

State Of Uttar Pradesh & Ors vs Surinder Pal Singh on 31 January, 1989

Equivalent citations: 1989 AIR 811, 1989 SCR (1) 347, AIR 1989 SUPREME COURT 811, 1989 (2) SCC 470, 1989 (1) JT 169, 1989 (1) SERVLJ 121, (1989) 1 SERVLR 561, (1989) 1 CURCC 356

Author: N.D. Ojha

Bench: N.D. Ojha, E.S. Venkataramiah

PETITIONER:

STATE OF UTTAR PRADESH & ORS.

Vs.

RESPONDENT:

SURINDER PAL SINGH

DATE OF JUDGMENT 31/01/1989

BENCH:

OJHA, N.D. (J)

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OJHA, N.D. (J)

VENKATARAMIAH, E.S. (J)

CITATION:

1989 AIR 811	1989 SCR (1) 347
1989 SCC (2) 470	JT 1989 (1) 169
1989 SCALE (1) 214	

ACT:

Police Act, 1861: Section 7.

U.P. Police Regulations--Regulation 486(I)(3) scope of-procedure---Whether confined to Departmental Proceedings only--Not applicable to investigation made in Criminal Prosecution.

Criminal Procedure Code , 1973: Section 36--Does not contain a procedure similar to Regulation 486(1)(3) of the U.P. Police Regulations--Does not deal with competence of police officer to conduct investigation--Section 5A of the Prevention of Corruption Act, 1947 overrides Section 36 of the Code.

Prevention of Corruption Act, 1947 : Sections 5(1) and (2), 5-A (1). Proviso.

"Criminal Misconduct"--What is--Police Officer Misappropriation of--20 Gold Bricks recovered during

investigation--Is "criminal misconduct" under section 5(1)(c), punishable under section 5(2).

Competency of authorised police officer to investigate offence-Section 36 of Criminal Procedure Code and Regulation 486(1)(3) of the U.P. Police Regulations held not applicable.

Indian Penal Code; 1860: Sections 120-B, 203, 218, 342, 392 and 409.

Indian Treasure-Trove Act, 1878: Sections 4, 20.

Word & Phrases: 'Criminal Misconduct'--Meaning of.

HEADNOTE:

A First Information Report was lodged against the respondent, who was a Deputy Superintendent of Police, under Section 120-B, 203, 218, 342, 392, 402 of the Indian Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 as also under sections 4/20 of the Treasure Trove Act, 1878. The case against the respondent was that

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while investigating a case, as a Station Officer of a Police station, 20 gold bricks which he had recovered were misappropriated by him. An Inspector in the Crime Branch of the Criminal Investigation Department carried on the investigation. Before, submission of the charge sheet the respondent filed a Writ Petition in the High Court challenging the legality of the investigation on the ground that the investigation was vitiated in law because it was conducted by an officer junior in rank to him in violation of Regulation 486(1)(3) of the U.P. Police Regulations.

The High Court held that the provisions of Regulation 486(1)(3) were mandatory and since the investigation was conducted by an inspector who was not an officer "higher in rank than the respondent" the investigation was vitiated in law. Accordingly, a writ of Mandamus was issued by the High Court directing the appellants not to submit any charge sheet, but leaving it open to the appellants to get the investigation conducted by an officer competent to investigate under the said Regulation.

In this appeal by Special leave, it was contended on behalf of the appellants: (i) that since one of the offences committed by the respondent was under section 5(2) of the Prevention of Corruption Act, the inspector conducting the investigation though not higher in rank to the respondent at the relevant time was competent to conduct the investigation as he was authorised in this behalf by the State Government under the proviso to sub-section (1) of Section 5A of the Prevention of Corruption Act: (ii) Regulation 486(1)(3) was relevant to departmental proceedings against a police officer and it was not applicable to investigation of an offence under Section 5(2) of the Prevention of Corruption Act.

On behalf of the respondent it was contended: (i) that

in view of the provisions of Section 36 of the Code of Criminal Procedure, 1973 and Regulation 486(1)(3), no interference was called for with the judgment of the High Court: (ii) the offence punishable under Section 5(2) of the Prevention of Corruption Act has not been committed by the respondent, because the rejoinder affidavit filed on behalf of the appellants refers to demand of illegal gratification by the other two constables only, and therefore the proviso to sub-section (1) of section 5A of the Prevention of Corruption Act was not applicable.

