Supreme Court of India
R. R. Chari vs State Of U.P on 28 March, 1962
Equivalent citations: 1962 AIR 1573, 1963 SCR (1) 121
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
R. R. CHARI

Vs.

RESPONDENT:
STATE OF U.P

DATE OF JUDGMENT:
28/03/1962

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1962 AIR 1573 1963 SCR (1) 121
CITATOR INFO :
R 1968 SC1292 (11)
R 1984 SC 684 (19)

ACT:
Criminal Trial-Bribery and forgery-Public Servant, tried by Sessions Judge-Legality of trial-Accused permanent servant of Assam Government loaned to Central Government Sanction by Central Government, validity of-Criminal Law Amendment Act, 1952 (46 of 1952), ss. 7, 10-Code of Criminal Procedure, 1898 (Act of 1898), ss. 197, 213-Prevention of Corruption Act 1947 (2 of 1947) s. 6.

HEADNOTE:
The appellant was in the permanent service of the Assam Government but his services were lent to the Central Government. At the relevant time, i e , December 1945 to September 1946, he was posted at Kanpur as Deputy Iron & Steel Controller. In connection with the granting of permits to certain persons charges under ss. 120B, 161, 165 and 467 Indian Penal Code, and under r. 473(3) read with r.472, Defence of India Rules were leveled' against him. Sanction for his prosecution was granted by the Central Government on January 31, 1919, and a charge sheet was submitted against him. On March 1, 1952, the appellant was

committed to the Court of Sessions for trial. The trial commenced on May, 7, 1953, and the Sessions judge convicted the appellant of all the charges. On appeal the High Court upheld the conviction under ss. 161 and 467 Indian Penal Code and set aside the conviction on the other charges. The appellant contended (i) that the trial by the Sessions judge was illegal as after the coming into force of the Criminal Law Amendment Act, 1952, on July 28, 1952, he could only be tried by a Special judge, and (ii) that the sanction granted by the Central Government was invalid and of no avail as sanction for the prosecution of the appellant could only be granted by the Assam Government in whose permanent employment the appellant was.

Held, that the Sessions Judge had jurisdiction to hold the trial and it was not required that the appellant should have been tried by a special judge. Though s.7 of the Criminal Law Amendment required all offenses under ss. 1 61 and 165 Indian Penal Code to be tried by a Special judge, the section was only prospective and did not provide for transfer of all pending cases. Under s.10 of the Act only such cases triable by a Special Judge under s.7as were ac-
tually pending before any Magistrate immediately before
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the commencement of the Act could be transferred to the Special judge. The case against the appellant having already been committed to the Sessions was no longer pending before the Magistrate. The mere fact that the Magistrate still had power, under s.216 of the Code of Criminal, Procedure to summon witnesses for the defence and bind them to appear before the Court of Sessions, did not imply that his jurisdiction to deal with the merits of the case continued.

Held, further that though the sanction granted by the Central Government was a good sanction under s. 197 of the Code of Criminal Procedure it was not a valid sanction under s.6 of the Prevention of Corruption Act. At the time when the sanction was granted the appellant was in the permanent employment of the Assam Government but he was employed in the affairs of, the Federation. Under s.197, in cases of persons employed in connection with the affairs of the Federation the Governor-General was the authority to grant the sanction and in cases of persons employed in connection with the affairs of the States it was the Governor. Under s.6 of the Corruption Act the position was different. Clauses (a) and (b) of the section dealt with persons permanently employed in connection with the affairs of the Federation or of the Provinces and in regard to them, the appropriate authorities were the Central Government and the Provincial Government. The word "employed" in cls.(a) and (b) referred to employment of a permanent character. The case of a public servant whose services were loaned by one Government to another fell under cl.(c) under which sanction could be ranted by the authority competent to remove him

from his service. The authority competent to remove the appellant from his service was the Assam Government and that Government alone could have granted a valid sanction for the prosecution of the appellant. Accordingly the trial of the appellant for offenses under ss. 161 and 165 was without jurisdiction.
Held, further that the convinction of the appellant for the offence under s.467 could not stand as it was based entirely upon the uncorroborated testimony of accomplices.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 46 of 1958.

