C. R. Bansi vs State Of Maharashtra on 15 December, 1970

Equivalent citations: 1971 AIR 786, 1971 SCR (3) 236, AIR 1971 SUPREME COURT 786, 1971 SCD 144, 1971 CRI APP R (SC) 105, 1971 MADLW (CRI) 282, 1971 3 SCR 236, 1974 BOM LR 444

Author: S.M. Sikri

Bench: S.M. Sikri, Vishishtha Bhargava, I.D. Dua

PETITIONER:
C. R. BANSI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT:
15/12/1970

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
BHARGAVA, VISHISHTHA
DUA, I.D.

CITATION:
1971 AIR 786 1971 SCR (3) 236
1970 SCC (3) 537
CITATOR INFO :
RF 1977 SC1772 (14)
R 1979 SC1495 (7)
R 1984 SC 684 (19)

ACT:
Prevention of Corruption Act (2 of 1947), ss. 5(3) and 6-
Scope of

HEADNOTE:
The appellant, who was an income-tax Officer, was, dismissed from service and against the order of dismissal he filed an appeal to the President of India. Meanwhile, he was charged under the Prevention of Corruption Act, 1947 , with the offence of habitually accepting bribes. Five instances were offered by the prosecution in evidence against him to

prove the charge. The trial court accepted the evidence regarding two instances, and convicted the appellant under s. 5(2) read with ss. 5(1)(d) and 5(3) of the Act drawing-the presumption under s. 5.(3) (before its amendment in 1964) against him on the ground that he was in possession of assets disproportionate to his known sources of income. He was sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 1,25,000/-, to be recovered from the properties siezed from him. The High Court accepted the evidence regarding one more instance and confirmed the conviction and sentence.

In appeal to this Court,

HELD : (1) The trial is not bad for lack of santcion under s. 6 of the Act. The appellant ceased to be a public servant when the order of dismissal was passed. The fact that an appeal was pending would not make him a public servant. Sanction is necessary only when the person is employed in connection with the affairs of the Union and not when he was employed. [241 D-F]

(2)Since the charge was one of habitually accepting bribes it was not necessary that specific instances of taking bribe should be given in the charge. [241 G]

Biswabhusan Naik v. State of Orissa, [1955] 1 S.C.R. 92, followed.

(3) The appellant had property disproportionate to his known sources of income and the presumption under s. 5(3) of the Act was rightly drawn against him. Failure to establish any of the offences in s. 5(1) (a) to (d) is irrelevant for sustaining a conviction based on the presumption.

Biswabhusan Naik v. State of Orissa, [1955] 1 S.C.R. 92 and C. S.D. Swamy v. State, [1960] 1 S.C.R. 461, followed.

Surajmal Singh v. State of Uttar Pradesh, [1961] 2 S.C.R. 971 and R. S. Pandit v. State of Bihar, [1963] Supp. 2 S.C.R., 652, referred to and explained. [245 C]

(4) In view of the fact that the appellant had undergone the sentence for about four months and a large fine was imposed on him, the ends of justice would be met if the sentence is reduced to one already undergone while maintaining the sentence of fine. [246 B-C]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 834 of 1965.

Appeal by special leave from the judgment and order dated October 19, 24, 1964 of the Bombay High Court in Criminal Appeal No. 1330 of 1964.

A. S. R. Chari, R. Nagaratnam, Vineet Kumar and Shyamala Pappu, for the appellant.

Debabrata Mukherjee, H. R. Khanna and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by Sikri, J. -- This is an appeal by special leave against the judgment and order of the High Court of Judicature at Bombay dismissing the appeal of the appellant against the conviction recorded by the Special Judge for Greater Bombay. The appellant was convicted by the Special Judge under s. 5(2), read with s. 5 1 (1) (a) X (d) and s. 5 (3), of the Prevention of Corruption Act, 1947 (11 of 1947)-hereinafter referred to as the Act and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,25,000/-, in default of payment of fine to suffer further rigorous imprisonment for one year. The Special Judge further directed that the amount of fine be recovered from the properties seized.

