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**Mastermal Vs. State**

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**Court** : Delhi

**Decided On :** Aug-31-1971

**Reported in** : ILR1972Delhi87

**Judge** : M.R.A. Ansari, J.

**Acts** : Prevention of Corruption Act, 1947 - Sections 5A; Indian Penal code, 1860 - Sections 161

**Appeal No.** : Criminal Appeal No. 28 of 1971

**Appellant** : Mastermal

**Respondent** : State

**Advocate for Pet/Ap.** : F. Anthony,; O.P. Saini and; D.R. Sethi, Advs

**Judgement** :

**M.R.A. Ansari, J.**

(1) This is an appeal filed by the appellant who was an Assistant Sub Inspector of Police attached to the office of Superintendent of Police, Crime & Railways, Delhi, against his conviction for an offence under section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the Act) and under section 161 Indian Penal Code and against his sentence of rigorous imprisonment for 15 months and a fine of Rs. 300.00 under section 5(2) of the Act and rigorous

imprisonment for 15 months under section 161 Indian Penal Code

(2) The prosecution case against the appellant is that while he was working as an Assistant Sub Inspector attached to the office of the Superintendent of Police, Crime & Railways, Delhi, he was entrusted with the investigation of a case against one Chhida, Lal of Hapur under section 420 Indian Penal Code in which one B. R. Manchanda was the complainant. The appellant went to Hapur on 5-1-1970 to investigate into this case and met Chhida Lal. He told him that Manchanda has filed a complaint against him for an offence under section 420 Indian Penal Code and that he had come to arrest him. Chhida Lal and his father requested the appellant not to arrest him and Chhida Lal promised to appear before the appellant at Delhi on any date fixed by him. But the appellant thereupon demanded a bribe of Rs. 1,000.00 from Chhida Lal for not arresting him. The appellant, however, agreed to take Rs. 400.00 for not arresting Chhida Lal. A sum of Rs. 200.00 was paid to him on the spot and Chhida Lal promised to pay the balance of Rs. 200.00 to the appellant at Delhi. When Chhida Lal went to Delhi subsequently and appeared before the appellant, the latter told Chhida Lal to effect a compromise with Manchanda and threatened to arrest Chhida Lal and file a case against him if the latter failed to effect a compromise with Manchanda. Chhida Lal made attempts at compromise with Manchanda but the attempts failed. When Chhida Lal informed the appellant about this, the latter again threatened to arrest Chhida Lal unless he was paid Rs. 200.00 by way of bribe. This was on 22-1-1970. Chhida Lal promised to pay this amount to the appellant the next day. On 23-1-1970 Chhida Lal, instead of paying this amount to the appellant, went to the office of the Superintendent of Police, Anti- Corruption Branch, Delhi, and informed them of the demand of the bribe by the appellant. He also informed that he had brought Rs. 200.00 with him in currency notes of rupee one hundred each. A statement was then recorded from Chhida Lal in the presence of witnesses and the numbers of the currency notes brought by Chhida Lal were also noted down. Chhida Lal was asked to go to the office of the appellant and in the presence of the witnesses hand over the amount to him. Accordingly, Chhida Lal went to the office of the appellant. The latter came out of the office and took Chhida Lal and one of the witnesses to the nearby restaurant. On seeing them entering the restaurant, the other witness along with the Head Constable of the police of Anti-Corruption

Branch also went inside the restaurant and sat on a nearby table. In the presence of these witnesses, Chhida Lal handed over the amount of Rs. 200.00 to the appellant and the latter received them in his right hand. Immediately, the pre-arranged signal was given and the rest of the raid party headed by Inspector Des Raj entered the restaurant and the Inspector caught hold of the right hand of the appellant and challenged him for having received the bribe. The amount of Rs. 200.00 was found in the right hand of the appellant and the same was seized by the Inspector. The two currency notes contained the same numbers as had already been noted down. The appellant was arrested and after investigation, challaned under section 5(2) read with section 5(l)(d) of the Act and under section 161 Indian Penal Code .

