

A. C. Sharma vs Delhi Administration on 5 February, 1973

Equivalent citations: 1973 AIR 913, 1973 SCR (3) 477, AIR 1973 SUPREME COURT 913, 1973 (1) SCC 726, 1973 ALL. L. J. 160, 1973 SCC(CRI) 608, 1973 3 SCR 477, 1973 MADLJ(CRI) 447, (1973) 1 SERVLR 779, 1973 2 SCJ 289, (1973) 1 SCC 726 908, 1973 ALLCRIR 104

Author: A. Alagiriswami

Bench: A. Alagiriswami

PETITIONER:

A. C. SHARMA

Vs.

RESPONDENT:

DELHI ADMINISTRATION

DATE OF JUDGMENT 05/02/1973

BENCH:

DUA, I.D.

BENCH:

DUA, I.D.

ALAGIRISWAMI, A.

VAIDYIALINGAM, C.A.

CITATION:

1973 AIR 913

1973 SCR (3) 477

1973 SCC (1) 726

CITATOR INFO :

R 1992 SC 604 (121,134)

ACT:

Delhi Special Police Establishment Act 25 of 1946-Notification under s. 3 of Act, being notification No. 7/5/55-A.V.D. dated November 6, 1966, conferring jurisdiction on Delhi Special Police Establishment to investigate inter alia offences under 161, 165 165A Indian Penal Code and offences under the Prevention of Corruption Act 2 of 1947-Jurisdiction of the Anti-Corruption Department of Delhi Administration whether completely displaced-Schemes of Act 25 of 1946 and Act 2 of 1947-Persuasive value of administrative instructions in interpreting statute-Defect in investigation, effect of-Word 'elsewhere' in s. 5A (1) (d) of Act 2 of 1947, meaning of.

HEADNOTE:

The appellant was the dealing clerk in the labour office Delhi in April 1965. He was tried and convicted by the Special Judge Delhi under s. 5(2) of Prevention of Corruption Act and section 161 of the Indian Penal Code. His appeal to the High Court of Delhi was dismissed by the Single Judge. In appeal by special leave to this Court it was contended that the Delhi Special Police Establishment Act, 1946, as amended, prescribes special powers and procedure for investigation of offences of bribery and corruption and as the appellant was an employee of the Central Public Work Department offences against him could only be investigated by the Special Police Establishment. His prosecution based on investigation by the Deputy Superintendent of the Anti-corruption Department of the Delhi Administration was therefore, according to the appellant, illegal. This contention, raised for the first time in this Court, was allowed to be urged in view of the decision of this court in Ahluwalia's case.

HELD : (i) Statement of objects and reasons for introducing a Bill in the legislature is not admissible as an aid to the construction of the statute as enacted; far less can it control the meaning of the actual words used in the Act. It can only be referred to for the limited purpose of ascertaining the circumstances which actuated the sponsor of the Bill to introduce it and the purpose for doing so. [484G-H]

(ii) The preamble of a statute, which is often described as a key to the understanding of it, may legitimately be consulted to solve an ambiguity or to ascertain and fix the meaning of words in their context which otherwise bear more meanings than one. It may afford useful assistance as to what the statute intends to reach. But if the enactment is clear and unambiguous in itself then no preamble can vary its meaning. While construing a statute one has also to bear in mind the presumption that the legislature does not intend to make any substantial alteration in the existing law beyond what it expressly declares or beyond the immediate scope and object of the statute. [485A-B]

(iii) The scheme of the Delhi Special Police Establishment Act does not either expressly or by necessary implication divest the regular police authorities of their Jurisdiction, power and competence to investigate into offences under any other competent law. As general rule it would require clear and express language to effectively exclude as a matter of law the power of investigation for the offences mentioned
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in the notification dated November 6, 1956, under s. 3 of the Act, from the jurisdiction and competence of the regular police authorities conferred on them by the Cr.P.C. and other laws and to vest this power exclusively in the