The following charge was framed against the appellant:

> " That you, while functioning as (a) Income- tax Officer, from about 1st April 1947 to November 1954 at Jalgaon Dhulia, Godhra and Mahansa (b) as Inspector of Income-tax from November 1954 to January 1958 at Surat and Broach, (c) as Incometax Officer from January 1958 to the end of November 1961 at Bhavnagar, Dhulia, Amraoti and Ratnagiri, habitually accepted or obtained and habitually agreed to accept or attempted to obtain gratification other than legal remuneration and obtained for yourself pecuniary advantage by corrupt and illegal means or by otherwise abusing your position as a public servant, with the result that, during the said period you came in possession of assets of the value of about Rs. 2,01,080/- which were disproportionate to your known sources of income for which you could not satisfactorily account and you thereby committed the offence of criminal misconduct punishable under subs. (2) read with section (1) (a), (d) & (3) of section 5 of Act IT of 1947, the Prevention of Corruption Act, 1947, and within the cognizance of this Court."

The case of the prosecution before the Special Judge was that the appellant was habitually corrupt, and wherever he was posted he used to develop personal contacts with the assessees, whose cases were pending before him and in his talk with them he tried to impress upon them that they were likely to be heavily taxed; he used to create a favourable psychological background and taking advantage of the same tried to screw out money from them; if the assessee did not accept his proposal or proved to be smarter, he used to harass him by various methods. The prosecution sought to establish the charge against him under s. 5(1)(a) of the Act by leading evidence of five instances:-

> (i) He obtained from the witness Gopaldas an amount of Rs. 3,000/- as a loan and subsequently converted it as his personal gratification for finalising income-tax cases of his firm.
>
> (ii) He demanded an illegal gratification (Rs. 10,000/- from the witness Gopaldas to show him were pending before him.

(iii) He attempted to obtain bribe from P.W. 7-

Motilal Bansgopal, whose income-tax proceedings were pending before him.

(iv) He atempted to obtain bribe from the assessee P.W. 9, Somchand Khimji, whose income-tax proceedings were pending before him.

(v) He also made a demand of bribe of Rs.

400/ to Rs. 500/- from P.W. 93 Gulabdas Kisondas Bhatia of Dharanyaon.

Before the Special Judge the prosecution also relied on the presumption arising under s. 5(3) of the Act as the accused was found to be in possession of assets worth about Rs. 2,01,080 which were disproportionate to his known sources of income.

The learned Special Judge, in a very detailed and lengthy judgment, held that it was not proved that the appellant had obtained Rs. 3000/- from Gopaldas representing that he wanted the amount as a hand-loan for taking delivery of the car. He further held that it was not proved that the appellant demanded bribe of Rs. 10,000/- from him as a motive for doing him favour in the disposal of his wealth tax cases. Regarding P.W. 7. Motilat Bansgopal. the Special Judge held that the accused had entertained a corrupt motive in asking the assessee P.W. 7to see him at his residence, and this circumstance could be considered against him in considering the charge for the offence of habitually being corrupt. Regarding Somchand, P.W. 9, the- Special Judge held that the appellant had made an implied demand of bribe and had a guilty conscience. Regarding- Gulabdas, he held that the allegation regarding demand of bribe from P.W. 93, Gulabdas, had not been proved. He summarised. the findings thus "Thus out of specific instances the prosecution has established only two and it has been proved that the accused had made an implied demand of bribe from P.W. 9, Somchand and he had also asked P.W. 7, Motilal to come to his residence in connection with the delay in filing the return. The second instance though does not establish any demand of bribe as such, it does prove the proclivity of the mind of the accused and a corrupt tendency and would support the prosecution version." He further held that "the two instances proved will not themselves be sufficient to prove habit of bribe taking and the question is whether considering all the matters before the court it can be held that the accused is guilty of criminal misconduct and if yes, of what category." He further held that the appellant could be convicted on the strength of presumption arising under s. 5 (3). The High Court repelled the contention of the appellant that no presumption arose under s. 5 (3) of the Act because no specific instances had been held to be proved and, at any rate, they did not amount to an offence. The High Court distinguished the cases of R. S. Pandit v. State of Bihar,(1) and Surajpal Singh v. The State of Uttar Pradesh(2). The High Court further observed that the trial Judge had accepted the evidence regarding two instances while it was prepared to accept the instance involving Gopaldas also. The High Court generally agreed with the finding regarding disproportionate assets and disbelieved the explanation offered by the appellant. Before we deal with the merits of the case, we shall taker up two preliminary points raised by the learned counsel for the appellant, Mr. Chari. He urged that as sanction had not been given for prosecuting the appellant the whole trial was bad. He said that the search of the appellant's house