(3) The prosecution examined 12 witnesses in the trial court of whom P.W. 7 is Chhida Lal, the complainant, in this case. He stated that there were some transactions between him and B. R. Manchanda and that in February, 1966, their accounts were settled and a sum of Rs. 9,000.00 was agreed to be payable by him to Manchanda. He executed four cheques, two of Rs. 2,000.00 each and the other two of Rs. 2,500.00 each in Manchanda's favor. They were post-dated cheques. The understanding between them was that before encashing these cheques, Manchanda should hand over the sales-tax declarations in respect of their transactions to Public Witness 7. But when even after encashing two of the cheques for a total sum of Rs. 4,500.00 Manchanda did not give the sales-tax declarations to Public Witness 7, the latter instructed the bank to withhold payment on the remaining two cheques. Thereupon, Manchanda filed a civil suit against him and also filed a complaint with the police under section 420 Indian Penal Code . On 5-1-1970, the appellant came to Hapur along with other police officials and told him that he had come to arrest him in connection with this case. He and his father Girdhari Lal requested the appellant not to arrest him, promising that Public Witness 7 would himself appear before the appellant at Delhi. Thereupon, the appellant demanded some money to be paid to him by way of bribe for not arresting him. The amount was settled at Rs. 200.00 by Ganga Saran who has been examined as P.W. 4. This amount was immediately paid by one Mohan Lal, a friend of Chhida Lal, to the appellant and the appellant accepted the same and asked Public Witness 7 to come to Delhi after a week. Accordingly the appellant

went to Del'hi and met the appellant in his office, The latter then told Public Witness 7 to settle with Manchanda. After 4 days, P.W. 7 again met the appellant and told him that there could not be any settlement between him and Manchanda. On 22-1-1970, Public Witness 7 again met the appellant in his office and asked the appellant to effect the settlement between him and Manchanda and offered that in case of settlement being effected, he would, pay the appellant some mony. The appellant agreed and asked him to come and see him the next day. Instead of meeting the appellant, he went to the office of Anti-Corruption and made the report Ex. Public Witness 2/A. He also produced two currency notes of rupee one hundred each before the police and the numbers of these currency notes were also noted down. Then according to the instruction given to him, he went to the appellant's office along with one of the witnesses and met the appellant. The latter then came to his office and they went to Thukral Restaurant. He and the other witness Hari Mohan sat on one side of the table and the appellant sat on the other. After 2 or 4 minutes, the other witness Todar Mal and one Head Constable of police also entered the restaurant and took their seats on a table near them. Public Witness 7 again requested the appellant to get his disputes with Manchanda settled. The appellant then told him that he would set the disputes settled at Rs. 8,500.00 and that he would himself charge Rs. 1,000.00 from Public Witness 7. He told the appellant that Rs. 1,000.00 was too-much for him. The appellant then told him that he would not accept anything less than Rs. 700.00- P.W, 7 then told the appellant that he had already paid Rs. 200.00 at Hapur, that he would pay Rs. 200.00 immediately and would pay Rs. 300.00 later. The appellant accepted Rs. 200.00 from him and placed the same on the table. At that time, Inspector Des Rai and the other members of his party entered the restaurant and challenged the appellant for having taken the bribe and recovered Rs. 200.00 from the table. At this stage, this witness was treated as hostile by the prosecution and was cross-examined with the permission of the Court with reference to his earlier statement made to the police. He admitted in the cross-examination that the appellant and his brother had contacted him and begged his pardon and told him that he was a family man and would be ruined if the case succeeded. In his cross-examination by the appellant, this witness stated that on or about 19-1-1970, he had met the appellant and told him that he would bring some money for settlement with

Manchanda. and that he again met him on 22-1-1970 for the same purpose. He also stated that on 23-1-1970. the appellant told him that Manchanda would be coming to the restaurant and that the settlement would then be made.

(4) P.W. 2, Todar Mal, one of the witnesses who is alleged to have been present when Public Witness 7 offered the bribe to the appellant, corroborated P.W. 7 with regard to the statement Ex, Public Witness 2/A made by P.W. 7 before the Anti-Corruption police He also corroborated him with regard to the numbers of the currency notes produced by Public Witness 7. He then proceeded to state that he accompanied the raid party and after the appellant, Public Witness 7 and Hari Mohan, had entered the restaurant, he and Head Constable Hari Chand also went inside the restaurant and took a seat on the table near the one where the appellant. P.W. 7 and Hari Mohan were sitting. Public Witness 7 and Hari Moan had a talk with the appellant and after sometime Head Constable Hari Chand rose from his seat, went towards the appellant and caught hold of his right fist. Inspector Des Raj also entered the restaurant along with the rest of the party and recovered two currency notes of rupee one hundred each from the right hand fist of the appellant. The numbers of these notes tallied with the numbers which had already been noted down.