Setting aside the judgment of the High Court and allowing the appeal. ,

HELD: 1. The High Court erred in taking the view that notwithstanding-

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standing the provision contained in the proviso to Section 5A of the Prevention of Corruption Act and the undisputed fact that the Inspector of Crime Branch, Criminal Investigation Department, who conducted the inquiry in the instant case had been duly authorised to do so by the State Government as contemplated by the said proviso, the investigation was vitiated in law on the ground that the said inspector was not higher in rank to the respondent as contemplated by Regulation 486(1)(3) of the Regulations. [359D-E]

2. One of the offences said to have been committed by the respondent was, as contemplated by Section 5(2) of the Prevention of Corruption Act. [360H; 361A]

2.1 For determining what constitutes 'criminal misconduct' used in sub-section (2) of Section 5 of the Prevention of Corruption Act, one has to refer to sub-section (1) thereof. This sub-section contains clauses (a) to (e) and provides that a public servant committing any of the acts mentioned in the said clauses (a) to (e) is said to commit the offence of 'criminal misconduct'. Accepting or obtaining or attempting to obtain illegal gratification would be covered under clause (a). [360F]

2.1.1 The case against the respondent is that the 20 gold bricks which he had recovered during investigation were misappropriated by him. Thus, even though the case of the respondent could not be covered by clause (a) it would squarely be covered by clause (c) of Section 5(1) of the Prevention of Corruption Act and constitutes 'criminal misconduct' within the meaning of sub-section (2) of the said section. [360G-H]

2.2 In view of the proviso to sub-section (1) of Section 5A of the Prevention of Corruption Act, a police officer not below the rank of an Inspector of police if authorised by the State Government in this behalf by general or special order was entitled to investigate the aforesaid offence without the order of a Presidency Magistrate or a Magistrate of the First Class as the case may be, as contemplated by the main provision contained in sub-section (1) of Section 5A. The Inspector of Police, Crime Branch who made the

Investigation in the instant case, had been authorised by the State Government as contemplated by the proviso. Therefore, no exception can be taken to the investigation by the Inspector of the Crime Branch of the Criminal Investigation Department. [354B-D, F]

3. In view of the non-obstante clause contained in Section 5A of the Prevention of Corruption Act, the provisions with regard to

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investigation of an offence punishable under Section 5 of the Prevention of Corruption Act as contained in Section 5A thereof will have overriding effect over Section 36 of the Code of Criminal Procedure, 1973. [354G-H]

3.1 Section 36 of the Code of Criminal Procedure, 1973 does not contain a provision similar to Regulation 486(1)(3) of the U.P. Police Regulation, that investigation shall be made by a police officer higher in rank than the officer charged. It only purports to confer on police officers superior in rank to an officer in charge of police station, the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station. [354H; 355A-B]

4. The procedure prescribed in Regulations 486(I)(3) of the U.P. Police Regulations stands on the same footing as Rule 16.38 of the Punjab Police Rules and had therefore to be confined to departmental proceedings under Section 7 of the Police Act. [359A, B, C]

State of Punjab v. Raj Kumar, A.I.R. 1988 S.C. 805 and State of Punjab v. Charan Singh, [1981] 2 S.C.C. 197, applied.

Delhi Administration v. Chanan Shah, [1969] 3 S.C.R. 653; Union of India v. Ram Kishan, [1971] 2 S.C.C. 349 and State of Uttar Pradesh v. Babu Ram Upadhyaya, [1961] 2 S.C.R. 679, distinguished.

Mahendra Singh v. State, A.I.R. 1956 Allahabad 96, approved.

5. It will be open to the Inspector of the Crime Branch to proceed with investigation and submit a charge sheet against the respondent if after investigation it is found expedient to do so. [361B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 430 of 1989.