took place on November 4, 1961, and on June 27, 1962, he was dismissed' from service by the Commissioner of Income-tax. On July 30, 1962, charge-sheet was filed in the court of Special Judge. On (1) [1963] Suppl. 2 S.C.R. 652.

(2) [1961] 2 S.C.R. 971 "September 21, 1962, the appellant submitted an appeal to the President of India and the President was pleased to, convert the order of dismissal into one of the removal. The learned counsel contends that I pending the appeal the appellant should have been deemed to be in service and, therefore deemed to be in service on July 30, 1962. A similar point was raised before the Special Judge and he repelled the contention in the following terms .

> "For requiring a sanction to be taken before taking cognizance of an offence against a person, he must be in actual employment of the State. A mere right of appeal will not invest him with that status. Moreover, a person may have right of appeal, but he may not exercise the same and may not file the appeal. It is purely within his discretion and the act of taking cognizance which is the course of law would not be made dependent upon such arbitrary and discretionary alternatives held by a person."

The Special Judge also referred to rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and the explanation thereto in which it is stated :

> "In this rule the expression 'member of a Central Civil Service' includes a person who has ceased to be a member of the service."

This explanation was also relied on before us. Regarding the explanation the learned Special Judge came to the conclusion that the explanation was restricted to that particular rule for giving the dismissed servant a right to prefer an appeal.

We agree with the conclusion of the learned Special Judge. Section 6 of the Act reads as follows :

> "Previous sanction necessary for prosecution. (1) No Court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code (Act 45 of 1860), or under sub-section (2) of section 5 this Act, alleged to have been committed by a public servant, except with the previous sanction,
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save, by or with the sanction of the Central Government, of the Central Government.
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from the office save by or with the sanction of the State Government, of the State Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.

> (2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public ser-

vant from his office at the time when the offence was alleged to have been committed." It seems to us that the person must be employed in connection with the affairs of the Union in sub-cl. (a) and with the affairs of the State in sub-cl. (b) The case of the appellant would be covered in sub-cl. (a) because he had been employed in connection with the affairs of the Union. But the sub-section contemplates that the person must be employed in connection with the affairs of the Union and not that he was employed with the affairs of the Union. The policy underlying s. 6, and similar sections, is that there should not be unnecessary harassment of public servants. But if a person ceases to be a public servant the question of harassment does not arise. The fact that an appeal is pending does not make him A public servant. The appellant ceased to be a public servant when the order of dismissal was passed. There is no force in the contention of the learned counsel and the trial cannot be held to be bad for lack of sanction under s. 6 of the Act.

The other preliminary point which the learned counsel raised was that the charge was defective. We have already set out the charge. It is true that there are no instances given in the charge. But as the charge is of habitually accepting the. bribe it is no,, necessary that the various instances should have been mentioned. It was expressly so held by this Court in Biswabhusan Naik v. The State of Orissa(1). This Court overruled a similar point in the following words:

> "But no particulars need be set out in the charge in such a case because the offence under section 5(1) (a) does not consist of individual acts of bribe as in section 161 of the Indian Penal Code but is of a general character. Individual instances may be useful to prove (1) [1955]1 S.C.R.92.

2-807 Sup CI/71 the general averment in particular cases but it is by no means necessary because of the presumption which section 5(3) requires the Court to draw."

This Court accordingly held in that case that there was no illegality in the charge. We accordingly hold that the charge in this case was not illegal.

