Supreme Court of India
Surajpal Singh vs The State Of Uttar Pradesh on 7 December, 1960
Equivalent citations: 1961 AIR 583, 1961 SCR (2) 971
Author: S Das
Bench: Sinha, Bhuvneshwar P.(Cj), Das, S.K., Sarkar, A.K., Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
SURAJPAL SINGH

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH

DATE OF JUDGMENT:
07/12/1960

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
SINHA, BHUVNESHWAR P.(CJ)
SARKAR, A.K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1961 AIR 583 1961 SCR (2) 971
CITATOR INFO :
D 1964 SC 464 (13,33)
D 1971 SC 786 (6,15)
RF 1977 SC2091 (5)
RF 1979 SC 602 (6)

ACT:
Criminal Misconduct--Acquittal under one category of criminal misconduct charged--Conviction under another category not charged--Legality of--Presumption, Whether creates an offence--Prevention of Corruption Act, 1947 (11 of 1947), s. 5, sub-ss. (1), (2), (3).

HEADNOTE:
The appellant was a Head Constable attached to a malkhana where articles seized in connection with excise offences were kept in deposit. The appellant was charged under S. 5(1)(c) read withs. 5(2), Prevention of Corruption Act , 1947, in that he had dishonestly or fraudulently misappropriated or otherwise converted to his use these articles; the charge further stated that a sum of Rs. 9,284-

1-0 was recovered from him which was disproportionate to his known sources of income. He was acquitted of the charge under s. 5(1)(c) but was convicted under s. 5(2) on the ground that he had failed to account satisfactorily for the possession of Rs. 9,284-1-0 which was disproportionate to his known sources of income.
Held, that the conviction of the appellant under S. 5(2) of the Prevention of Corruption Act, 1947, was illegal. The only charge against the appellant was of criminal misconduct under S. 5(1)(c) of the Act for dishonestly or fraudulently misappropriating property entrusted to him and of this charge he could have been convicted by invoking the rule of presumption under s. 5(3). But since this was not done and he was acquitted of that charge, he could not be convicted of criminal misconduct referred to in cls. (a), (b) or (d) of s. 5(1) for which he had not been charged. The Courts below had proceeded wrongly on the footing as though sub-s. (2) or sub-s. (3) of s. 5 created an offence; the offence which was punishable under s. 5 (2) or which could be founded on the rule of presumption under S. 5(3) was the offence of criminal misconduct of one or more of the categories mentioned in cls. (a) to (d) of sub-s. (1) of S- 5.
C.S. D. Swamy v.. The State, [1960] 1 S.C.R. 461, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 169 of 1959.

Appeal by special leave from the judgment and order dated March 27, 1958, of the Allahabad High Court in Criminal Appeal No. 785 of 1955.

Nuruddin Ahmad and Naunit Lal, for the appellant. G. C. Mathur and C. P. Lal, for the respondent. 1960. December 7. The Judgment of the Court was delivered by S.K. DAS, J.-This is an appeal by special leave from the judgment and order of the High Court of Judicature at Allahabad dated March 27, 1958, whereby the said High Court maintained the conviction of the appellant under s. 5(2) of the Prevention of Corruption Act, 1947 (2 of 1947) but reduced the sentence of four years' rigorous imprisonment passed on the appellant by the Special Judge, Kanpur, to two years' rigorous imprisonment.

The short facts are these. The appellant Surajpal Singh was employed in the Police Department of the Uttar Pradesh Government. He started his service as a constable on a salary of Rs. 13 per month from August 1, 1930. In 1946 his pay was increased to Rs. 46 per month. He was appointed a Head constable on a salary of Rs. 50 per month in 1947. He officiated as a Sub-Inspector of Police sometime in 1948 and 1949 on a salary of Rs. 150 per month. On March 1, 1949, he was reverted to his post of Head constable. Between the dates February 27, 1951, and September 9, 1952, he was posted as a Head constable attached to the Sadar Malkhana, Kanpur. The charge against him was

that in that capacity he dishonestly or fraudulently misappropriated or otherwise converted to his own use many articles, principally those seized in connection with excise offences kept in deposit in the said Malkhana. These articles included opium, bottles of liquor etc. The charge further stated that a sum of Rs. 9,284-1-0 was recovered on a search of his house on September 9 and 10, 1952 and this amount was disproportionate to the known sources of income of the appellant. There was an allegation by the prosecution that the acts of dishonest misappropriation etc. were committed by the appellant in conspiracy with two other persons called Bhagawat Singh and Gulab Singh. Therefore, the charges against the appellant were (1) for the offence of conspiracy under s. 120B of the Indian Penal Code; (2) for the offence under s. 5(1)(c) of the Prevention of Corruption Act, 1947, for the acts of dishonest misappropriation or user, read with s. 5(2) of the said Act; and (3) for an offence under s. 465 of the Indian Penal Code in respect of a particular entry said to have been forged in the Register of Properties kept in the Sadar Malkhana.

The learned Special Judge who tried the appellant Bhagawat Singh and Gulab Singh recorded an order of acquittal in respect of the latter two persons. As to the appellant, he was also acquitted of all the charges except the charge under s. 5(2) of the Prevention of Corruption Act. On this charge the learned Special Judge recorded an order of conviction, but this was based on the sole ground that the appellant had failed to account satisfactorily for the possession of Rs. 9,284-1-0 which, according to the finding of the learned Special Judge, was disproportionate to the known sources of income of the appellant. It should be noted here that the learned Special Judge held the appellant not guilty of the various acts of dishonest misappropriation or user alleged against him in respect of the properties kept in the Sadar Malkhana.