(5) P.W. 3 is Hari Mohan, the other witness who is alleged to have been. present at this transaction. After corroborating Public Witness 7 with regard to his statement Ex. Public Witness 2/A, he proceeded to state that he accompanied Public Witness 7 to the appellant's office and that the appellant took Public Witness 7 and himself to a restaurant and all of them sat down on a table. Public Witness 7 then asked the appellant as to what he was doing in his case and the appellant told him that he had a talk with Manchanda and got the dispute settled at Rs. 8,500.00 and asked P.W. 7 whether he had brought the money. Public Witness 7 then took out the currency notes from his pocket and handed them over to the appellant and the latter took them in his right hand. The appellant then told P.W. 7 that he had brought very little money though he had been asked to bring a lot of it. Public Witness 7 then replied that he had not been able to arrange for the balance amount and that he would arrange for it within a few days. This witness then gave the pre-arranged signal. Inspector Des Raj then entered the restaurant

and caught hold of the appellant and challenged him for having accepted the bribe. The currency notes which the appellant was holding in his right hand were then recovered by Inspector Des Raj and their numbers tallied with those which had already been noted down.

(6) P.W. 10 is Hari Chand, Head Constable attached to the office of S.P., Anti-Corruption Branch. He stated that he had accompanied the raid party and after Public Witness s. 3 and 7 and the appellant had entered the restaurant, he and Public Witness 2 also followed them and sat on the table nearby them. He saw Public Witness 7 giving some currency notes to the appellant and the latter received them in his right hand. He then came out of the restaurant and gave the agreed signal at which Inspector Des Raj entered the restaurant and caught hold of the right hand of the appellant and challenged him for accepting the bribe. Two currency notes of rupee one hundred each were recovered from the right hand of the appellant. Public Witness 4, Shri Ganga Saran Sharma, is an Advocate of Meerut. He stated that on 5-1-1970, Public Witness 7's father Girdhari Lal sent for him and he went to his house and saw the appellant sitting there. The appellant told them that he had come for investigation into the case filed by Manchanda and he would arrest Chhida Lal. The latter's father requested the appellant not to arrest him and undertook to produce him at Delhi whenever required. The appellant then demanded a sum of Rs. 1,000.00 for not arresting P.W. 7. At the request of Public Witness 7's father, the appellant reduced the amount to Rs. 400.00 or Rs. 500.00. Girdhari Lal then paid Rs. 200.00 to the appellant and undertook to send the balance to the appellant later on. The appellant then obtained Public Witness 7's signature on a bond for his appearance at Delhi. The evidence of the remaining prosecution witnesses is not very material.

(7) In his statement under section 342 Cr. P.,Cthe appellant admitted that he was entrusted with the investigation of a case under section 420 Indian Penal Code which had been registered against Public Witness 7 upon a complaint filed by one B. R. Manchanda and that he went to Hapur on 1-5-1970 for the purpose of recording a statement from Public Witness 7. He denied that he had threatened to arrest Public Witness 7 or that he demanded any bribe for not arresting him. He merely obtained a bond from Public Witness 7 for his appearance at Delhi. He

admitted that Public Witness 7 had met him at Delhi but denied that he had asked Public Witness 7 to effect a compromise with Manchanda under threat of arresting him or that he demanded any bribe for not arresting him. He stated that, on the other hand, P.W. 7 himself had requested him to effect settlement with Manchanda and that he then had a talk with Manchanda and got the impression that he might agree to accept Rs. 8,500.00 from Public Witness 7 in settlement. He had conveyed this impression to Public Witness 7. He admitted that Public Witness 7 had met him on 23-1-1970 but stated that Public Witness 7 had told him that he brought a little money for Manchanda and produced two currency notes on the table. He, however, did not touch them and as soon as Public Witness 7 had placed these two currency notes on the table, Public Witness 10 pounced upon him and there was a commotion. He examined one defense witness, namely, Sita Ram, S.I. Duty Officer, of the office of the Crime & Railways, who produced the Roznamcha of the Crime Branch dated 5-1-1970, 6-1-1970, 13-1-1970 and 19-1-1970. Accord ing to this Roznamcha, the appellant had gone to Hapur on 5-1-1970 in connection with the enquiry against Chhida Lal and that no constable or head constable accompanied him.