From the Judgment and Order dated 10.3.1987 of the Allahabad High Court in C.M.W.P. No. 15545 of 1984. Gopal Subramaniam and Mrs. S. Dikshit for the Appellants. O.P. Rana and R. Ramchandran for the Respondent. The Judgment of the Court was delivered by OJHA, J. This appeal by special leave preferred against the judgment of the Allahabad High Court dated 10th March, 1987 in Civil Misc. Writ Petition No. 15545 of 1984 raises a question about the interpretation

and scope of Regulation 486(I)(3) of the U.P. Police Regulations, hereinafter referred to as the Regulations. The respondent Surinder Pal Singh who was a Station Officer of Police Station Shikohabad was promoted as a Deputy Superintendent of Police on 20th June, 1977. A First information Report was lodged against him in the Police Station Shikohabad on 8th June, 1980 by the Deputy Superintendent of Police, Anti-Corruption, Agra Circle under sections 409/392/203/218/342/120-B of the Indian Penal Code read with Section 5(2) of the Prevention of Corruption Act as also under sections 4/20 of the Treasure Trove Act. According to this First Information Report while digging some land on 1st March, 1977, one Parsu Ram Jatav and Jaipal Jatav found 20 gold bricks which they failed to deposit with the authorities. However, on receiving an information in this behalf from one Hiralal and Vinod Kumar, the said gold was recovered by the respondent but was misappropriated. Investigation was carried on by an Inspector in the Crime Branch of the Criminal Investigation Department. Before however any chargesheet could be submitted, the respondent filed the aforesaid writ petition in the Allahabad High Court challenging the legality of the investigation by an officer junior in rank to him. The writ petition was contested by the appellants but was allowed by the judgment appealed against relying on Regulation 486(I)(3) of the Regulations and a writ of mandamus was issued directing the appellants not to submit any chargesheet on the basis of the Crime Branch. It was, however, left open to the appellants to get the investigation conducted by an officer competent to investigate under the aforesaid Regulation who could submit a chargesheet. In order to appreciate the respective submissions made by the learned counsel for the parties, Regulation 486(I)(3) may usefully be reproduced. It reads:

"486. When the offence alleged against a police officer amounts to an offence only under section 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of the Superintendent of Police in accordance with the following rules:

1. Every information received by the police relating to the commission of a cogniz-

able offence by a police officer shall be dealt with in the first place under chapter XIV, Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned provided that (1).....

(2).....

(3) unless investigation is refused by the Superintendent of Police under section 157(1)(b), Criminal Procedure Code, and not ordered by the District Magistrate under section 159, or unless the District Magistrate orders a magisterial inquiry under section 159, investigation under section 156, Criminal Procedure Code, shall be made by a police officer selected by the Superintendent of Police and higher in rank than the officer charged;

(4)....."

The high Court relying on the decision of this Court in State of Uttar Pradesh v. Babu Ram Upadhyaya, [1961] 2 SCR 679 took the view that since the provisions of Reg. 486(I)(3) were mandatory, the investigation made by an Inspector of the Crime Branch who was not an officer "higher in rank than the officer charged" namely the respondent, was clearly vitiated in law.

It has been urged by the learned counsel for the appellants that since the respondent was alleged to have committed an offence inter alia under section 5(2) of the Prevention of Corruption Act also the investigation made by the Inspector, Crime Branch, who had been duly authorised in this behalf by the State Government was in accordance with law, notwithstanding the fact that the respondent at the relevant time was an officer higher in rank than the Inspector who made investigation. Reliance in support of this submission has been placed on section 5A of the Prevention of Corruption Act, 1947 particularly the proviso to the said section. It was also submitted by learned counsel for the appellants that Regulation 486(1)(3) even though relevant with regard to departmental proceedings against a police officer had no relevance in so far as the investigation of an offence under Section 5 of the Prevention of Corruption Act was concerned. For the respondent, on the other hand, it was urged that the judgment appealed against did not call for any interference in view of Section 36 of the Code of Criminal Procedure and Regulation 486(I)(3).

Having heard learned counsel for the parties we are of the opinion that the judgment appealed against cannot be sustained. Subsection (1) of Section 5A of the Prevention of Corruption Act, 1947 reads as hereunder:

"5A. Investigation into cases under this Act (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), no police officer below the rank

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the presidency-towns of Cal-

cutta and Madras, of an Assistant Commissioner of Police;

(c) in the presidency-town of Bombay, of a Superintendent of Police; and

(d) elsewhere, of a Deputy Superintendent of Police.

shall investigate any offence punishable under Section 161, Section 165 or Section 165A of the Indian Penal Code (45 of 1860) or under 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 therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a

warrant:

Provided further that an offence referred to in clause

(e) of sub-section (1) of Section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

(2)....."