D.S.P.E. The D.S.P.E. Act seems to be only permissive or empowering, intended merely to enable the D.S.P.E. also to investigate into the offences specified as contemplated by section 3 without impairing any other law empowering police authorities to investigate offences. [486B-F]

(iv) The plain meaning of sub-section (1) of s. 5A of the Prevention of Corruption Act 1947 appears to be that Inspectors of Police of D.S.P.E. in all places, Assistant Commissioners of Police in the Presidency towns of Calcutta and Madras, Superintendent of Police in the Presidency town of Bombay, and Deputy Superintendents of Police in all places other than Presidency towns of Calcutta, Madras and Bombay are authorised to investigate into the offences mentioned therein. The word 'elsewhere' in cl.(d) does not indicate that a Deputy Superintendent of Police is debarred from investigating offences mentioned in this clause even when so ordered by a Magistrate First Class in the areas in which D.S.P.E. is also empowered to function. The word 'elsewhere' in clause (d) appears to refer only to the three Presidency towns mentioned in clauses (b) and (c). This sub-section therefore does not confer sole power on D.S.P.E. to investigate into the offences mentioned therein to the complete exclusion of the regular police force. It is merely concerned with the object of making provision for safeguarding against arbitrary use of power of investigation by officers below certain ranks so that public servants concerned are saved from frivolous harassment at the hands of disgruntled persons. It is also noteworthy that apart from the restrictions in s. 5A(1) the applicability of the provisions of the Cr.P.C. to the proceedings in relation to the offences mentioned in that subsections, is, subject to certain modifications contained in s. 7A, expressly recognised. [488D-G]

(v) The schemes of the two enactments, namely, the D.S.P.E. Act, 1946 and Prevention of Corruption Act, 1947 suggest that they are intended to serve as supplementary provisions of law designed to function harmoniously in aid of each other and of the existing regular police investigating agencies for effectively achieving the object of successful investigation into the serious offences mentioned in s. 5A without unreasonably exposing the public servant concerned to frivolous and vexatious proceedings. [488G-H; 489A]

(vi) The above interpretation is supported by D.O. No. 21(8)63GD dated October 5, 1963 addressed by the Central Bureau of Investigation, Ministry of Home Affairs, Government of India, to the Inspectors General of Police. No doubt the letter contains only administrative instructions but it clearly shows the construction placed during all these years by the administrative officers concerned. If the view stated in this letter is not clearly against the language and scheme of the Act in question then, it is entitled to due consideration and has some persuasive value. Reference to the State Police in the D.O. includes

the police force of the Union Territory of Delhi. [489F-H; 490A]

(vii) In the present case the investigation by the Deputy Superintendent of Police could not be considered to be in any way unauthorised or contrary to law. The function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. [490A-C]

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(viii) it was not possible to find any infirmity in judgment of the High Court upholding the prosecution story and convicting the appellant and there was no cogent ground for reappraising the evidence. There was absolutely no extraordinary reason for departing from the normal rule of practice according to which this Court accepts the conclusions of facts arrived at by the High Court to be final. There was no grave injustice as a result of any irregularity or other infirmity either in the trial or in the judgments of the trial court and the High Court. [491D-F]

H. N. Bishabud & Inder Singh v. State of Delhi, [1955] 1 S.C.R. 1150, Munna Lal v. The State of U.P. CrL. A. Nos. 102-104 of 1961 d/April 17, 1963, State of Madhya Pradesh v. Mubarak Ali, A.I.R. 1959 S.C. 707, State of Andhra Pradesh v. M. Venugopal, [1964] 3 S. C. R. 743 and Khandu Sonu Dhobi v. State of Maharashtra, CrL. A. No. 105 of 1969 d/February 15, 1972, applied.

R. J. Singh Ahluwalia v. The State of Delhi, [1970] 3 S.C.R. 451, Abdul Halim v. State of West Bengal, A.I.R. 1961 Cal. 257, Om Prakash v. State, A.I.R. 1964 Punjab 407, Labh Shankar V. State of Saurashtra, A.I.R. 1955 Saurashtra 42 Kharati Lal v. State, 1965, D.L.T 362 and Kartar Singh v. State, CrL. A. No. 42 of 1971 decided on October 13, 1971, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 28 of 1973.

