Abdal Ahmad vs The State on 20 November, 1950

Equivalent citations: AIR1952ALL597, AIR 1952 ALLAHABAD 597

ORDER

Seth, J.

1. This is an application in revision against the appellate order of the Ses. J. of Mainpuri, dated 19-9-1949, by which he has maintained the conviction of the applicant under Section 5 (2), Prevention of Corruption Act, 1947 (II [2] of 1947), hereinafter referred to as 'the Act'.

2. The prosecution case may briefly be recapitulated thus:

> Applicant Abdal Ahmad wag posted as Second Officer at thana Kotwali, Mainpuri, on 4-9 1947, when a first information report was lodged there by Deoki Nandan against Nathu Ram, Babu Ram & six others, accusing them of an offence punishable under Section 504, Penal Code, alleged to have been committed at village Pindsara. Two days later, that is, on 6.9.1947, another first information report was lodged by Deoki Nandan's brother, Chet Earn Patwari, at the same police station. Ghet Bam reported that an offence of theft under Section 380, Penal Code had occurred at his residence in Mainpuri & expressed his suspicions against Baghubir Singh & the aforesaid Baba Ram. The investigation of the offence under Section 380, Penal Code, was entrusted to the applicant, who, having commenced it at Mainpuri, decided to pursue it further at Pindaara. Accordingly, he visited that village on 7.9.1947. Ha sent for Nathu Ram & Babu Ram & told them that two reports had been lodged against them & that the investigation had been entrusted to him. While returning from Pindsara to Mainpuri the applicant brought with him Nathu Ram & Babu Ram as far as village Bahraol, which lies on the way from Pindsara to Mainpuri. At Bahraol the applicant told Nathu Ram & Babu Ram that they would be put to much trouble & harassment (per bar hoge) & would not be allowed to go unless they paid him a sum of Rs. 110, Rs. 100 for himself & Rs. 10 for his sipahis. Nathu Ram & Babu Ram had some small amount with them. They borrowed Rs. 31 & thus managed to pay Rs. 50 to the applicant at Bahraol. They were released & allowed to go back home only when they had paid this amount of Rs. 50 to the applicant & had made a promise to pay the balance, namely, Rs. 60 at Mainpuri at an early date. On 10-9-1947, Nathu Bam saw the District Magistrate of Mainpuri & narrated to him what had taken place at Pindsara & Bahraol & told him that he (Nathu Bam) had brought with him currency notes for Rs. 60 for payment to the applicant & that he intended to make the payment that very day. The District Magistrate recorded the statement of Nathu Bam, noted the numbers of the currency notes which Nathu Ram proposed to hand over to the applicant & wrote out a slip to the Superintendent of Police, Mainpuri, requiring him

to arrest the applicant if he accepted the notes. He deputed a First Class Mag., Shri Gyan Swarup Gupta, to witness the acceptance or the recovery of the amount, as the case may be, & sent the complainant & Shri Gupta to the Superintendent of Police with the slip. The future programme was left to be arranged by them. A party consisting of Shri Gupta, Shti Satva Narain Singh, the Deputy Superintendent of Police, Mainpuri, Nathu Ram, Babu Ram, Udaibir Singh & Puran Singh proceeded after dusk to the quarter of the applicant, which stands within the compound of the Kotwali. After having reached near the gate of the Kotwali, Shri Gupta asked Nathu Ram & Babu Ram to proceed ahead & the rest of the party waited on the street in a covered ekka. They had waited for about 15 minutes when information was brought to them by Babu Ram that Nathu Ram was handing over the money to the applicant. On receipt of this information they immediately proceeded towards the quarter of the applicant & as soon as they had crossed the purdah wall in front of the house of the applicant & could see him & Nathu Ram, the Deputy Superintendent of Police flashed his torch on the person of the applicant. In this flash of light the applicant was seen holding the currency notes in his hand & throwing them on the ground. The notes were picked up & were, on examination, found to bear the numbers noted by the District Magistrate. A recovery memo was prepared, the statements of Nathu Ram & the applicant were recorded & the notes were sealed in a packet. These were forwarded to the Collector by Shri Gupta along with a report in which he mentioned all that had happened in his presence.

