16-7-1952. In Ex. D-4 Sri Sen wrote that, it was necessary to have signatures of Sarju Mal, Shyam Lal and M. Singh for purposes of comparison. Again, in Ex. P-30 Sri Sen wrote:

I am unable to identify the writer or writers of the rest of the writings on the basis of the present materials.

Sri Sen gave the supplementary opinion (Ex. P-31) on 16-7-1952. Mr. Chaudhry argued that, the supplementary opinion carries no weight, as Sri Sen had already stated earlier that he was unable to say anything further without additional material. Sri Kehar Singh, Inspector, S. P. E., Lucknow is P. W. 9. He stated before the Court that when the expert demanded more documents for comparison,

Sri Kehar Singh sent Exs. P-21 to, P-26 again. Exhibits P-21 to P-26 marked by the court correspond to six papers, which were marked by Sri Sen as 14 to 19.

A perusal of the three opinions (Exs. D-4, P-30 and P-31) shows that, five papers marked by Sri Sen as 1 to 5 were used by him as the basis for comparison for purposes of the two opinions (Exs. D-4 and P-30). But for the supplementary opinion (Ex. P-31), he utilised papers marked by him as 14 to 19 in addition to the five papers marked by him as 1 to 5. It, therefore, appears that, when Sri Sen gave his supplementary opinion (Ex. P-31) on 16-7-1952, he had with him some additional material, which was not in his possession when he wrote Ex. D-4 or Ex. P-30. It is not, therefore, surprising that, in his supplementary opinion (Ex. P-31) Sri Sen was able to say something about the writing Q-1 etc,

12. Mr. Chaudhry contended that after all Sri Sen's statement is merely his opinion, and it is not safe to base the appellant's conviction on the opinion of an expert. Sri Sen's opinion is not the only material for holding that the disputed writing and signature are the appellant's writing and signature. We have also got Ram Gopal's statement on the same point. The statements of Ram Gopal and Sri Sen are sufficient to prove that, Exs. P-3, P-4 and P-5 were written by the accused.

13. These three payment orders purport to have been issued by Sri M. Singh, Residential Engineer. Sardar Harmohan Singh appeared before the Court as P. W. 3. He stated that the three signatures purporting to be signatures of M. Singh appearing on the three payment orders are not his signatures. Exhibits P-9 to P-16 are specimen signatures of Sardar Manmohan Singh. In his opinion (Ex. P-30) Sri Sen stated that the person, who wrote the writing marked as 6 to 13, did not write the signatures marked Q-3, Q-6 and Q-9. Thus from the statements of Sardar M. Singh and Sri Sen it is clear that, somebody forged signatures, which purport to be the Resident Engineer's signatures on Exs. P-3, P-4 and P-5.

Sri Sen was unable to say which person prepared these signatures Q-3, Q-6 and Q-9. It is, however, clear that the three signatures are forged. Further, the body of the three payment orders was prepared by the accused. The charge of forgery has, therefore, been proved against the accused on three counts. These payment

orders were prepared in the name of one Sarju Mal. There is evidence to the effect that, a person purporting to be Sarju Mal encashed the payment orders. Obviously forgery was committed for the purpose of cheating. So the offence committed by the accused falls under Section 468, I. P. C.

14. Secondly, I have to consider the charge under Section 5 of Act II of 1947. This charge relates to the encashment of three payment orders. There are again two witnesses on this charge. The first witness on this charge is Durga Dutt Pande (P. W. 2). He stated that in 1950 he was posted as Goods Clerk at Bareilly O.T.R. Station, He made payments on the three cash orders (Exs. P-3, P-4 and P-5). On each occasion the witness paid Rs. 107/- to the accused, who purported to be sarju Mal. The practice was that the payee had to be identified by the Station Master or the Assistant Station Master,

In accordance with that practice, the payee was identified by Sri A. B. Fanthome, Station Master, when Exs. P-3 and P-4 were encashed. And the payee was identified by Sri Mohammad Hamid, Assistant Station Master, when Ex. P-5 was encashed. Durga Dutt Pande said that he recognised the signatures of Sri A. B. Panthome on Exs. P-3 and P-4, He could not recognise Sri Mohammad Hamld's signature. According to the prosecution, the accused pretended to be Sarju Mal, and obtained payment. It was, therefore, a case of personation and wrong identification.'

The prosecution should should have examined Sri A. B. Fanthome, Station Master, and Sri Mohammad Hamid, Assistant Station Master, on the question of the wrong identification. But neither Sri Fanthome nor Sri Mohammad Hamid appeared before the Court. Sri Fanthome was the Station Master Bareilly even when Durga Dutt Pande gave his evidence before the Court. Sri Kehar Singh Inspector (P. W. 9) said that he did not contact Sri Fanthome. Sri Fanthome was a material witness. He ought to have been examined by the police during investigation of this case.