Appeal from the judgment and order dated March 17, 1958, of the Allahabad High Court in Criminal Appeal No. 1635 of 1953, A. S. R. Chari, S. Pichai and S. Venkatakrishnan, for the appellant.

SarjooPrasad, G.C.Mathur and G.P.Lal, for the respondent. 1962. March 28. The Judgement of the Court was delivered by GAJENDRAGADKAR, J.-The appellant R.R. Chari was a permanent employee in a gazetted post under the Government of Assam. In 1941, his services were lent to the Government of India. The first appointment which the appellant held under the government of India was that of the Deputy Director of Metals in the Munitions Production Department at Calcutta. Then he came to Delhi on similar work in the office of the Master-General of Ordnance which was the Steel Priority Authority during the War period. He was subsequently trans- ferred to Kanpur as Assistant Iron a Steel Controller in 1945. Sometime thereafter, he become the Deputy Iron & Steel Controller, Kanpur Circle; which post he held for one month in September, 1945. From January, 1946, be was appointed to the said post and he held that post until September 20 1946. The period covered by the charges which were eventually formed against the appellant and, others is from January 1, 1946 to September 20, 1946. On the latter date, the appellant proceeded on leave for four months and did not return to' service either under the Government of India or under the Assam Government.

It appears that while the appellant had proceeded on leave the Government of India wrote to the Assam Government on February 8, 1947, intimating that it had desided to replace the services of the appellant at the disposal of the Assam Government on the expiry of the leave granted to him with effect from September, 21, 1946. The Government of India also added that the exact period of the leave granted to the appellant would be intimated to the Assam Government later. On April 28, 1947, leave granted to the appellant was gazetted with effect from September 21, 1946 for a period of four months. A subsequent notification issued by the Central Government extended the leave up to May 13, 1947. On this latter date, the Central Government suspended the appellant, and on a warrant issued by the District Magistrate, Kanpur, he was arrested on the October 28, 1947. Subsequently, he was released on bail. Thereafter, the Government of India accorded sanction for the prosecution of the appellant under s. 197 of the Criminal Procedure Code on the January 31, 1949. A Charge-sheet was submitted by the prosecution alleging that the appellant along with three

of his former assistants had committed various acts of conspiracy, corruption and forgery during the period 1, 1.1946 to 20-9- 1946 The other persons who were alleged to be co- conspirators with the appellant, were vaish, a clerk in charge of licensing under the appellant, Rizwi and Rawat who were also working as clerks under the appellant. Bizwi abs- conded to Pakistan and Rawat died. In the result, the case instituted on the ,,aid charge sheet proceeded against the appellant and Mr. Vaish.

Broadly stated the prosecution case was that during the period December 1945 to September 20, 1946, the appellant and Vaish and other entered into a criminal conspiracy to do illegal acts, such as the commission of offenses under, ss. 161, 165, 467. Indian Penal Code or in the alternative, Offenses such as were prescribed by r. 47 (3) read with r. 47 (2) of the Defence of India Rules, 1939 and. abetment in the acquisition and sale of Iron and .steel, in contravention of the Iron and Steel (Control of Distribution) Order 1941 ; and that in pursuance of the said conspiracy, they did commit the aforesaid illegal acts from time to time and thus rendred themselves liable to be punished under s.120-B of the Indian Penal Code. That was the substance of the first charge.

The Second Charge was in regard to the commission of the offence under s. 161 and it set out in detail the bribes accepted by the appellant from 14 specified persons. In the alternative, it was alleged that by virtue of the fact that the appellant accepted valuable things from the persons specified, he had committed as offence under s. 165 Indian Penal Code.

The third charge was under s. 467 Indian Penal Code or in the alternative, under r. 47(3) read with r. 47(2) (a) of the Defence of India Rules. The substance of this charge was that in furtherance of the conspiracy, the appellant fraudulently or dishonestly made, signed or executed fourteen documents specified in clauses (a) to (n) in the charge. Amongst these documents were included the orders prepared in the names of several dealers and licences issued in their favour.