(8) The first contention raised by Mr. Frank Anthony, learned counsel for the appellant, is that the trial of the appellant as well as his conviction are vitiated by reason of the fact that the investigation into this case was conducted by Public Witness 11 who had no authority as required under section 5-A of the Act. It is pointed out that Public Witness Ii, Des Raj, was only an Inspector of the Anti-Corruption Branch of Delhi police and under section 5-A(l)(d) of the Act, it was only a Deputy Superintendent of Police who had the authority to investigate into an offence under section 161 Indian Penal Code . The prosecution have not placed on record any notification by the State Government authorising police officers of the rank of the Inspectors of Police to investigate into such offences. The Supreme Court had held in the case of Sailendranath Bose v. The State of Bihar (A.T.R. 1968 S.C. 1292) 0) that the laying of a trap is a part of the investigation. It would, thereforee, appear that Public Witness Ii did not have the authority to investigate into the offence including the laying of the trap against the appellant on 23-1-1970. The lacuna in the notification of the State Government authorising the police officers of the rank of the Inspectors of police to investigate into an offence only

under the Act and not an offence under section 161 Indian Penal Code has been pointed out by this Court on a number of occasions. It is unfortunate that the Delhi Administration has not taken note of these decisions and rectified the detects in the notification. The learned counsel for the State has not been able to state before me that this defect has in fact been rectified by the Administration in any later notifications.

(9) Although Public Witness 11 did not have the necessary authority to investigate into this offence, this circumstance per se will not be sufficient to vitiate the trial of the appellant or his conviction. The appellant must in addition prove that this defect in the investigation has resulted in a miscarriage of justice. The learned counsel for the appellant has stated that if the investigation had been conducted by an officer of the rank of a Deputy Superintendent of Police, he would have secured the presence of really independent witnesses at the time of the raid instead of witnesses of the status of Public Witness s. 2 and 3. But, as will be discussed at a later stage, these two witnesses far from supporting the prosecution case have to a certain extent supported the case of the appellant himself. thereforee, no miscarriage of justice has resulted by this irregularity in the investigation of the case.

(10) The appellant in his statement under section 341 Criminal Procedure Code . has admitted the prosecution case to a certain extent. He has admitted that one Manchanda had filed a complaint against Public Witness 7 for an offence under section 420 I Pc and that he was entrusted with the investigation into the said case. He has also admitted that he went to Hapur on 5-1-1970 in connection with the said investigation. He has, however, denied that he went to Hapur for the purpose of arresting Public Witness 7 or that he threatened to arrest him or even that he demanded any bribe for not arresting him. According to his statement under section 342 Criminal Procedure Code ., he had gone to Hapur only for the purpose of recording a statement from Public Witness 7. But he did not further state whether a statement from Public Witness 7 was actually recorded, On the other hand, the appellant has admitted that he took a bond from Public Witness 7 for his appearance at Delhi. This bond is marked as Ex. Public Witness 7/A and it is to the following effect :-

'Personal Bond of Rs. 5.000.00 1 Shri Chhida Lal s/o Shri Girdhari Lal R/o H. No. 99, Kishan Ganj, Hapur promise to attend the Crime Branch. Tis Hazari, Delhi on 13-1-1970 in connection with cheating case u/s 420/408/471 Indian Penal Code . In case of non-compliance of this order 1 shall pay a sum of Rs. 5,000..00 to the Govt. of India. Sd..00 (Chhida Lal) 5-1-1970'.