It is possible that Sri A. B. Fanthome and Sri Mohammad Hamid are unwilling to give statements, because they were responsible for wrong identification of the payee. Apparently, Durga Dutt Pande did not know the accused before April 1950.

He claims to have identified the accused, because he appeared before the witness on three occasions for receiving payment. No identification parade was arranged to test whether the witness is able to identify the payee. Durga Dutt Pande said that hundreds of such cash orders must have come before him for payment since 1940.

Ten or 20 cash orders must have come before him for payment during the period April to June 1950. Money paid on such cash orders must have been entered in some remittance book. But no such remittance register was produced before the Court to show that, Durga Dutt Pande made payments on the three dates. There is no writing on the cash orders themselves to indicate that payment was made by Durga Dutt Pande. In re-examination he said that, he is not required under any rule to sign or put any mark on the payment order. The witness appeared before the Court in June 1953.

He retired from railway service in November 1950. The witness had no reason for falsely implicating the accused. The payee appeared thrice in succession to obtain money on the three cash orders during the short period of two months. It was, therefore, possible for the goods clerk to identify the payee. Durga Dutt Pande's evidence appears to be true.

15. The second witness on the question of encashment of the payment orders is the handwriting expert Sri Sen (P. W. 6). He indicated that the admitted signature of Prem Shankar and the disputed signature Q-2 on Ex. P-3 were by the same person. In other words, the signature Q-2, which purports to be Suraj Mai's signature on Ex. P-3, was in fact made by the accused. Sri Sen's opinion affords good corroboration of Durga Dutt Pande's statement. It is thus proved that, it was the accused, who obtained payment of the sum of Rs. 107/- on the cash order Ex. P-3.

16. Sri Sen is not quite sure about the two signatures Q-5 and Q-6 appearing on Ex. P-4 and Ex. P-5. Sri Sen merely said that, these two signatures were probably made by the same person, who wrote Exs. P-17, P-18 etc. There is thus no good corroboration of Durga Dutt Pande's state-ment as regards encashment of Ex. P-4 and Ex. P-5.

17. The question for consideration now is whether the encashment of the payment order (Ex. P-3) amounts to the offence punishable under Section 5(2) of Act II of 1947. Section 5 of the Act deals with criminal misconduct in discharge of official duty. The offence has been defined by Sub-section (1) of Section 5. Penalty for the offence has been provided in Sub-section (2) of Section 5. The accused has been convicted under Sub-section (2) read with clause (d) of Sub-section (1) of Section 5. Section 5(1)(d) is:

If he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

Mr. Chaudhry urged that in order to constitute the offence under Clause (d), it is necessary to prove that the accused obtained pecuniary advantage as a public servant. It was urged that Ex. P-3 was prepared in favour of one Sarju Mal No Sarju Mal ever tried to encash the payment order. The payment order was cashed by a fictitious person The payee did not act as a public servant It was, therefore, urged that, the case does not fall under Clause (d) of Sub-section (1) of Section 5.

18. Reliance was placed upon Dr. K. L. Anand v. The State : AIR1956 All673 . In that case one doctor obtained money for issuing a medical certificate. He was prosecuted under Section 5 of Act II of 1947. It was pointed out that, private practice was permissible. It could not therefore, be said that money was obtained by the doctor in his public capacity, so it was held that the charge under Section 5 of Act II of 1947 was not proved.

19. In the present case there is no question of the cash order having been encashed in a lawful manner. This is a case of a forged cash order in the name of a fictitious person. It has come in evidence that, there was no such person as Sarju Mal, temporary post war clerk. This name was altogether fictitious. For purposes of cl (d) of Sub-section (1) of Section 5 of Act II of 1947, it is not necessary that the accused should function as a public servant at the moment at which pecuniary advantage is obtained. For purposes of Clause (d), it is sufficient if the accused obtained pecuniary advantage by abusing his position as a public servant.

What happened in the present case was this. The accused was employed as a clerk in the Resident Engineer's office. The accused succeeded in obtaining blank cash order forms. He filled up the blank cash order forms. The accused could do all this because he was a public servant. He abused his position as a public servant, forged the cash order form (Ex, P-3), and subsequently obtained payment on its basis. This sequence of events shows that, the accused obtained pecuniary advantage by abusing his position as a public servant, Mr. Chaudhry urged that, mere criminal misconduct is not punishable under Sub-section (2) of Section 5. What is punishable is criminal misconduct in the discharge of his duty. In this connection it may be pointed out that, the offence of criminal misconduct in the discharge of duty has been defined by Sub-section (1).