The fourth charge was that the appellant had abetted the firms specified in clauses (a) to (k) in the commission of the offence under r 81(2) of the Defence of India Rules. That, in brief, is the nature of the prosecution case against the appellant as set out in the several charges. At the initial stage of the trial, the appellant took a preliminary objection that the sanction accorded by the Government of India to the prosecution of appellant under s. 197 Code of Criminal Procedure was invalid. This objection was considered by Harish Chandra J. of the Allahabad High Court and was rejected on the July, 18th 1949. The learned Judge directed that since he found no substance in the preliminary contention raised by the appellant, the record should be sent back to the trial Court without delay so that it may proceed with the trial of the case. On May 7 1953, the appellant alone with Vaish was tried by the Additional District and Sessions Judge at Kanpur. The charge under s. 120-B was tried by the learned Judge with the aid of assessors, whereas the remaining charges were tried by him with the aid of the jury. Agreeing with the opinion of the assessors and the unanimous verdict of the jury, the learned Judge convicted the appellant under s. 120 B and sentenced him to two years' rigorous imprisonment. He also convicted him under section s. 161 and sentenced him to two years Rigorous imprisonment and a fine of Rs, 25,000/-. in default to suffer further rigorous imprisonment for six months. For the offence under s. 467 Indian Penal Code of which the appellant was convicted, the learned Judge sentenced him to four years' rigorous imprisonment. Be was also convicted under r. 81 (4) read with r. 121 and cls. 4,5, 11 b (3) and 12 of the Iron and Steel Order of

1941 and sentenced to two years'rigorous imprisonments. All the sentences thus imposed on the appellant were to run concurrently. Vaish who was also tried along with the appellant was similarly convicted and sentenced to different terms of imprisonment.

The appellant and Vaish then appealed to the High Court against the said order of convictions and sentence. It was urged on their behalf before the High Court that the charge delivered by the Judge to the jury suffered from grave misdirections and non-directions amounting to misdirections. his plea was accepted by the High Court and so, the High Court examined the evidence for itself. In the main, the High Court considered the ten instances adduced by the prosecution for showing that the appellant had accepted illegal gratification and had committed the other offenses charged, and came to the conclusion that the prosecution evidence in respect of eight instances could not be acted upon, whereas the said evidence in respect of two instances could be safely acted upon. These two instances were deposed to by Lala Sheo Karan Das and other witnesses and by Sher Singh Arora and other witnesses. In the result, the High Court confirmed the appellant's conviction under ss. 161 and 467 and the sentences imposed by the trial Court in that behalf. His conviction under s. 120-B Indian Penal Code, and under r. 81(4) read with r. 121 Defence of India Rules was set aside and he was acquitted of the said offenses. The High Court directed that the sentences imposed on the appellant under ss. 161 and 467 should run concurrently. The appeal preferred by Vaish was allowed and the order of conviction and sentence passed against him by the trial Court in respect of all the charges was set aside. This order was passed on March 17th, 1958. The appellant then applied for and obtained a certificate from the High Court and it is with that certificate that he has come to this Court in appeal.

At, this stage, it would be useful to indicate briefly the main findings recorded by the High Court against the appellant. As we have just indicated, there are only two instances out of ten on which the High Court has made a finding against the appellant. The first is the case of Lala Sheo Karan Das. According to the prosecution case, as a motive or reward for issuing written orders and expediting supply of iron by the stock-holders' Association Kanpur to Lala Sheo Karan Das, the appellant accepted from him Rs. 4,000/- on 31.3.1946, Rs. 2,000/- on 9.4.1946; Rs. 1,060/- on 11.4.1946 and Rs. 1,000/-on 12.5-1946 as illegal gratification. That is the basis of the charge under section 161. The prosecution case further is that in regard to the supply of iron to Lala Sheo Karan Das, certain documents were forged and it is alleged that the written orders issued in that behalf Exhibits P 341 and P 342 were ante-dated and the licences issued in that behalf were similarly ante-dated. In support of this case, oral evidence was given by Lala Sheo Karan Das himself, his son Bhola Nath and Parshotam Das, his nephew who is a partner with him. This oral evidence was sought to be corroborated by relevant entries in kachhi rokar books. These entries indicated that the several amounts had been paid by the firm to the appellant. The High Court considered the oral evidence and held that the said evidence was corroborated by entries in the account-books. The argument that dacca rokar books had not been produced did not appear to the High Court to minimise the value of the kachhi rokar books which were actually produced, and the contention that the books of Account kept by accomplices themselves could not, in law, corroborate their oral evidence, did not appeal to the High Court as sound. It held that even though Sheo Karan Das, his son and his nephew may be black-marketeers, it did not necessarily follow that they were liars. Besides, the High Court took the view that there were certain pieces of circumstantial evidence which lent support to the oral