3. After such investigation as was thought necessary, a charge sheet under Section 161, Penal Code, was submitted against the applicant by a Circle Inspector on 14-9-1947, in which he was accused of having received an illegal gratification of Rs. 50 at Bahraol on 7-9-1947, & an illegal gratification of ES. 60 at Mainpuri on 10.9.1947. Thus started the trial of the applicant in the Court of a Magistrate, who framed two charges against him, charging him alternatively with having committed offences punishable under Sections 161 & 384, Penal Code. By the time it had reached the stage when the witnesses for the prosecution were to be cross-examined under Section 256, Criminal P. C. hereinafter referred to as 'the Code,' it appears to have been realised that according to Section 6 of the Act, sanction was necessary for the prosecution of the applicant for an offence punishable under Section 161, Penal Code. It also appears to have been thought desirable to prosecute the applicant for an offence defined in Section 5 (1) (d) of the Act, for which also sanction was necessary.

4. The requisite sanction to prosecute the applicant for offences under Section 161, Penal Code & Section 5 (1) (d) of the Act was, therefore, obtained, & a fresh charge sheet under Sections 161 & 384, Penal Code & Section 5 (1) (d) of the Act was submitted against him on 27-5-1948. Thereafter the prosecution took up the position that all the proceedings that had been taken till then on the charge sheet submitted on 14-9-1947, were without jurisdiction inasmuch as they had been taken without sanction & declined to proceed any further with that charge sheet. The learned Magistrate passed an order on 3-6-1948, acquitting the applicant of the charge under Section 384, Penal Code & quashing the proceedings in so far as they related to the charge under Section 161, Penal Code. The applicant was acquitted of the offence punishable under Section 384, Penal Code because the learned Magistrate was of the opinion that he could not be convicted upon evidence which he had no

opportunity to cross examine in accordance with the provisions of Section 256, of the Code. The learned Magistrate then took up the second charge sheet & after holding an enquiry committed the applicant to the Court of Session to be tried for offences punishable under Section 5 (2) of the Act read with Section 5 (1) (d) of the Act. He did not frame any charge against the applicant under Section 384, Penal Code, as in his opinion the applicant could not be tried again for an offence under that section by reason of his acquittal recorded on 3-6-1943. The learned Magistrate did not frame charges against the applicant under Section 161, Penal Code, for in his opinion a charge under Section 5 (2) of the Act, was the appropriate charge to be framed in the case.

5. The applicant was tried by the Assistant Ses. J. Mainpuri, who amended the charge framed by the Magistrate by adding two more charges under Section 161, Penal Code, the one in respect of a sum of Rs. 50 alleged to have been received by the applicant as bribe at Bahraol on 7-9-1947, & the other in respect of the sum of Rs. 60 alleged to have been received as bribe at Mainpuri on 10-9-1947. The statement of Nathu Ram to the District Magistrate & the report of Shri Gupta, mentioned above, formed the substratum of the prosecution case & what was mentioned therein was developed, embellished & narrated by the witnesses for the prosecution.

6. The applicant pleaded, in defence, that the story about the payment to him of Rs. 50 at Bahraol was totally false & that what had happened at Mainpuri was that Nathu Bam approached him with the request that Chet Ram be prosecuted for an offence punishable under Section 182, Penal Code, for making a false report, & made an offer of a bribe for this purpose which was refused by the applicant & that while this conversation was going on, Shri Gupta's party arrived at the spot & Shri Gupta enquired from Nathu Bam whether he had paid the money, whereupon Nathu Bam pointed towards the ground & said, 'Here they are'. The applicant denied that he had received the currency notes from Nathu Bam or that he was holding them in his hand or that he had dropped them on the ground on the arrival of Shri Gupta's party. The applicant suggested that the notes had been purposely dropped on the ground by Nathu Bam unnoticed by him due to the darkness that prevailed.

7. The learned Assistant Ses. J. believed the prosecution evidence & convicted the applicant of the offences under the Act, which he found to have been committed at Bahraol on the 7th & at Mainpuri on 10-9-1947. As regards the charges under Section 161, Penal Code, he remarked that offences under that section were covered by the offences under the Act.

8. The learned Ses. J. Mainpuri, who heard the appeal against the order of the learned Assistant Ses. J. reached the following conclusion & maintained the conviction of the applicant under Section 5 (2) of the Act for the offence alleged to have been committed at Mainpuri on 10 9-1947:

> "Having considered all the evidence & circumstances, my conclusion is that while the prosecution evidence has failed to establish beyond all reasonable doubt that the sum of Rs. 50 was paid to the applicant as bribe at Bahraol, it has been certainly proved beyond any shadow of doubt that the sum of Rs. 60 in six currency notes of Rs. 10 each was paid to the appellant & received by him as bribe at his quarter on 10-9-1947, as alleged by the prosecution. I agree with the conclusion of the learned Assistant Ses.