Sub-section (1) contains four clauses. If any of the court clauses is satisfied, the offence of criminal misconduct in the discharge of duty is complete. The offence becomes punishable under Sub-section (2). If the facts proved make out the offence described in Clause (d) of Sub-section (1), such an offence becomes punishable under Sub-section (2). The offence committed by the present appellant in obtaining Rs. 107/- on the basis of the forged cash order (Ex. P-3) amounts to the offence punishable under Sub-section (2) read with Clause (d) of Sub-section (1) of Section 5 of Act II of 1947.

20. Next Mr. Chaudhry urged that, there was misjoinder of charges during the trial. There is force in this contention. According to the charge prepared by the learned Special Judge, there was one single charge for forgery, and a single charge under Section 5 of Act II of 1947. But I have shown above that, in substance, there were three charges under Section 468, I. P. C., and three charges under Section 5 of Act II of 1947. The question is whether the six charges could be tried jointly. The three charges for forgery relate to three offences of the same kind. So three charges for forgery could be tried together under Section 234, Cr. P. C.

On the same principle three charges under Section 5 of Act II of 1947 could be tried together in the same trial. Again, a cash order was forged for obtaining money. The accused is said to have obtained money in the name of a fictitious person after preparing a forged cash order. The forgery and obtaining money upon

forged cash order were parts of the same transaction. So the two connected offences relating to a single cash order could be tried together under Section 235, Cr. P. C. The question, however, remains whether three charges under Section 468, I. P. C. and three charges under Section 5 of Act II of 1947 could be disposed of in a single trial.

21. This question came up for consideration before a Full Bench of this Court in *Sri Ram Varma v. State* : AIR1956 All466 . It was held by a majority of the Pull Bench that, the use of the word 'and' in Section 233. Cr. P. C. does not justify the conclusion that, aid can be taken from more than one section to constitute an exception to the normal rule of joinder of charges laid down in Section 233, Cr. P. C. Each of the four S3. 234, 235, 236 and 239 can individually be relied upon as justifying a joinder of charges in respect of any trial, but use cannot be made of two or more of these four sections together to justify a joinder. The joinder of three charges of of criminal breach of trust with three charges of falsification of accounts could not be upheld.

22. On the authority of this Pull Bench decision, it must be held that, three charges of forgery and three charges of criminal misconduct could not be disposed of in a single trial. I agree with Mr. Chaudhry that, there was a mis joinder of charges.

23. Mr. Chaudhry urged that the misjoinder of charges has created two defects in the trial. Firstly, the trial Court had no jurisdiction to try the offence or offences of forgery. Secondly the trial is vitiated on account of the illegality arising out of the misjoinder of charges. These two contentions must be examined separately.

24. Courts of Special Judges have been constituted under the Criminal Law Amendment Act (Act No. XLVI of 1952). Section 6 of the Act deals with the power to appoint Special Judges. Section 6 contains a list of certain offences. Section 7 of the Act deals with cases triable by Special Judges. Sub-section (1) of Section 7 lays down that, Special Judges shall try offences specified in Section 6. Sub-section (3) of Section 7 of Act XLVI of 1952 states:

When trying any case, a Special Judge may also try any offence other than an offence specified in Section 6 with which the accused may, under the Code of

Criminal Procedure, 1898, be charged at the same trial.

Section 5 of Act II of 1947 is specified in Section 6 of the Act, (XLVI of 1952). Section 468, I. P. C. is not mentioned in Section 6 of the Act.

25. The combined effect of Sections 6 and 7 of the Act is this, A Special Judge can try an offence under Section 5 of Act II of 1947. Ordinarily, a Special Judge cannot try an offence under Section 468, I. P. C. But if an offence under Section 468, I, P. C., and an offence under Section 5 of Act II of 1947 form parts of the same transaction, the two offences could be tried together by the same Court in a single trial as laid down in the Code of Criminal Procedure. In such a case the Special Judge may try the offence under S 468, I. P. C., in addition to the charge under Section 5 of Act II of 1947. This power may be referred to as the additional jurisdiction of the Special Judge to try offences like Section 468, I. P. C.

26. Mr. Chaudhry urged that, although that is the position under Sub-section (3) of Section 7 of Act No. XLVI of 1952, that position will not hold good in a case of misjoinder of charges. I have shown above that the trial suffered from misjoinder of charges. Mr. Chaudhry, therefore, urged that, it was not open to the Special Judge to exercise the additional jurisdiction under Sub-section (3) of Section 7 of Act No. XLVI of 1952.