Appeal by special leave from the judgment and order dated 29th October 1969 of the Delhi High Court at New Delhi in Cr. A. No. 1 of 1966.

Frank Anthony and K. B. Rohatgi, for the appellant. Gobind Das and R. N. Sachthey, for the respondent.

F. S. Nariman, Additional Solicitor-General of India, and B. D. Sharma, for the Attorney-General for India. The Judgment of the Court was delivered by DuA, J.-The appellant was the dealing clerk in

the Labour Office, Delhi, in April, 1965. He was convicted by the Special Judge, Delhi under s. 5(2) of the Prevention of Corruption Act and sentenced to one year's rigorous imprisonment and fine of Rs. 200/- with two, months further rigorous imprisonment in case of default. He was also found guilty and convicted of an offence under s. 161, I.P.C. and sentenced to rigorous imprisonment for (one year. The two substantive sentences were directed to be concurrent. His appeal to the High Court of Delhi was dismissed by a learned single Judge. He appeals to this Court by special leave. His application for leave is dated December 20, 1969. In that application one of the grounds taken by him questioned the legality of the investigation into the offences against him by the Deputy Superintendent of the Anti-Corruption Department of the Delhi Administration. According to this ground the Delhi Special Police Establishment Act as amended prescribes special powers and procedure for investigation of offences of bribery and corruption in the departments of the Central Government and as the appellant was an employee of the Central Public Works Department, offences against him could only be investigated by the Special Police Establishment. The investigation having not been done by the D.S.P.E., according to the appellant, his trial is vitiated. In support of this ground the appellant presented in this Court an application dated January 13, 1970 seeking permission to place on the record a letter dated February 10, 1966 purporting to have been written by the S.P. Anti-Corruption Branch, Delhi and addressed to the appellant stating that the anti-corruption branch of Delhi Administration was not competent to make an enquiry into the allegations levelled against c.P.W.D. employee being a Central Government employee. This Court, while granting special leave, also permitted the appellant to urge additional grounds. We now turn to the, facts giving rise to this case. One Bakht Ram, a labour supplier had to get about Rs. 3,500/- from one Umrao Singh, a contractor, who was evading this payment. Bakht Ram moved the Labour Officer for relief. The Labour Officer stopped payment to the contractor to the extent of the amount claimed by Bakht Ram but as the case was not being dealt with as expeditiously as Bakht Ram expected or desired, he approached the appellant who was the dealing clerk for expeditious disposal of the case. The appellant demanded Rs. 100/- by way of bribe for using his good offices. The matter was ultimately settled at Rs. 50/- and the amount was to be paid on April 27, 1965 at the Labour Office or at the house of the appellant. Bakht Ram thereupon reported the matter to the Deputy Superintendent of Police (Anti-Corruption Branch) and produced three currency notes of the denomination of Rs. 10/- each which he proposed to pay to the appellant. The numbers of these currency notes were noted by the Deputy Superintendent of Police in the presence of two witnesses and Bakht Ram was instructed to make the payment in the presence of those witnesses. Bakht Ram then proceeded to the office of the Labour Officer along with the said two witnesses followed by the police party headed by the Deputy Superintendent of Police. As the appellant was not present in the office of the Labour Officer the party proceeded to his house. Bakht Ram called the appellant out from his house and they both went to a tea shop nearby. The two witnesses followed them. Within their hearing Bakht Ram told the appellant that he had brought Rs. 30/- with him and that he would pay the balance later. He requested the appellant to see that the Labour Officer passed requisite orders on Bakht Ram's application claiming Rs. 3,500/-. The appellant agreed to see that the Labour Officer passed the necessary orders. He received Rs. 30/- from Bakht Ram and put the currency notes in his pocket. One of the two witnesses at this stage gave a signal and the D.S.P. came to the spot. The currency notes in question were recovered from the appellant's possession. They bore the same numbers as had been noted by the D.S.P. At the trial the appellant's plea was that Bakht Ram had borrowed from him Rs. 40/- on April 1, 1965 and the amount recovered from him by the D.S.P.