This document is in the nature of a bail bond and there would have been no necessity for obtaining such a bond from Public Witness 7 unless the appellant had wanted to arrest him. That a sum of Rs. 200.00 was paid to the appellant for not arresting Public Witness 7 has been proved by P.W. 7 as well as Public Witness 4. There is, however, a discrepancy in the evidence of these two witnesses with regard to the terms on which the appellant agreed not to arrest Public Witness 7. Whereas according to P.W. 7's statement in the trial Court the amount which the appellant agreed to receive by way of bribe for not arresting Public Witness 7 was only Rs. 200.00 and also that that amount was immediately paid to the appellant and no further amount was to be paid to him later on this account; according to Public Witness 4, the appellant demanded Rs. 1,000.00 in the first instance and ultimately agreed to receive Rs. 400.00 or Rs. 500.00 for not arresting Public Witness 7 and that Rs. 200.00 were paid to him immediately and Public Witness 7's father promised to send the balance to the appellant later on. Although Public Witness 4 is an advocate, his testimony on this point cannot be accepted in preference to that of Public Witness 7 especially as Public Witness 7's testimony is probablised by the subsequent eyents. According to the bond executed by Public Witness 7, he had to appear before the appellant at Delhi on 13-1-1970 and Public Witness 7 has admitted that he did meet the appellant at Delhi about a week after 5-1-1970. Public Witness 7 has also admitted that he met the appellant a number of times subsequently also. If according to Public Witness 4 the amount of Rs. 200.00 paid to the appellant on 5-1-1970 represented only a part of the amount promised to be paid to the appellant for not arresting Public Witness 7 on 5-1-1970 and if Public Witness , 7's father had promised to send the balance to the appellant at Delhi, then Public Witness 7 ought to have paid the balance to the appellant either on 13-1-1970 when he met the appellant or at least on the subsequent occasions. But Public Witness 7 has not stated either that he paid this amount to the appellant when he met him at Delhi or even that the

appellant had demanded the payment of the balance of the amount agreed upon at Hapur on 5th January 1970. thereforee, it would appear that the amount of Rs. 200.00 said to have been paid by Public Witness 7's father to the appellant at Hapur on 5th January, 1970 represented the full amount of the bribe said to have been accepted by the appellant for not arresting Public Witness 7. But the appellant is not charged in this case nor is he convicted for the offence of accepting the bribe of Rs. 200.00 from Public Witness 7 on 5th January, 1970. He is charged and he is also convicted for the offence of demanding and accepting Rs. 200.00 from Public Witness 7 at Delhi on 23rd January 1970. thereforee, the earlier incident at Hapur is relevant only for the purpose of appreciating what had happened on 23rd January, 1970.

(11) The witnesses who speak to the incident that took place on 23rd January, 1970 are Public Witness s. 2, 3, 7, 10 and 11. The most important of these witnesses is Public Witness 7. This witness, however, has given prevaricated statements and has been treated as hostile by the prosecution. In his examination-in-chief he stated that on 22nd January, 1970, he visited the appellant in his office, then went with him to a restaurant in Tis Hazari courts and then asked the appellant to effect a settlement with Manchanda and offered that in case of settlement being effected by him, he would pay him some money. He then proceeded to state that on 23rd January, 1970 also when he and the appellant went to the restaurant along with Public Witness 3, he again requested the appellant to get his dispute with Manchanda settled and that the appellant told him that he would get the dispute with Manchanda settled at Rs. 8,500.00. Then, according to Public Witness 7, the appellant told him that he would charge Rs. 1,000.00 for effecting the settlement and ultimately agreed to accept Rs. 700.00 for that purpose and that it was towards this amount of Rs. 700.00 that he paid Rs. 200.00 to him immediately and also that it was this amount that was recovered from the possession of the appellant by Inspector Des Raj. If this portion of the evidence of Public Witness 7 is accepted as true, then, it is doubtful whether the acceptance of Rs. 200.00 by the appellant from Public Witness 7 for his services to Public Witness 7 for effecting the settlement with Manchanda would amount to an offence either under section 5(2) read with section 5(l)(d) of the Act or under section 161 Indian Penal Code . According to P.W. 7, he himself had requested

the appellant to bring about a settlement between him and Manchanda and offered to pay some amount for his services and that it was not the appellant who had offered to P.W. 7 to bring about a settlement with Manchanda in consideration of a certain amount to be paid to him. The appellant has not adopted any corrupt or illegal means nor has he abused his position as a public servant if he accepted some remuneration for his services for bringing about a settlement between Public Witness 7 and Manchanda at the request of Public Witness 7. He, thereforee, would not come within the mischief of section 5(l)(d) of the Act. The appellant also cannot be said to have agreed to render any service to any person with the Central or any State Government or Parliament or the Legislature of any State or any local authority, corporation or Government company, or with any public servant. He, thereforee, does not come true that what the appellant agreed to do, namely, to bring about a settlement between P.W. 7 and Manchanda and to charge some remuneration for the same, may amount to a misconduct by a public servant. But I am doubtful if it will amount to an offence either under section 5(l)(d) of the Act or under section 161 Indian Penal Code .