As seen above, one of the offences said to have been committed by the respondent was, as contemplated by Section 5(2) of the Prevention of Corruption Act. In view of the proviso to Section 5A, therefore, a police officer not below the rank of an Inspector of Police if authorised by the State Government in this behalf by general or special order was entitled to investigate the aforesaid offence without the order of a Presidency Magistrate or a Magistrate of the first class as the case may be, as contemplated by the main provision contained in sub-section (1) of Section 5A. That the Inspector of Police, Crime Branch who made the investigation in the instant case had been authorised by the State Government as contemplated by the aforesaid proviso has not been disputed before us. Indeed, even before the High Court the said fact had not been disputed, as is apparent from the following observations made in the judgment appealed against:

"It is undisputed that in the State of Uttar Pradesh, Inspector of the Crime Branch of the Criminal Investigation Department, who are superior in rank to the Station Officer, had been entrusted with the jurisdiction over the whole State to investigate into the cases under the provisions of the Prevention of Corruption Act."

In this view of the matter unless the submission made by learned counsel for the respondent based on Section 36 of the Code of Criminal Procedure and Regulation 486(1)(3) is accepted, no exception can be taken to the investigation made in the instant case by the Inspector of the Crime Branch of the Criminal Investigation Department. As regards Section 36 of the Code of Criminal Procedure firstly, the provisions with regard to investigation of an offence punishable under Section 5 of the Prevention of Corruption Act as contained in Section 5A thereof are to prevail over any provision to the contrary in this behalf in view of the non-obstante clause occurring in the beginning of the Section namely, "Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) ". Secondly, Section 36 of the Code of Criminal Procedure deals with powers of superior officers of police and provides that police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station is only an enabling provision. On its plain language the said section only purports to confer on police officers superior in rank to an officer in charge of police station, the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station. It does not obviously contain a provision similar to Regulation 486(1)(3) that investigation shall be made by a police officer higher in rank than the officer charged.

As regards Regulation 486(I)(3), it is significant to note that the said Regulation as is apparent from its opening words deals with a case "When the offence alleged against a police officer amounts to an offence only under Section 7 of the Police Act". Section 7 of the Police Act provides for the departmental punishments of inferior police officers. It does not in terms make provision for any inquiry and merely provides that the exercise of disciplinary powers shall be "subject to such rules as the State Government may from time to time make under this Act". Chapter 32 of the Regulations wherein Regulation 486(1)(3) occurs, lays down these rules. In a recent decision of this Court in *State of Punjab v. Raj Kumar*, AIR 1988 SC 805. Rule 16.38 of the Punjab Police Rules came up for consideration. Sub-clauses 1 to 4 of the said Rule read as hereunder:

"16.38(1). Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Magistrate having 1st class powers.

(2). When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow:

the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

(3). Ordinarily a Magistrate before whom a comp-

laint against a police officer is laid proceeds at once to judicial enquiry. He is, however, required to report details of the case to the District Magistrate, who will forward a copy of this report to the Superintendent of Police. The District magistrate himself will similarly send a report to the Superintendent of Police in cases of which he himself takes cognizance.

(4). The Local Government has pre-

scribed the following supplementary procedure to be adopted in the case of complaints against police officers in those districts where abuse of the law with the object of victimising such officers or hampering investigation is rife. The District Magistrate will order that all petitions against police officers shall be presented to him personally. If he considers that these petitions are of a frivolous or fictitious nature, it is within his discretion to take no action on them. When he considers an enquiry to be necessary he will use his discretion whether to send the papers to the Superintendent of Police or to a Magistrate for judicial enquiry.

In the case of formal criminal complaints, the District Magistrate will arrange for all cases to be transferred from other courts to his own."