was the amount paid by Bakht Ram towards the discharge of that loan. He also produced four witnesses in support of his version. The learned Special Judge considered the prosecution evidence and held that the receipt of money having been admitted by the appellant, the onus lay on him to rebut the presumption raised by s. 4 of the Prevention of Corruption Act. After considering the appellant's plea and appraising the evidence produced by him in support thereof, the learned Special Judge concluded that the burden had not been discharged. In his view, the defence witnesses were interested in the appellant and one of them, being the General Secretary of the Congress Mandal, Lajpatnagar, New Delhi and in that capacity wielding some influence, had also tried to help the appellant. The testimony of these witnesses did not impress the Special Judge. Holding the appellant guilty he convicted him and imposed the sentence, as already noticed. On appeal the High Court agreed with the view, taken by the trial court. According to the High Court also the appellant having admitted receipt of a sum of Rs. 30/- from P.W. 1 Bakht Ram on the date of the offence, under s. 4 of the Prevention of Corruption Act, the burden lay upon him to prove that this amount had been received otherwise than by way of illegal gratification. The testimony of the defence witnesses was not considered acceptable and the order of the trial court was affirmed.

In this Court Mr. Anthony questioned the legality of the investigation by submitting that the only police agency having jurisdiction to investigate into the allegations against the, appellant was the Delhi Special Police Establishment. The investigation by the anti-corruption branch, Delhi, being thus without jurisdiction, it was contended that the appellant's trial and conviction were, on this ground alone, wholly illegal. Mr. Anthony relied on *R. J. Singh Ahluwalia v. The State of Delhi*(1) in sustaining his right to raise this point for the first time in this appeal, as according to his submission, it goes to the root of the validity of the investigation. If the investigation is unauthorised the trial springing from it cannot be considered lawful, said the counsel. The appeal- (1) (1970) 3 S.C.R. 451.

lant having been permitted to urge additional ground and there being no objection by the other side, in the interest of justice we heard the parties on the new objection. As the point raised related to the validity of central laws we directed notice to the Attorney General and pursuant to that notice heard Mr. Nariman, Additional The short but important question with far-reaching effect, if the appellant's contention were to prevail, requiring our decision is, whether with the setting up of the Delhi Special Police Establishment, the anti-corruption branch of the Delhi Police had been completely deprived of its power to investigate into the offences like the present or whether both the S.P.E. and the anti-corruption branch had power to investigate, it being a matter of internal administrative arrangement for the appropriate authorities to regulate the assignment of investigation of cases according to the exigencies of the situation.

Mr. Anthony relied on the preamble of the Delhi Special Police Establishment Act, 25 of 1946. Mr. Nariman produced before us a copy of its objects and reasons for showing the background in which this Act was enacted. Both sides referred to the background of this enactment for the purpose of supporting their rival contentions about its scope and effect. The objects and reasons for its enactment show that in 1943 the Government of India had set up ,a police staff called the Delhi Police Establishment (War Department) under the Special Police Establishment (War Department) Ordinance No. XXII of 1943 for the purpose of investigating offences of bribery and corruption

connected with the Departments of Central Government. As this Organisation proved useful it was decided to retain its police staff on permanent basis by means of legislation. Ordinance No. XXII of 1943 lapsed on September 30, 1946. In order to avoid a break in continuity, Ordinance No. XXII of 1946 was promulgated on September 25, 1946 to remain in force till March 25, 1947. The object of this Act is to retain the said special police staff as a permanent Organisation to enable it to conduct investigation in all provinces of India with their consent. Its preamble reads :

"An Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences."

Section 3 of the Act on which principal reliance was placed by Mr. Anthony reads:

"3. Offences to be investigated by special police establishment : The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment."