> J. in respect of this part of the prosecution story. The appellant has therefore rightly been found guilty of the offence of criminal misconduct in discharging official duty, as defined in Section 5 (1) (d), Prevention of Corruption Act, being Act II [2] of 1947. He is therefore punishable under Section 5 (2) of the said Act."

9. The learned counsel for the applicant has addressed me on four questions of law. He contends in the first place that the trial of the applicant whish has resulted in his conviction was barred by Section 403 of the Code, & in the alternative, by the rule which is the foundation of the pleas in bar, known as autrefois acquit & autrefois convict', in the second place the learned counsel contends that Section 5(1) (d) of the Act, should be so construed as to exclude from its purview offences which have been specifically provided for in the Penal Code, even though the language of Section 5 (1) (d) of the Act be found to be wide enough to cover such offences, & that so construing Section 5 (1) (d) the facts found in the present case do not make oat an offence defined by that section but only make out an offence under Section 161, Penal Code, for which the applicant has not been convicted: thirdly, the learned counsel contends, that even if Section 5(1) (d) of the Act is not so construed, the facts found in the case constitute offences both under Section 5 (1) (d) of the Act & Section 161, Penal Code, & such being the position, according to the rule embodied in the legal maxim, generalia specialibus non derogant, the applicant could not be convicted of an offence tinder the Act; & fourthly, the learned counsel contends that the charge framed against the applicant is illegal & vague & vitiates the trial.

10. It will be convenient to take up these questions in the order in which they have been mentioned, & I would, therefore, advert first to the question, whether the trial of the applicant was barred by Section 403 of the Code, or by any other rule of law.

11. It is urged by the learned counsel that having already been tried once by a Court of competent jurisdiction for an offence punishable under Section 384, Penal Code & acquitted of it, at the previous trial initiated by the charge sheet dated 14-9-1947, the applicant could not be tried again for an offence punishable under Section 5 (2) of the Act, on the same facts on which he had been previously tried. The learned counsel claims for the applicant the protection of the bar imposed by Section 403 of the Code & submits that the entire proceedings beginning with the submission of the charge sheet dated 27-5-1948, should be quashed & the applicant discharged.

12. The decision of this question depends upon, whether the applicant could or could not have been charged with an offence punishable under Section 5 (2) of the Act, at his previous trial, it being undisputed that all other conditions specified in Sub-section (1) of Section 403 of the Code, have been satisfied in the present case. The learned Deputy Government Advocate submits that by reason of the provisions of Section 6 of the Act, no Court can take cognizance of an offence punishable under Section 6 (2) of the Act, without previous sanction & as no sanction to prosecute the applicant had been granted when the previous trial was started, he could not have been charged with an offence punishable under Section 5 (2) of the Act, in the trial.

13. I have not been impressed by the argument, for I find that sanction to prosecute the applicant for an offence punishable under Section 5 (2) of the Act, had been accorded before the termination of

the previous trial, & I have been unable to discover any reason why the Court could not have taken cognizance of that offence by framing a charge for it after the requisite sanction had been accorded. By having recourse to this procedure the Court would have been taking cognizance of the offence punishable under Section 5 (2) of the Act for the first time while framing a charge for it & not earlier, & so after sanction had been granted to prosecute the applicant for that offence. The cases relating to other enactments, for example. Section 270, Govt. of India Act, 1935, (25 & 26 Geo. V oh. 42), which prohibit the very initiation of proceedings, do not appear to have any bearing on the interpretation of Section 6 of the Act.

14. It is, however, needless to pursue this matter any further or to express any definite opinion on the point discussed above, for, even if I hold that all the conditions mentioned in Sub-section (1) of Section 403 of the Code, have been satisfied, the bar imposed by that sub-section is avoided in the present case by reason of the fact that the offence for which the applicant has been tried now, & the offence for which he was tried previously, are offences under different enactments & Sub-section (5) of Section 403 of the Code expressly enacts that nothing contained in Section 403 of the Code shall affect the provisions of Section 26, General Clauses Act, 1897, (X [10] of 1897), according to which :

> "Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted & punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

I, therefore, find that the trial of the applicant was not barred by Section 403 of the Code.