In that case a report was given against the respondent who was an Assistant Sub-Inspector in the Punjab Police service to the Deputy Superintendent of Police, Patiala alleging demand of illegal gratification. After completion of investigation the respondent was chargedsheeted before the Sub-Judge, Sangrur and an objection was raised by the respondent to the framing of charges against him on the ground that the investigation of the case was in contravention of Rule 16.38. His objection having been overruled by the Sub-Judge, the respondent filed a petition before the High Court of Punjab and Haryana under Section 561A of the Code of Criminal Procedure. There being a conflict of decisions with regard to the interpretation and scope of Rule 16.38, the case was referred to a full Bench which allowed the petition and quashed the charges framed against the respondent on the ground that the investigation against the respondent had not been done in accordance with Rule 16.38. An appeal was preferred in this Court on the basis of a certificate granted under Article 134(1)(c) of the Constitution by the State of Punjab and it was urged that the procedure prescribed in Rule 16.38 called for observance in the case of departmental enquiries alone and it could not govern criminal prosecutions also for offences under the Indian Penal Code and other Acts. Reliance in support of this submission was placed on an earlier decision of this Court in *State of Punjab v. Charan Singh*, [1981] 2 SCC 197 declaring that Rule 16.38 cannot govern criminal prosecutions against the members of the police force as it could not override the provisions of the Code of Criminal Procedure. While agreeing with the aforesaid proposition of law the matter was dealt with in *Raj Kumar's case* (supra) at some length in view of certain misconceptions contained in the judgment of the High Court under appeal. It was pointed out that Section 3 of the Police Act conferred the right of superintendence of police force throughout the general police district on the State Government and vested in such government the right to exercise such powers in that behalf. It was also pointed out that Section 7 thereof dealt with the appointment, dismissal, etc. of inferior officers. It was also noticed therein that besides the power conferred on the State Governments to make rules under Section 7, there was also provision under Section 12 of the Police Act for the Inspector-General of Police subject to the approval of the State Government to frame such orders and rules as stated in the said Section, and that the Punjab Police Rules, 1934 had been framed in the exercise of the powers conferred under Sections 7 and

12. The view taken by the full Bench of the Punjab and Haryana High Court in that case was that the rules framed in exercise of powers conferred under Sections 7 and 12 had the force of law and they constituted a special legislation which took precedence over the provisions of the Code of Criminal Procedure. And since Rule 16.38 contained a mandatory provision regarding the procedure to be followed when any complaint was received by the Superintendent of Police against a member of the police force regarding the commission of offence by him in connection with his official relations with the public, the said rule would apply with equal force to investigations relating to criminal offences for which a prosecution was to be launched as it would to enquiries for taking departmental action through disciplinary proceedings.

After referring to earlier decisions of this Court in the cases of *Delhi Administration v. Channan Shah*, [1969] 3 SCR 653; *Union of India v. Ram Kishan*, [1971] 2 SCC 349 and *State of Uttar Pradesh v. Babu Ram Upadhyaya* (supra) on which reliance seems to have been placed on behalf of the respondent of that case, it was held that the aforesaid decisions "related to departmental enquiries and not criminal

nal prosecutions for offences committed by the delinquent police offices. The pronouncements in these cases will, therefore, govern only cases where departmental enquiries are held in contravention of the procedure prescribed by the Police Rules. The reason for a special procedure being prescribed in the Rules for investigations before departmental enquiries are held against delinquent police officers is not far off to see. In the very nature of their duties, the members of the police force would often stand exposed to criticism and complaints by not only the members of the public but also by the members of the force themselves and consequently they stand placed more vulnerable than members of other Government services, of being implicated in false or exaggerated charges." After considering the nature and purpose of Rule 16.38 of the Punjab Police Rules, it was further held:

"The procedure envisaged by the Rule is for effective check being exercised against victimisation of efficient and honest police officers on the one hand and favoritism being shown to the delinquent police officers on the other. These rules were not intended to replace and certainly cannot override the provisions of the Criminal Procedure Code. The Full Bench was therefore in error in taking the view that the Rules lay down a special procedure for investigation of all offences committed by the members of the police force and, that they have overriding effect over the provisions of the Criminal Procedure Code in terms of Sections 4 and 5 of the Code."

"We therefore hold that the Full Bench was in error in taking the view that the Punjab Police Rules read in conjunction with the Police Act prescribe a different procedure for the investigation and prosecution of offences committed by Police officers under the I.P.C. or other Acts in connection with their relations with the public and that the rules constitute a special statute and take precedence over the provisions of the Cr.P.C. The Full Bench has failed to note that Rule 16.38 only mandates the investigation of cases pertaining to departmental enquiries and the holding of departmental enquiries in accord-

ance with the procedure prescribed thereunder."