Reference to S. 3 of both the Ordinances of 1943 and 1946 would show that apart from the category of offences, the power of the establishment to investigate into the offences mentioned therein is expressed in language similar to that used in the two Acts Section 3 of the 1943 Ordinance reads :

"3. Offences to be investigated by Special Police Establishment : The Central Government may by general or special order specify the offences or classes of offences committed in connection with Departments of the Central Government which are to be investigated by the Special Police Establishment (War Department) or may direct any particular offence committed in connection with a Department of the Central Government to be so investigated."

Section 3 of the 1946 Ordinance reads "3. Offences to be investigated by special police establishment :

The Central Government may, by notification in the official gazette, specify the offences or classes of offences committed in connection with matters concerning Departments of the Central Government which are to be investigated by the Delhi special police establishment."

It was contended that section 3 of this Act confers on D.S.P.E. exclusive jurisdiction for investigating the offences specified by the Central Government by notification in the Gazette. Stress in this connection was laid on the words "which are to be investigated" as disclosing the mandatory character of the legislative intention. Our attention was also drawn to the notification no. 7/5/55-AVD dated November 6, 1956

in exercise of the powers conferred by s. 3 in which offences, inter alia, under S. 161, 165, 165A, I.P.C. and offences punishable under the Prevention of Corruption Act (2 of 1947) are specified. According to the learned Advocate the Special Establishment is a very efficient investigating agency and it utilises officers and not clerks for assistance in its investigation. It is apparently for this reason, said the learned counsel, that cases of corruption against employees of Central Government are entrusted to it. Mr. Anthony in the course of arguments conceded that if in S. 3 instead of the word "are" the legislature had used the words "may" or "can" then the section would not prima facie convey a mandatory direction clothing the D.S.P.E. alone with the power of investigation to the exclusion of the other investigating agencies, including the regular police force. Our attention was also drawn to the resolution of the Government of India (No. 4/31/61-T dated April 1, 1963), reproduced at p. 681 of the Anti-Corruption Laws of India by P. V. Ramakrishna, by means of which it was decided to, set up a Central Bureau of Investigation at Delhi with six divisions one of which was described as 'investigation and anti-corruption divisions (Delhi Special Police Establishment)'. According to the argument the Government had designed to set up a special investigating agency for investigating cases of corruption and bribery to the exclusion of an other investigating agencies. Our attention was specifically invited to the letter (No. 593/AC Br. dated February 10, 1966) from the Superintendent of Police, Anti- Corruption Branch, to the appellant in reply to an application of his. In that letter it was stated :

"Shri L. Swarup, Labour Officer, Jurisdiction No. 5, C.P.W.D. Delhi is a Central Government employee. Therefore, Anti-Corruption Branch of Delhi Administration is not competent to make enquiry into the allegations levelled against him."

This letter fortifies his submission, said Mr. Anthony. Support for his contention was also sought from Abdul Halim vs. State of West Bengal(1), Om Prakash vs. State(2), Labh Shankar vs. State of Saurashtra (3) and Kharaiti Lal vs. State(4). These decisions do not seem to have any direct bearing on the point which concerns us.

Mr. Anthony also produced before us a copy of an unreported decision of a single Judge of the Delhi High Court in Kartar Singh vs. State(5) rejecting a similar contention raised by the learned counsel. But the correctness of this decision was questioned by Mr. Anthony. We now proceed to examine the legal position.

Statement of objects and reasons for introducing a Bill in the Legislature is not admissible as an aid to the construction of the statute as enacted : far less can it control the meaning of the actual words used in the Act. It can only be referred to for the limited purpose of ascertaining the circumstances which actuated the sponsor of the Bill to introduce it and the purpose for doing so. The preamble of a statute which is often described as a key to the understanding of it may legitimately be consulted to solve (1) A.I.R. 1961 Cal. 257.

(3) A.I.R. 1965 Saurashtra 42.