testimony of the accomplices. The ante-dating of the orders, and the supply of a large quantity of iron, were two of these circumstances. It is on these grounds that the High Court accepted the prosecution case against the appellant under s. 161 Indian Penal Code. The High Court then examined the evidence in support of the charge under s. 467 and it held that the manner in which the dates in the quota register had been tampered with supported the oral testimony of the witnesses that the applications made by Sheo Karan Das had been deliberately and fraudulently ante- dated and orders passed on them and the licences issued pursuant to the said orders-all were fraudulent documents which proved the charge under s. 467 as well as under r. 47 (3) read with 47(2)(a). On these grounds, the appellant's conviction under s. 467 was also confirmed. As to the prosecution case in respect of the bribes offered by Sher Singh Arora, the High Court was not satisfied with the evidence adduced in respect of the actual offer of money, but it held that the evidence adduced by the prosecution in respect of the offer and acceptance of certain valuable things was satisfactory. These valuable things were a three-piece sofa sot, a centre piece, two stools and a revolving chair (Exts. 16 to 21). These were offered on behalf of Sher Singh Arora and accepted by the appellant in January, 1946. In dealing with this part of the prosecution case, the High Court considered the statements made by the appellant and ultimately concluded that the charge under s. 161 had been proved in respect of the said articles.

In regard to the charge under s. 467, the High Court adopted the same reasons as it had done in dealing with the said charge in respect of Sheo Karan Das's transactions and held that the said .charge had been proved. The licences which are alleged to have been ante-dated are Exts. P 535 and P

536. The application which is alleged to have been ante- dated is Ext. P 294, and the High Court thought that the relevant entries in the quota register showed that the dates had been tampered with. In the result, the charge under s. 467 in respect of this transaction was held to be established. An alternative charge was also proved against the appellant under r. 47(3) read with r. 47(2) (c) Defence of India Rules.

The first point which Mr. Chari has raised before us is that the Addl. District & Sessions Judge had no jurisdiction to try this case, because at the relevant time, the Criminal Law Amendment Act, 1952(46 of 1952) had come into operation and the case against the appellant could have been tried only by a Special Judge appointed under the said Act. This argument has been rejected by the High Court and Mr. Chari contends that the decision Of the High Court in erroneous in law. In order to deal with the merits of this point, it is necessary to refer to some dates. The order of commitment was passed in the present proceedings on March 1, 1952. It appears that thereafter a list of defence witnesses was tiled by the appellant before the Commiting Magistrate on July 24, 1952. On July 28, 1952, the Criminal Law Amendment Act came into force. On August 14, 1952, Vaish filed a list of witnesses before the committing Magistrate and requested that one of the prosecution witnesses should be recalled for cross- examination. On September 18, 1952, the District & Sessions Judge at Kanpur was appointed a Special Judge under the Act. On December 19, 1952, the case was taken up before the Special Judge and the question as to where the case should be tried was argued. The Special judge held that the question had been considered by the Madras High Court in the case of P. K. Swamy and it had been held that the Special Judge had no jurisdiction to hear the case because