27. If the Court had confined the trial to the two offences relating to the cash order Ex. P-3, the two connected offences could be tried by the Court of the learned Special Judge. I do not think that, the Court lost its jurisdiction to try the offence of forgery simply because the Court wrongly included a few more charges in the same trial. The additional jurisdiction of the Court under sub-i s. (3) of Section 7 of Act No. XLVI of 1952 would remain unaffected even if the trial suffered from misjoinder of charges.

I am, therefore, of the opinion that the offence of forgery committed on 3-4-1950 was triable by the learned Special Judge, although there was misjoinder of charges. On the same reasoning, it will be seen that, the learned Special Judge had jurisdiction to try the other two offences for forgery. The Court had jurisdiction to try all the six charges, although the six charges were wrongly combined in a

single trial.

28. Mr. Chaudhry next contended that, apart from the Question of jurisdiction, the trial itself was illegal. There are several decisions of their Lordships of the Privy Council and different High! Courts to the effect that, misjoinder of charges renders the whole trial illegal. But these decisions can no longer be treated as good law in view of the amendment of Section 537, Cr. P. C. Section 537, Cr. P. C. deals with irregularities. Section 537 has now been so amended as to include misjoinder of charges in the list of irregularities. In view of this amendment, misjoinder of charges can no longer be treated as an illegality vitiating the trial. What the effect of misjoinder is has to be examined in the light of Section 537, Cr. P. C. The explanation to Section 537, Cr. P. C. states:

In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceeding.

29. It has not been shown that, the question of misjoinder of charges was raised before the trial Court. Although the Court dealt with six separate charges, the six charges are closely connected with one another. The six charges arose out of three transactions, which were of similar nature. In each transaction a forged payment order was prepared, and money was obtained on the strength of the forged payment order. In each transaction the accused was supposed to be responsible both for forgery and the encashment of the order. In view of the similarity of charges, it was quite convenient for both the parties to have these six charges disposed of in a single trial. Had the Court tried the charges properly, it would have been necessary to hold more than one trial.

There were two ways of dealing with the six charges. One way was to try the three offences of forgery in one trial and to take up the three charges under Act II of 1947 in another trial. In that case the Court of the special Judge would have had no jurisdiction to try the offences for forgery. In that case it would have become necessary to have the forgery charges tried in district Bareilly. That would have been highly inconvenient to the parties. The second alternative was to split up the

six charges into three groups. Each group could consist of one charge of forgery and the connected charge under Act II of 1947. In this way the Special Judge himself could dispose of the six charges in three separate trials. But I do not think that, the accused would have benefited, if the Court had chosen one of the two alternatives. The accused was not prejudiced, because the Court thought it fit to dispose of all the six charges in a single trial. It is not, therefore, necessary to disturb the appellant's conviction on the ground of misjoinder of charges.

30. Lastly, Mr. Chaudhry contended that S. '7 of Act No. XLVI of 1952 is ultra vires, as it contravenes Article 14 of the Constitution. The argument was that, a trial before a Sessions court is more advantageous to an accused than a trial before a Special Judge. Section 7 of Act No. XLVI of 1952 introduces discrimination. So Section 7 of the Act is ultra vires.

31. A similar argument was advanced before a Pull Bench of this Court in *Om Prakash v. The State* : AIR1955 All275 . The contention was overruled by the Full Bench. It was held that, if a public servant is prosecuted under Section 409, I. p. C., such prosecution does not amount to an act of discrimination within the meaning of Article 14 of the Constitution on the ground that it denies to him the equality before the laws or the equal protection before the laws.

32. Section 7 of Act No. XLVI of 1952 is not directed against a particular person. The Legislature thought it fit to have certain cases disposed of with expedition. For this purpose, Special Judges were created to deal with cases of corruption etc. Constitution of such Special Courts to try offences of a particular type does not involve any unconstitutional discrimination. I am of the opinion that, Section 7 of Act No. XLVI of 1952 does not violate Article 14 of the Constitution.

33. Three charges of forgery have been proved against the accused. Strictly speaking, the Court should have awarded separate sentences for the three offences. But since the Court framed a single charge under Section 468, I. P. C., a single sentence was passed for this offence. A total sentence of imprisonment for three years cannot be said to be excessive for the three offences of forgery. As regards the charge under Act II of 1947, I have found that the charge has been proved under only one of the three counts. So the sentence under Section 5 of Act

II of 1947 may be reduced.

34. I uphold Prem Shankar Misra's conviction and sentence under Section 468, I. P. C. I uphold his conviction under Section 5(2) read with Sub-section (1)(d) of Section 5 of Act II of 1947, but reduce the sentence for this offence to rigorous imprisonment for 18 months. The two sentences shall run concurrently. The appellants shall surrender to bail and serve out his sentence.

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