We may now deal with the merits of the case. This is an appeal by special leave, and as there are concurrent findings of fact we do not ordinarily go into questions of fact. But we allowed Mr. Chari to take us through the relevant evidence, both oral and documentary, in order to show whether the concurrent findings were vitiated in any respect. He has not been able to point out any circumstances which may lead us to differ from the concur- rent findings. It is true that as far as the case of Gopaldas is concerned the High Court differed from the Special Judge and held that the allegations were proved. The learned counsel has taken us in detail through the material relevant to this witness and we are inclined to agree with the conclusion arrived at by the High Court. But apart from that the concurrent findings regarding P.W. 7, Motilal, and P.W. 9, Somchand, and the presumption arising under s. 5(3) are sufficient to sustain the conviction recorded against the

appellant.

The learned counsel urged before us that if the prosecution fails to establish any of the offences mentioned in S. 5 (1)

(a) to 5 (1) (d), the question of assets being found disproportionate to the known sources of the accused becomes irrelevant. A number of cases were referred to us but we are unable to agree with this proposition because we are bound by the ruling to the ,contrary given by this Court. In Biswabhusan Naik v. State of Orissa(1), after referring to S. 5(1)(a) and S. 5(3), Bose, J., speaking for the Court, observed :

> "Therefore, all that the prosecution has to do is to show that the accused, or some person on his behalf, is in possession of pecuniary resources or property disproportionate to his known sources of income and for which the accused cannot satisfactorily account. Once that is established then the Court has to presume, unless the contrary is proved, that the accused is guilty of the new offence created by section 5, namely criminal misconduct in the discharge of his official duty."

(1) [19551] 1 S.C.R. 92.

Then the Court proceeded to deal with the facts thus "Now the accused was found in possession of Rs. 3,148/-. He accounted for Rs. 430/- of that sum by showing that it was paid to him at the, time as a trap. He has been acquitted of that offence, so all he had to account for was the balance Rs. 2,698/-. This is a large sum for a touring officer to carry with him in cash while on tour. His explanation was not considered satisfactory and that is a question of fact with which we are not concerned in this Court. Therefore, all that remains to be seen is whether this was disproportionate to his known sources of income."

Then the Court referred to the findings regarding his total emoluments drawn and the small piece of land owned by him, and observed "Once the facts set out above were found to exist and the explanation of the accused rejected as unsatisfactory, section 5(3) was at once attracted and the Court was bound to presume (the word-used in the section is 'shall' and not 'may') that the accused was guilty under section 5(2), especially as this part of the section goes on to say 'and his conviction 'therefor shall not be invalid by reason only that it is based solely on such presumption."

These facts alone are enough to sustain the conviction and we need not consider the other matters."

The conviction, therefore, of Biswabhushan Naik, in that case, solely proceeded on the presumption as in the earlier part of the judgment it was observed that he was separately charged and separately prosecuted under s. 161 of the Indian Penal Code for three specific offences of bribe taking but was acquitted on all the counts and his conviction was only under s. 5 (2) alone.

Similarly in C.S.D. Swamy v. The State, Swamy's conviction was sustained only on the presumption. The appellant, Swamy, in that case was put up on trial on charges under ss. 5(1) (a) and 5 (1) (d) of

the Act. Payments of particular sums by way of bribe were not proved against him. But the High Court, holding that the appellant's bare statements from the dock un supported by any other acceptable evidence could not satisfactorily account for the large deposits standing to his credit in

(1) [1960] 1 S.C.R. 461.

his bank accounts raised the presumption under S. 5 (3) of the ,Act and held him guilty of criminal misconduct in the discharge of his official duty under S. 5 (1) (d) of the Act. It was contended before this Court that the charge relating to specific instances of bribery having failed the contrary presumption under s. 5(3) of the Act should have been established. This Court repelled the argument in the following words :