Coming to the facts of the instant case it may be pointed out that in view of the opening words of the said Regulation namely "when the offence alleged against a police officer, amounts to an offence only under Section 7 of the Police Act," the said Regulation also stands on the same footing as Rule 16.38 of the Punjab Police Rules. In *Mahendra Singh v. State*, AIR 1956 Allahabad 96 a special Bench of the Allahabad High Court held that section 7 of the Police Act provides for the departmental punishment of inferior police officers. it was also held that the said section did not in terms make provision for any inquiry; it merely provided that the exercise of disciplinary powers shall be subject to rules framed by the State Government and Chapter 32 of the Police Regulations laid down these rules which provided for a departmental trial for punishment to be inflicted under Section 7 of the Police Act. In this view of the matter it is apparent that like Rule 16.38 of the Punjab Police Rules, the procedure prescribed in Regulation 486(I)(3) of the Regulations had to be

confined to departmental proceedings under Section 7 of the Police Act and the High Court was clearly in error in taking the view that notwithstanding the provision contained in the proviso to Section 5A of the Prevention of Corruption Act and the undisputed fact that the Inspector of Criminal Branch, Criminal Investigation Department, who conducted the enquiry in the instant case had been duly authorised by the State Government as contemplated by the said proviso, the investigation was vitiated in law on the ground that the said Inspector was not higher in rank to the respondent as contemplated by Regulation 486(I)(3) of the Regulations.

Learned counsel for the respondent, in this connection, brought to our notice the following averment in paragraph 3 of the rejoinder affidavit of Mahavir Singh Tomar filed on behalf of the appellants:

"It is further submitted that the complaint against the respondent was not received by the Superintendent of Police of District. The same was received from Central Government by the State Government of U.P. and wherefrom, in exercise of the General powers of superintendence over criminal investigation, it was handed over directly to Crime Branch, Criminal Investigation Department, U.P. Anti-Corruption Department of U.P. inquired into the matter for testing and verifying the truth of allegations and finally lodged F.I.R. against the Respondent and others under s. 409/392/218/342/120-B I.P.C. and 5(2) at P.S. Shikohabad, District Mainpuri. It is worth mentioning that offence under Sec. 5(2) of Prevention of Corruption Act covers demand of illegal gratifications by one S.I. Sobran Singh Chauhan and Constable Brijendra Singh only, hence the application of provisions of Para 486(1) is out of question."

On its basis, it was urged that since offence punishable under Section 5(2) of the Prevention of Corruption Act is said to have been committed only by S.I. Sobran Singh Chauhan and Constable Brijendra Singh and not by the respondent, the proviso to Section 5A of the Prevention of Corruption Act was not attracted to the facts of the instant case. We find it difficult to agree with this submission in view of the specific statement contained in Paragraph 3 of the rejoinder affidavit to the effect that the First Information Report which was lodged against the respondent and others was under various sections including Section 5(2) of the Prevention of Corruption Act. The averment with regard to S.I. Sobran Singh Chauhan and Constable Brijendra Singh is with reference to "demand of illegal gratification". Section 5(2) of the Prevention of Corruption Act provides: "Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year."

For what is meant by "criminal misconduct" used in sub-section (2) of Section 5 of the Prevention of Corruption Act, one has to refer to sub-section (1) thereof. This sub-

section contains clauses (a) to (e) and provides that the public servant committing any of the acts mentioned in the said clauses (a) to (e) "is said to commit the offence of criminal misconduct". Accepting or obtaining or attempting to obtain illegal gratification would be covered under clause (a). As seen above, the case against the respondent is that the 20 gold bricks which he had recovered were misappropriated by him. Thus, even though it would not be covered by clause (a) it would squarely be covered by clause

(c) of Section 5(1) of the Prevention of Corruption Act and constitutes "criminal misconduct" within the meaning of sub-section (2) of the said Section. From the averment in the rejoinder affidavit referred to above, it is, therefore, not possible to accept the submission made by learned coun-

sel for the respondent that the respondent is not alleged to have committed any offence under Section 5(2) of the Prevention of Corruption Act. In view of the foregoing discussion, this appeal succeeds and is allowed and the judgment of the High Court is set aside. It would now be open to the Inspector of the Crime Branch to proceed with the investigation and to submit a chargesheet against the respondent if on investigation it is found expedient to do so.

T.N.A.

Appeal allowed.