15. The learned counsel for the applicant then contends that even apart from Section 403 of the Code, there exists an unmodified rule of natural justice which bars successive trials of a person of different offences on the same facts, & relies upon two decisions of the Patna H.C. in support of this contention. They are Gauri Shanker v. Emperor, A.I.R. (34) 1947 Pat 290 and Ramautar v. Emperor, A.I.R. (35) 1948 Pat. 32. Ramautar Lal's case does not call for any comment, because it merely follows Gauri Shanker's case. Gauri Shanker's case, however, requires careful consideration.

16. It was contended in Gauri Shanker's case that Sub-section (1) of Section 403 of the Code exhaustively mentions all the circumstances under which the pleas of autrefois acquit and autrefois convict may be successfully urged. This contention was rejected by Ray J. & the following two pro-positions were laid down by him : (1) That a person cannot be tried more than once for different offences upon the same set of facts & (2) that Section 403 of the Code does not exhaustively deal with the rule upon which the pleas of autrefois acquit & autrefois convict are founded. I respectfully concur in the view that Sub-section (1) of Section 403 of the Code does not exhaustively mention all the circumstances under which the aforesaid two pleas may be successfully urged, for Sub-section (3) of Section 403 of the Code, contemplates a set of circumstances not mentioned in Sub-section (1) under which a second trial would be barred. I do not, however, find it possible to conaur in the view that a person cannot generally be tried more than once upon the same set of facts, for any offence whatsoever. The learned Judge has not quoted any authority in support of the proposition laid down by him. He has based it only on an examination of the various sub-sections of Section 403 of the Code, for he says :

> "On close examination of these sub-sections & on consideration of the principle behind the section as a whole, it seems very clear to me that the section in effect intends to lay down that generally no accused shall be vexed with more than one trial for offences arising out of the same set of facts."

Proceeding to give his reasons in support of this view, the learned Judge begins by pointing out that there is nothing in Sub-section (2) of Section 403 of the Code which militates against the proposition laid down by him, but the mere fact that nothing in Sub-section (2) militates against the proposition laid down by the learned Judge does not indicate that that proposition is well-founded. As regards Sub-section (3), the learned Judge observes that the words, "if the consequences had not happened or were not known to the Court to have happened at the time when he was convicted."

are decisive. The learned Judge has, however, not chosen to indicate how these words support the proposition laid down by him much less how they are decisive on the point. Having given these words my best consideration, I have been unable to discover anything in them which may lend support to that proposition. The learned Judge has not said, nor could he have said, that there is anything in Sub-section (4) to indicate that a person cannot be tried more than once upon the same facts, for that sub-section expressly provides that a person may be tried again on the same facts if the Court by which he was previously tried was not competent to try the offence for which he is subsequently charged. The learned Judge has simply tried to explain that this sub-section also does not contain anything which militates against his view by observing that the use of the word 'may' indicates that the principles of natural justice must be kept in view in permitting a second trial. In my opinion the use of the word 'may' does not indicate anything of the kind. It is obvious that this word has been used to indicate nothing more than this that in the circumstances mentioned in Sub-section (4) the bar of autrefois aiquit or autrefois convict is avoided even when the circumstances mentioned in Sub-sections (1) & (3) are found to exist. The learned Judge says that Sub-section (5) very strongly emphasis's his view. With due deference to the learned Judge it seems to me that Sub-section (5) by expressly providing for successive trials for offences constituted under different enactments by the same set of facts negatives instead of supporting the proposition formulated by the learned Judge.

17. It would thus appear that there is nothing in the various sub-sections of Section 408 of the Code to indicate that that section in effect intends to lay down that generally an accused shall not be tried more than once on the same set of facts. It seems to me that the basic rule which underlies the various provisions of Section 403 of the Code is not that a person shall not be tried more than once upon the same set of facts, but that a person shall not be put in peril more than once of being convicted for the same offence. Sub-section (1) clearly gives effect to this rule by providing that a person shall not be tried again for the same offence or, upon the same facts, for another offence, for which a charge might have been framed against him at the previous trial under Section 236 of the Code, or of which he might have been convicted under Section 237 of the Code. Sub-section (3) supports this rule by providing that when the consequences had not happened or were not known to the Court, that is to say, when the accused was not put in jeopardy of being convicted for the offence for which he is subsequently tried, the plea of autrefois acquit or autrefois convict would not be justified. Sub-section (4) contains another instance in which the aforesaid pleas would not be

justified for the reason that the accused was not in jeopardy of being convicted of the offence for which he is subsequently tried.