(12) But this portion of Public Witness 7's evidence does not support the prosecution case against the appellant namely, that the appellant demanded and Public Witness 7 paid Rs. 200.00 to the appellant by way of bribe for not arresting Public Witness 7 in case Public Witness 7 failed to settle With Manchanda. The second charge framed against him is in the following terms :-

'SECONDLY that on 23rd January, 1970 at Delhi, being a public servant employed as A.S.I, in Delhi police attached to the office of S.P. (Crime and Railway), Delhi, accepted Rs. 200.00 from Shri Chhida Lal as gratification other than legal remuneration as a motive or reward for showing him favor in effecting his compromise with Shri B. R. Manchanda in a complaint submitted by him to the S.P. (Crime and Railway) Delhi and also for not arresting him in the said complaint and thereby committed an offence under section 161 Indian Penal Code and within my cognizance.'

So far as this charge is concerned, the statement of Public Witness 7 referred to above, does not support it. But Public Witness 7 has not even been consistent in

his statement. In his cross-examination by the appellant, he stated that he met the appellant on 19th January, 1970 and told him that he would bring some money for settlement with Manchanda and that when he met the appellant again on 22nd January 1970 the appellant then told him that he would get his disputes settled with Manchanda and that he should bring some money for it. He has further stated that the appellant also told him on 22nd January, 1970 that Manchanda would be coming to the restaurant on 23rd January, 1970 and that the settlement would be made. This would suggest that the amount of Rs. 200.00 which Public Witness 7 paid to the appellant on 23rd January 1970 was meant for Manchanda and not for payment to the appellant himself. The least that can be said is that there is a doubt whether this amount of Rs. 200.00 was meant to be paid to Manchanda or was meant to be paid to the appellant.

(13) This part of Public Witness 7's evidence is corroborated by the evidence of Public Witness 3. He stated that after he had gone to the restaurant, Public Witness , 7 asked the appellant as to what he was doing in his case and the appellant told him that he had a talk with Manchanda and got the disputes settled for Rs. 8,500.00 and that the appellant asked Public Witness 7 if the latter had brought the money as per the discussion which they had last evening. He proceeded to state that Public Witness 7 then took out the two currency notes from his pocket and handed them over to the appellant. He further stated that the appellant then told Public Witness 7 that he had brought very little money though he had been asked to bring a lot of it and that Public Witness 7 replied that he had not been able to arrange for the balance amount which he would arrange within a few days. This witness has not been treated as hostile by the prosecution and this evidence would certainly corroborate Public Witness 7's evidence and it would support the appellant's case that the amount of Rs. 200.00 which was paid by Public Witness 7 to the appellant was not meant for him but was meant for Manchanda.

(14) The evidence of the other two witnesses who were present when P.W. 7 paid the amount to the appellant, namely, Public Witness s. 2 and 10, does not negative the appellant's case, because neither of these witnesses speaks to the conversation that actually took place between P.W. 7 and the appellant before the

former handed over the money to the latter.

(15) It is no doubt true that Public Witness 7 has gone back upon what he stated in Ex. Public Witness 2/A. It is apparent that he has been won over by the appellant. It is quite possible that Public Witness s. 2 and 3 have also beer) won over by the appellant . But the fact remains that what P.W. 7 stated in Ex. Public Witness 2/A cannot be used as substantive evidence and so far as Public Witness 7 is concerned, he has made prevaricating statements in Court and it is very difficult to say which portion of the evidence represents the truth. He appears to be a thoroughly unreliable witness and as that portion of his evidence which incriminates the appellant is not corroborated either by Public Witness 2 or by Public Witness 3, it cannot be acted upon for convicting the appellant. The prosecution has, thereforee, not proved their case beyond reasonable doubt.

(16) In result, the conviction of the appellant under section 5(2) read with section 5(l)(d) of the Act as well as under section 161 Indian Penal Code is set aside and the appeal is allowed.

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