the order of commitment' had been passed prior to the passing of the Criminal Law Amendment Act. Since the order of commitment in the present case had also been passed before July 28, 1952, the Special Judge held that the case against the appellant must be tried under the provisions of the Criminal Procedure Code and not under the provisions of the Criminal Law Amendment Act; and so, an order was passed that the trial should be held by the Additional District & Sessions Judge at Kanpur. After the case was thus transferred to the Add1. Sessions Judge at Kanpur, it was actually taken up before him on May 7, 1953, when the charge was read out to the accused persons and the jury was empanelled. It is in the light of these facts. that the question about the jurisdictions of the trial Judge has to be determined. Two provisions of the Criminal Law Amendment Act fall to be considered in this connections Section 7 provides that notwithstanding anything contained in the Code of Criminal Procedure, or in any other law, the offenses specified in sub-section (1) of s. 6 shall be triable by a Special Judge only, Offenses under ss. 161 and 165 Indian Penal Code are amongst the offenses specified by s. 6(1). Section 7(2)(b) provides that when trying any case, a Special Judge may also try any offence other than an offence specified in s. 6 with which the accused may, under the Code of Criminal Procedure be charged at the same time. Therefore, if the offence under s. 161 falls under s. 7(1) and has to be tried by a Special Judge, the other offenses charged would also have to be tried by the same Special Judge as a result of s. 7(2)(b). It is clear that the provisions of a. 7 are prospective. This position is not disputed. But it would be noticed that s. 7 does not provide for the transfer of pending cases to the special Judge and so, unless the appellant's case falls under the provisions of s. 10 which provides for transfer, it would be tried under the ordinary law in spite of the fact that the main offence charged against the appellant falls under s. 6(1) of the Criminal Law Amendment Act. That takes us to s. 10 which deals with the transfer of certain pending cases. This section provides that all cases triable by a special Judge under s. 7 which immediately before the commencement of the Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the special Judge having jurisdiction over such cases. It is thus clear that of the cases made triable by a special Judge by s. 7, it is only such pending cases as are covered by s.10 that would be tried by the special Judge. In other words, it is only cases triable by a special Judge under s. 7 which were pending before any Magistrate immediately before the commencement of this Act that would tie transferred to the special Judge and thereafter tried by him. So, the question to consider is whether the appellant's case could be said to have been pending before any Magistrate immediately before the commencement of the Act. This position also is not in dispute. The dispute centres round the question as to whether the appellant's case can be said to have been pending before a magistrate at the relevant time, and this dispute has to be decided in the light of the provisions contained in s. 219 of the Code of Criminal Procedure. This section occurs in Chapter 18 which deals with the enquiry into cases triable by the Court of Sessions or High Court. We have already seen that on March 1, 1952, an order of commitment had been passed in the present case and that means that the jurisdiction of the committing Court had been exercised by the said Court under s. 213 of the Code. Mr Chari contends that though the order of commitment had been passed, that does not mean that the case had ceased to be pending before the committing Magistrate. It is not disputed that once an order of commitment is made, the committing Magistrate has no jurisdiction to deal with the said matter; he cannot either change the order or set it aside. So far as the order of commitment is concerned, the jurisdiction of the Magistrate has come to an end. The said order can be quashed only by the High Court and that too on a point of law. That is the effect of s. 215 of the Code. It is, however, urged that s. 216 confers jurisdiction on the committing