(2) A.I.R. 1964 Punjab 407.

(4) 1965 D.L.T. 362.

(5) Crl. A. No. 42 of 1971 decided on October 13, 1971.

an ambiguity or to ascertain and fix the meaning of words in their context which otherwise bear more meanings than one. It may afford useful assistance as to what the statute intends to reach, but if the enactment, is clear and unambiguous in itself then no preamble can vary its meaning. While construing a statute one has also to bear in mind the presumption that the Legislature does not intend to make any substantial alteration in the existing law beyond what it expressly declares or beyond the immediate scope and object of the statute.

Turning to the D.S.P.E. Act it extends to the, whole of. India. For the constitution and powers of the establishment we have to turn to s. 2 of this Act which reads :-

"2. Constitution and powers of special police establishment :

(1) Notwithstanding anything in the Police Act, 1861, the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union territory of offences notified under section 3. (2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout any Union territory in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union territory have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-

Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union territory any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station."

Section 3 which empowers the Central Government to specify the offences to be investigated by the D.S.P.E. has already been set out. The notification dated November 6, 1956 referred to earlier specifies numerous offences under various enactments including a large number of ordinary offences under I.P.C. Clauses (a) to (J) of this notification take within their fold offences under a number of statutes specified therein. Clause (k) extends the sweep of this notification by including in its scope attempts, abetments and conspiracies in relation to or in connection with the offences mentioned in cl. (a) to (h) and also any other offence committed in the course of those, transactions arising out of the same facts. It may also be stated that after 1956 in a number of further

notifications the list of the offences specified under s. "I has increased manifold. We consider it unnecessary to refer to them in detail. According to s. 4 the superintendence of D.S.P.E. vests in the Central Government and s. 5 empowers the Central Government to extend to any area in a State not being a Union territory the powers and jurisdiction of members of this establishment for the investigation of any offences or classes of offences specified under s. 3. Subject to the orders of the Central Government the members of such Establishment exercising such extended powers and jurisdiction are to be deemed to be members of the police force of that area for the purpose of powers, functions, privileges and liabilities. But the power and jurisdiction of a member of D.S.P.E. in such State is to be exercised only with the consent :of the Government of the State concerned. The scheme of this Act does not either expressly or by necessary implication divest the regular police authorities of their jurisdiction, power and competence to investigate into offences under any other competent law. As a general, rule, it would require clear and express language to effectively exclude as a matter of law the power of investigation of all the offences mentioned in this notification from the jurisdiction and competence of the regular police authorities conferred on them by Cr. P.C. and other laws and to vest this power exclusively in the D.S.P.E. The D.S.P.E. Act seems to be only permissive or em- powering, intended merely to enable the D.S.P.E. also to investigate into the offences specified as contemplated by s. 3 without impairing any other law empowering the regular police authorities to investigate offences. Turning now to the Prevention of Corruption Act (2 of 1947), we find that this Act was enacted in March, 1947 several months after the enactment of the D.S.P.E. Act for the more effective prevention of brivry and corruption. By virtue of s. 3 of the Act an offence under s. 165A, I.P.C. was made a cognizable offence for the purposes of Cr. P.C. notwithstanding anything to the contrary contained in that Code. Section 4 provides for presumptions in certain cases. Section 5 defines criminal misconduct and also provides for punishment for such offences. It further provides for punishment for habitual commission of offences under ss. 162, 163 and 165, I.P.C. and also renderers punishable attempts to commit some offences. Section 5 is expressly stated to operate in addition to, and not in derogation of other laws. Section 5A which is of importance may here be set out :

"5A. Investigation into cases under this Act (1) Notwithstanding anything contained in the Code of Criminal Procedure, 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 Calcutta 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 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) If, from information received or otherwise, a police officer has reason to, suspect the commission of an offence which he is empowered to investigate, under subsection (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the person suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this sub-section :

Provided that no power under this sub-section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.-In this sub-section, the expressions 'bank and 'bankers' books' shall have the meanings assigned to them in the Bankers' Books Evidence Act, 1891."