> "The finding of the High Court and the court below is that the prosecution had failed to adduce sufficient evidence to prove those particular facts and circumstances of criminal misconduct within the meaning of s. 5 (1) (a) of the Act, but the failure to bring the charge home to the accused under s. 5 (1) (a) does not necessarily lead to the legal effect contended for. As soon as the requirements of sub-section (3) of s. 5 have been fulfilled, the Court will not only be justified in making, but is called upon to make the presumption that the accused person is guilty of criminal misconduct within the meaning of s. 5 (1) (d). ..... If there is evidence forthcoming to satisfy the requirements of the earlier part of sub-s. (3) of s. 5, conviction for criminal misconduct can be had on the basis of the presumption which is a legal pre-sumption to be drawn from the proof of' facts in the earlier part of the sub-s. (3) aforesaid. That is what has been found by the courts below against the accused person. Hence, the failure of the charge under cl. (a) of sub-s. (1) of s. 5 does not necesarily mean the failure of the charge tinder S. 5(1)(d)."

It will be noticed that while Bose, J., in Biswabhushan Naik v. State of Orissa(1), held that once the presumption applies the accused was guilty of the new offence created by S. 5, namely. criminal misconduct in the discharge of his official duties, without specifying any of the sub- clauses,Sinha, J,, as he then was. held that the offence under' S. 5 (1) (d) 'was made out. It is not necessary to decide in-this case which is the correct way of putting the matter because, whichever reasoning is adopted the case of the appellant fails.

The case of Surajpal Singh v. State of Uttar Pradesh(2) does not assist the appellant. It is true that, as laid down by this Court, s. 5(3) does not create a new offence. But this does not mean that if the prosecution fails to prove the specific (1) [1955] 1 S.C.R. 92.

(2) [1961] 2 S.C.R.971.

charges the presumption under s. 5(3) cannot be applied. in Surajpal's case what, happened was that the only charge against Surajpal was of 'criminal misconduct under s. 5(1)(c) of the Act. But since he was acquitted of the charge it was held that he could not be convicted. of criminal misconduct referred to in cls. (a), (b) or (d) of s. 5(1) of the Act for which he had not been charged. R. S. Pandit v. State of Bihar(1) also does not assist 'the appellant. It is true that it was held in that case s. 5(3) does

not create a separate offence but lays down only a rule of evidence and marks a departure from the well- established principle of criminal jurisprudence that onus is always on the prosecution to bring home the guilt to the accused. But it does not follow from this that if the prosecution has failed to prove specific instances it cannot rely on the presumption.

The learned counsel contended that if this is the law, the prosecution need not allege any specific instance at all and could come to Court only alleging that the accused had assets disproportionate to his known sources of income. This point does not arise in this case and is not likely to arise again because the Act has since been amended and the act of possessing pecuniary resources or property disproportionate to known sources of income, for which the public servant cannot satisfactorily account, has been made into a separate offence. Therefore we need not consider this example given by the learned counsel. Accordingly we hold that the, appellant in this case had pecuniary resources and property disproportionate to his known sources of income, and that both the High Court and the learned Special Judge rightly held that the presumption arose under s. 5 (3).

We may mention that the learned counsel tried to show that the assets were not too disproportionate but nothing has been shown which would entitle us to set 'aside the concurrent findings on this aspect of the case. The learned counsel then said that a fine of Rs. 1,25,000/- has been levied and the appellant has already undergone sen- tence of about four months. He said that the appellant is now on bail and it would be hard on him if we send him back to jail. He further said that the investigation began somewhere in 1961, the trial began in 1963, and the expenses of the,trail and the printing of the records has cost the appellant a great deal, (1) [1963] Supp. 2 S.C.R. 652.

and further that the State has kept Rs. 1,25,000/- out of the seized amount for recovery of the fine. The learned council for the respondent drew our attention to s. 5(2) which provides that any public, servant who commits criminal miscounduct in the discharge of his duty shall be punishable with imprisonment 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. It seems to us that in view of the facts mentioned by the learned counsel for the appellant it will meet the ends of justice if the sentence is reduced to one already undergone, maintaining the sentence of fine. In the result the appeal is allowed to the extent that sentence of three year's rigorous imprisonment is altered to imprisonment already undergone. His bail bonds shall stand cancelled.

V.P.S. Sentence modified.