18. The basic rule on which the pleas in bar known as autrefois acquit or autrefois convict are founded was carefully investigated in the King v. Barren (No. 2) ((1914) 2 K. B. 570) where the same proposition which has been laid down by Ray J. was pressed for acceptance by the Court of Criminal Appeal. As a matter of fact, a direct authority which apparently supported the proposition, namely. Reg v. King, ((1897) 1 Q. B. 214) was cited before the Court, but the Court declined to accept the proposition & the principle on which the pleas of autrefois acquit & autrefois convict depend was stated to be, "that She law does not permit a man to be twice in peril of being convicted of the same offence. If, therefore, he has been acquitted, that is, found to be not guilty of the offence, by a Court competent to try him, such acquittal is a bar to a second indictment for the same offence. This rule applies not only to the offence actually charged in the first indictment, but to any offence of which he could have been properly convicted on the trial of the first indictment." Beg v. King was distinguished on the ground that "It is quite plain that the learned Judge did not intend to lay down & did not lay down as a general principle of law that a man cannot be placed twice in jeopardy upon the same facts if the offences are different."

19. Another reason which Ray J. has given in support of his view is that if the proposition laid down by him is not accepted as correct, there would be nothing to prevent successive trials for different offences constituted by the same set of facts such as are contemplated by Sub-section (2) of Section 235 of the Code. The learned Judge observes :

> "It would be absurd to contend that a man can be tried once for the acts alleged for one offence failing under one definition of any law constituted by the acts & after his conviction or acquittal, he may be again subjected to another trial for another offence defined under any other law in force & constituted by the same acts .... Can it be conceived that while the legislature provides that all the offences constituted by the same acts can be tried in one trial, it will be open to the prosecution to have the luxury of trying the man over & over again for the same acts but for different offences as defined by law in force."

It is not necessary to decide in this case whether the contention formulated in the observations quoted above & rejected by the learned Judge is or is not worthy of acceptance, but it seems to me that it would not be just or fair to describe it as absurd when Section 233 of the Code specifically enjoins:

> "For every distinct offence of which any person is accused there shall be a separate charge, & every such charge shall be tried separately, except In the cases mentioned in Sections 234, 235, 236, & 239."

The provisions of Sections 234, 235, 236 & 239 of the Code, being merely permissive & not imperative, it is obvious that separate trials for offences mentioned therein would not be illegal. The attention of the learned Judge does not appear to have been invited to Section 233 of the Code & to

the basic principle which underlies the criminal procedure, namely that separate offences should be separately tried, so that the accused may not be bewildered & the Judge & the jury, while considering his case in respect of one offence, may not be prejudiced by what appears against him in respect of another offence, which is quite dissimilar to the basic principle underlying the civil procedure which aims at avoiding multiplicity of proceedings.

20. For the reasons indicated above, I find myself unable to hold that Section 403 of the Code, is based upon the rate that a person may not be tried more than once upon the same facts or even that any such rule exists.

21. So far as the second proposition laid down by the learned Judge is concerned, it may be that as Section 11, Civil P. C. does not exhaustively deal with the rule of res judicata, in the same way Section 403 of the Code does not exhaustively codify the rule upon which the pleas of autrefois acquit & autrefois convict are founded. Section 403 of the Code deals with criminal trials only & it may be that the principles upon which the section is based may be relied upon in proceedings other than criminal trials. For example, it may perhaps be successfully urged that successive proceedings under Section 109 of the Code against the same persons upon the same facts would be barred. But it seems tome, as at present advised, that the plea of autrefois acquit or autrefois convict cannot be successfully maintained in a criminal trial when the circumstances mentioned in Section 403 do not exist. However, I reserve this question for future consideration, firstly, because it has not been fully argued before me, & secondly, because it is not necessary to answer it for the decision of this case, for even if it be assumed that such pleas-may be successfully maintained under circumstances other than those mentioned in Section 403 of the Code, I am definitely of the opinion that they cannot prevail against express statutory provisions. The present case is completely covered by Section 26, General Clauses Act, & no general principles can be allowed to prevail against this specific enactment. I, therefore, hold that the trial of the applicant was not barred by Section 403 of the Code, nor by any other rule of natural justice & that there is no force in the first contention put for ward by the learned counsel.