Sub-section (1) of this section, while regulating the competence of the officers both of D.S.P.E. and of the regular police force to investigate offences to the extent considered necessary, over-rides the provisions of Cr. P.C. It expressly prohibits police officers, including those of the D.S.P.E., below certain ranks, from investigating into offences, under ss. 161, 165 and 165A, I.P.C. and under s. 5 of Prevention of Corruption Act, without orders of Magistrates specified therein and from effecting arrests for those offences without a warrant. The plain meaning of this sub-section appears to be that Inspectors of Police, of D.S.P.E. In all places, Assistant Commissioners of Police in the Presidency Towns of Calcutta and Madras, Superintendents of Police in the Presidency Town of Bombay, and Deputy Superintendents of Police in all places, other than Presidency Towns of Calcutta, Madras and Bombay, are authorised to investigate into the offences mentioned therein. The word "elsewhere" in cl. (d) does not indicate, as was contended by Mr. Anthony that a Deputy Superintendent of Police is debarred from investigating offences mentioned in this clause even when so ordered by a Magistrate of the First Class in the areas in which D.S.P.E. is also empowered to function. The word "elsewhere" in cl. (d) appears to us to refer only to the three Presidency towns

mentioned in cl. (b) and (c). This sub-section, therefore, does not confer sole power on D.S.P.E. to investigate into the offences mentioned therein to the complete exclusion of the regular police force. It is merely concerned with the object of making provision for safeguarding against arbitrary use of power of investigation by officers below certain ranks, so that public servants concerned are saved from frivolous harassment at the hands of disgruntled persons. In this connection it is also noteworthy that apart from the restriction contained in s. 5A(1) the applicability of the provisions of Cr. P.C. to the proceedings in relation to the aforesaid offences is, subject to certain modifications contained in s. 7A, expressly recognised. The schemes of the two enactments, namely, the D. S.P.E. Act. 1946 and the Prevention of Corruption Act, 1947. suggest that they are intended to serve as supplementary provisions of law designed to function harmoniously in and of each other and of the existing regular police investigating agencies for effectively achieving the object of successful investigation into the serious offences mentioned in s. 5A without unreasonably exposing the public servant concerned to frivolous and vexatious proceedings. Mr. Nariman also, drew our attention to D.O. No. 21/8/63GD dated October 5, 1963, addressed by the Central Bureau of Investigation, Ministry of Home Affairs, Government of India to the Inspectors General of Police inviting their attention to the Government of India Resolution No. 4/31/61-T dated April 1, 1963 establishing the Central Bureau of Investigation consisting of six Divisions to assist the State Police Forces. The authority of Central Bureau is stated therein to have been derived from the D.S.P.E. Act. In this letter para 6 reads :

"6. In this connection it may also be mentioned that, on account of inadequacy of staff, it is not possible for the S.P.E. Division to take up every one of the cases which might fall under the categories mentioned in the Annexure to the Government of India Resolution and which might be considered suitable for investigation by the S.P.E. Division. A certain discretion has, therefore, to be exercised in taking up cases for investigation. In some instances it may not be possible for it to take up even those cases which are committed by Central Government servants, e.g., petty cases of theft, misappropriation, cheating. Such cases could be dealt with more easily and more expeditiously by the local police which has concurrent jurisdiction over these cases also."

In para 7 it is stated that for successful investigation of cases it is most essential that a quick decision is taken about the Agency which has to investigate them. One of the Agencies mentioned therein is S.P.E. Division of the C.B.I. In para 8 it is stated that in respect of cases involving Public Servants or Public Concerns there is an administrative arrangement and understanding between the S.P.E. and the State Police about the manner in which they are to be dealt with so as to avoid difficulties and delays. This para then refers to the existing procedure and practice which, it is suggested, should continue to be valid in future. No doubt, this letter contains only administrative instructions but it clearly shows the construction placed during all these years by the administrative officers concerned with administering this law on the provisions of the S.P.E. and the Prevention of Corruption Act. If the views stated in this letter is not clearly against the language and scheme of these Acts then it is

entitled to due consideration and has some Persuasive value.. The contention raised by Mr. Anthony that Delhi not being a State but only a Union territory, the directions contained in D.O. No. 21/8/63-GD are, inapplicable and that in Delhi it is only the D.S.P.E. which has exclusive authority to investigate into the offences mentioned in s. 5A is not easy to accept.