In his appeal to the High Court the appellant urged various grounds, one of which was that he could not be convicted on the rule of presumption laid down in sub-s. (3) of s. 5 of the Prevention of Corruption Act, 1947, when on the only charge of criminal misconduct alleged under s. 5(1)(c) of the said Act he had been found not guilty. The High Court repelled this contention and upheld the conviction of the appellant but reduced the sentence.

The principal question before us is whether in the circumstances of this case, the conviction of the appellant on the charge under sub-s. (2) of s. 5 of the Prevention of Corruption Act, 1947, by invoking the rule of presumption as laid down in sub-s. (3) of that section, is correct. It is convenient to read here s. 5 of the Prevention of Corruption Act, 1947, in so far as it is relevant for our purpose.

"S. 5(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty-

(a)if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or

(b)if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned

in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c)if he dishonestly or fraudulently misappropriated or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d)if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

(2)Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

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

(2A)..... (3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that it is based solely on such pre- sumption."

Now, learned Counsel for the appellant has put his argument on the principal question in the following way: he has submitted that the is not in a position in an appeal by special leave to go behind the finding of fact arrived at by the courts below. The appellant, it appears, gave some explanation with regard to the possession of Rs. 9,284-1-0. That explanation was not, however, accepted by the courts below. Learned Counsel has submitted that he does not wish to go behind that finding of fact. He has submitted, how- ever, that the scheme of s. 5 of the Prevention of Corruption Act, 1947 is this: sub-s. (1) defines the offence of criminal misconduct in the discharge of his duties by a public servant; the offence can be one or more of four categories mentioned in cls. (a), (b), (c) and (d): sub-s. (2) is the penal section which states the punishment for the offence of criminal misconduct; and sub-s. (3) lays down a rule of presumption and states that no conviction for the offence shall be invalid by reason only that it is based solely on such presumption. Learned Counsel has pointed out, rightly in our opinion, that the charge against the appellant in the present case referred only to criminal misconduct in the discharge of his duty by a public servant of the nature mentioned in cl. (c) of sub-s. (1). In other words, the charge against the appellant was that he had dishonestly or fraudulently misappropriated or otherwise converted for his own use property entrusted to him etc. It was open to the learned Special Judge to have convicted the appellant of that offence by invoking the rule of presumption laid down in sub-s. (3). He did not, however, do so. On the contrary, he acquitted the appellant on that charge. Therefore, learned Counsel has submitted

that by calling in aid the rule of presumption laid down in sub-s. (3), the appellant could not be found guilty of any other type of criminal misconduct referred to in cls. (a), (b) or (d) of sub-s. (1) in respect of which there was no charge against the appellant.

We consider that the above argument of learned Counsel for the appellant is correct and must be, accepted. This Court pointed out in C. S. D. Swamy v. The State (1) that sub-s. (3) of s. 5 of the Prevention of Corruption Act, 1947 does not create a new offence but only lays down a rule of evidence which empowers the Court to presume the guilt of the accused in certain circumstances, contrary to the well known principle of Criminal law that the burden of proof is always on the prosecution and never shifts on to the accused person. In Swamy's case there were charges for the offence of criminal misconduct under two heads, cl. (a) and cl. (d). The trial court held the accused person' in that case not guilty of the offence under cl. (a) but guilty of the offence under cl. (d) by invoking the rule of presumption laid down in sub-s. (3) of s. 5. The distinction between that case and the case under our consideration is this: in Swamy's case there were two charges either of which could be founded on the rule of presumption laid down in sub-s. (3); but in our case there is only one charge of criminal misconduct of which the appellant has been acquitted; therefore, there is no other charge which can be founded on the rule of presumption referred to in sub-s. (3). This is the difficulty with which the respondent is faced in the present case. It appears to us that the learned Special Judge and the High Court proceeded wrongly on the footing as though sub-s. (2) or sub-s. (3) of s. 5 of the Act creates an offence. The offence which is punished under sub-s. (2) or can be founded on the rule of presumption laid down in sub-s. (3) must be the offence of criminal misconduct of one or more of the categories mentioned in cls. (a) to (d) of sub-s. (1). In the case before us the only category which was alleged against the appellant was that of category (c), (1) [1960] 1 S.C.R. 461.

namely, dishonest or fraudulent misappropriation etc. That charge having failed, there was no other charge which could be founded on the rule of presumption laid down in sub-s. (3).

Learned Counsel for the respondent State has contended before us that it was open to the appellate Court to affirm the conviction of the appellant under sub-s. (2) of s. 5 by holding him guilty of the offence of criminal misconduct of the category mentioned in cl. (a) or cl. (d) of sub-s. (1). We are unable to accept this contention as correct. The prosecution never alleged that the sum of Rs. 9,284-1-0 was the result of the appellant habitually accepting or obtaining illegal gratification etc. The prosecution case was that the sum of Rs. 9,284-1-0 was the result of the dishonest user of property which was entrusted with the appellant. It is not open to the appellate Court to affirm the conviction of the Appellant on an entirely new case never suggested against the appellant at any earlier stage. It is unfortunate that in this case the courts below did not choose to rely on the rule of presumption laid down in sub- s. (3) with reference to the charge under cl. (c) of sub-s. (1) of s. 5. But that misfortune cannot now be repaired by evolving out of a vacuum as it were a new case against the appellant based on cl. (a) or cl. (d) of sub-s. (1) of s. 5 in support of which no facts were ever alleged or suggested. For the reasons given above, we allow this appeal and set aside the conviction and sentence passed against the appellant.

Appeal allowed.