22. In order to make good his second contention, namely, that Section 5 (1) (d) of the Act should be so construed as to exclude from its purview offences provided for by the Penal Code, the learned counsel points out that Sections 3 & 6 of the Act indicate that the legislature was fully aware of the fact that the acceptance of illegal gratification will continue to be an offence under Section 161, Penal Coda, even after the enactment of the Prevention of Corruption Act & contends that under these circumstances there was no necessity for it to have again made such an act an offence by including it within the purview of Section 5 (1) (d) of the Act. That there is no force in this contention would appear from a reference to Section 5 (1) (c) of the Act, by which dishonest or fraudulent misappropriation or conversion for his own use by a public servant of any property entrusted to him or under his control as a public servant has been made an offence under the Act, although such an act continues to be an offence under Section 409, Penal Code also. If the legislature had intended what the learned counsel submits was intended by it, Clause (c) of Sub-section (1) of Section 5 of the Act would certainly not have been enacted. That it is a common feature of criminal legislation to look at the same Act from different points of view & to define it as different offences considered from such different points of view, whether under the same enactment or under different enactments,

becomes manifest when attention is turned to Sub-section (2) of Section 235 of the Code or to Section 26, General Clauses Act.

23. Learned counsel has relied on a single Judge decision of this Court in Ram Nath v. Emperor, A.I.R. (12) 1925 ALL. 230, in support of his third contention. In view of subsequent decisions by Division Benches in Joti Prasad v. Emperor, 1931 A.I.R. 986 and Emperor v. Reoti, 1933 A. L. J. 523, & the specific provisions of Section 26, General Clauses Act, 1897, this contention of the learned counsel cannot be accepted.

24. As regards his fourth contention, the learned counsel has been unable to state how the applicant has been prejudiced by any vagueness in the charges framed against him. Section 537 (a) of the Code precludes this Court from reversing or altering the finding, sentence or order passed by the learned Ses. J. on account of any error, omission or irregularity in the charges framed against the applicant unless it is established that such error, omission or irregularity has, in fact, occasioned a failure of justice. The learned counsel has failed to satisfy me that any failure of justice has resulted or that the applicant has been prejudiced in any way by any vagueness in the charges framed against him, even if it be assumed that the charges framed are vague. On the other hand, I am perfectly satisfied that the applicant has in no way been prejudiced. He is an intelligent person who has served for several years in the police department & it is impossible to believe that if he had thought that he was in any way being prejudiced by the vagueness of the charges framed against him he would not have made any complaint about it in the two Courts below.

25. I thus find that there is no force in any one of the aforesaid four contentions advanced on behalf of the applicant & overrule all of them.

26. It only remains to be considered whether the evidence in the case justifies the conviction of the applicant. [His Lordship then discussed the evidence & proceeded as follows:

27. The case for the prosecution may be true or may be false, but the evidence taken as a whole does not prove the charge against the applicant beyond all reasonable doubt, the evidence of the two Govt. servants not being sufficient to prove every element of the offence of which the applicant has been convicted & the rest of the evidence not being reliable enough.

28. Before parting with this case I would like to observe that I am not unmindful of the fact that this Court does not ordinarily enter into questions of fact in a criminal revision. If I have gone into questions of fact in this ease, it is because it seems to me that this case is exceptional. It is not exceptional because the applicant is a Govt. servant, for, in my opinion applications in revision by Govt. servants are not to be treated differently from applications in revision by other citizens of the State. I have considered questions of fact in this case, because I have thought it to be exceptional otherwise. One of the reasons which has induced me to consider questions of facts is that the learned Ses. J., whose findings of fact should ordinarily have been final, has acted upon one of his findings for one purpose & not for another. I have found it necessary to make these observations so that I may not be understood to lend any support to the view that questions of fact may be freely argued in criminal revisions by Govt. servants, whereas they may not be so argued in revisions by

others.

29. For the reasons already stated, I allow this appln. in revision & giving the applicant the benefit of doubt which has been created in my mind, I set aside his conviction & the sentence awarded to him & order that he be acquitted. The applicant need not surrender to his bail. His bail bonds are discharged.