Reference to the State Police force in that D.O. in our view includes the police force of the Union territory of Delhi. As the foregoing discussion shows the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence, can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. In *H. N. Rishabud & Inder Singh v. State of Delhi*(1) it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice, has been caused thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the court at an ,early stage of the trial the court will have to consider the nature and extent of the violation and pass appropriate orders for such. reinvestigation as may be called for, wholly or partly, and by such officer as it consider appropriate with reference to the requirements of s. 5A of the Prevention of Corruption Act, 1952. This decision was followed in *Munna Lal v. The State of U.P.* (2) where the decision in *State of Madhya Pradesh v. Mubarak Ali*(3) was distinguished. The same view was, taken in the Slate of Andhra Pradesh v. M. Venugopal (4) and more recently in *Khandu Sonu Dhobi v. State of Maharashtra*(5). The decisions of the Calcutta, Punjab and Saurashtra High Courts relied upon by Mr. Anthony deal with different points : in any event to the extent they contain any observations against the view expressed by this Court in the decision just cited those observations cannot be considered good law.

This takes us to the merits of the case. Mr. Anthony referred us to the evidence of Bakht Ram, the complainant (P.W. 1) and submitted that this witness has told lies in the witness box. P.W. 4 D.C. Srivastava who was also a party to the trap and appeared as a. witness to the acceptance of the bribe was also subjected to criticism by the learned counsel. According to this criticism his evidence is equally untrustworthy. It was emphasised that the prosecution witnesses were tied down by the Investigating Agency by taking their statements under S. 164, Cr. P.C. The learned counsel submitted that resort to s. 164, Cr. P.C. must put the court on guard against implicit reliance on such evidence because resort (1) [1955] 1 S.C.R to (2) Crl. A. Nos. 102-104 of 1961 d/April 17,1963.

(3) A I. R 1959 S.C. 707 (4) [1964] 3 S.C.R. 742. (5) Crl. A. No. 105 of 1969 d/February 15, 1972.

this section suggests that the witnesses are being compelled to back to the statement secured from them during investigation. The counsel further drew our attention to the defence version which, According to him, was put forth at the earliest opportunity. This version, according to him, should have been accepted. The story of demand of bribe by the appellant, argued Mr. Anthony, was not trustworthy. Finally, it was pointed out that Wazir Chand who was stated to be present when the

appellant is alleged to have demanded the bribe should have been produced by the prosecution and failure to do so has seriously prejudiced the appellant's case. The plea that he had been won over and was, therefore, not produced, did not justify his non- production. The counsel also drew our attention to the evidence of the three witnesses produced in defence. In the High Court all these contentions were raised and after a detailed consideration repelled for reasons which we think are sound. The appellant had in the present case, as observed by the High Court, admitted receipt of Rs. 30 from P.W. 1 on the date of the offence and his explanation was considered to be unconvincing. The defence evidence was also considered by the High Court to be unimpressive and unacceptable.

In our view, it is not possible to find any infirmity in the judgment of the High Court upholding the prosecution story and convicting the appellant and indeed we are unable to find any cogent ground for re-appraising the evidence for ourselves in this appeal. There is absolutely no extraordinary reason for departing from the normal rule of practice according to which this Court accepts the conclusions of facts arrived at by the High Court to be final. There is no grave injustice as a result of any irregularity or other infirmity either in the trial or in the judgments of the trial court and the High Court. The result, therefore, is that the appeal fails and is dismissed.

G.C.
16- L796SCI/73

Appeal dismissed.