magistrate to summon witnesses for defence as did not appear before the said Magistrate and to direct that they should appear before the Court to which the accused had been committed. Similarly, before the said Magistrate, bonds of complainants and witnesses can he executed as prescribed by s. 217. Section 219 confers power on the committing Magistrate to summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and to bind them over in manner here in before provided to appear and give evidence. It is on the provisions of this section that the appellant's case rests. The argument is that since the committing magistrate is given power to summon supplementary witnesses even after an order of commitment has been passed, that shows that the committing magistrate still hold jurisdiction over the case and in that sense, the case must be deemed to be pending before him. We are not impressed by this argument. The power to summon supplementary witnesses and take their evidence is merely a supplementary power for recording evidence and no more. This supplementary power does not postulate the continuance of jurisdiction in the committing magistrate to deal with the case. It is significant that this power can be exercised even by a Magistrate other than the committing magistrate, provided he is empowered by or under s. 206 and clearly, the case covered by the commitment order passed by one magistrate cannot be said to be pending before another magistrate who may be empowered to summon supplementary witnesses. When s. 10 of the Criminal law Amendment Act refer to cases pending before any magistrate, it obviously refers to cases pending before magistrates who can deal with them on the merits in accordance with law and this requirement is plainly not satisfied in regard to any case in which a commitment order had been passed by the committing magistrate. After the order of commitment is passed, the case cannot be said to be pending before the committing magistrate within the meaning Of S. 10. Therefore, we are satisfied that the High Court was right in coming to the conclusion that s. 10 did not apply to the present case and so, the Addl. Sessions Judge had jurisdiction to try the case in accordance with the provisions of the Code of Criminal Procedure. It is true that in dealing with this point, the High Court has pro- ceeded on the consideration that the appellant's trial had actually commenced befere the Addl. Sessions Judge even prior to July 28, 1952. In fact, it is on that basis alone that the High Court has rejected the appellant's contention as to absence of jurisdiction in the. trial Judge. We do not think that the reason given by the High Court in support of this conclusion is right, because the trial of the appellant could not be said to have commenced before May 7, 1953. However, it is unnecessary to pursue this point any further because we are inclined to take the view that the appellant's case does not fall under s. 10 of the Criminal Law Amendment Act and that is enough to reject the contention of the appellant on this point. The next argument raised is in regard to the validity of the sanction given by the Government of India to the prosecution of the appellant. This sanction Ext. P-550 purports to have been granted by the Governor-General of India under s. 197 of the Code for the institution of criminal proceedings against the appellant. It has been signed by Mr. S. Boothalingam, Joint Secretary to the Government of India on January 31, 1949. The sanction sets out with meticulous care all the details of the prosecution case on which the prosecution rested their charges against the appellant and so, it would not be right to contend that the, sanction has been granted as a mere matter of formality. The several details set out in the sanction indicate that prima facie, the whole case had been considered before the sanction was accorded. Mr. Chari, however, attempted to argue that on the face of it, the sanction does not show that the Governor-General granted the sanction after exercising his individual judgment. Section 197 of the code at the relevant time required that sanction for the prosecution of the appellant should have been given by the

Governor-General exercising his individual Judgment, and since, in terms ' , it does not say that the Governor-General in exercise of his individual judgment had accorded sanction, the requirement of s. 197 is not satisfied. That is the substance of the contention. In support of this contention, reliance is sought to be placed on certain statements made by Mr. Boothalingam in his evidence. Mr. Boothalingam stated that sanction of the Governor-General was conveyed by him as Joint Secretary to the Government of India. He also added that authorities of the Government of India competent to act in this behalf accorded the sanction and he conveyed it. His evidence also showed that the matter had been considered by the competent authorities and that he was one of those authorities. Mr. Chari argues that Mr. Boothalingam has not, expressly stated that the Governor-General applied his individual mind to the problem and exercising his individual Judgment, came to the conclusion that the sanction should be accorded. This contention had not been raised at any stage before and the point had not been put to Mr. Boothalingam who gave evidence to prove the sanction. If the point had been expressly put to Mr. Boothalingam be would have either given evidence himself on that point or would have adduced other evidence to show that the Governor-General had exercised his indi- vidual judgment in dealing with the matter. Therefore, we do not think that this plea can be allowed to be raised for the first time in this Court.

The next ground of attach against the validity of the sanction is based on the assumption that at the time when the sanctions was (riven, the appellant had ceased to be in the employment of the Government of India and had reverted to the Assam Government. .If it is established that at the relevant time, the ,appellant was a person employed in connection with the affairs of the Assam State, then of course, it is the Assam Government that would be competent to give the sanction. The High Court has found that at the relevant time, the appellant continued to be in the employment of the affairs of the Federation and had not reverted to the Assam Government ; and in our opinion, this finding of the High Court is right. We have already referred to the course of events that led to the granting: of the leave to the appellant by the Government of India; to the extension of the leave by the said Government and to his subsequent suspension. The appellant's argument is that after he went on leave, he moved the Assam Government for extension of his leave and was, in fact, asked by the Assam Government to appear before a medical board appointed by it. We do not think that these facts are enough to prove that the appellant had reverted to the service of the Assam Government. In fact., it is clear that the Government of India had intimated to the Assam Government that the appellant continued to be under its employment and that the Assam Government had expressly told the Government of India that it had no desire that the appellant should revert to its service until the 'criminal proceedings instituted against him were over. The Assam Government also pointed out that the appellant himself did not wish to rejoin in his post of Superintendent of the Assam Government's Press but had only asked for Leave Preparatory to Retirement following medical advice. It is thus clear that though the Government of India had originally thought of replacing the appellant's services with the Assam Government at the end of the leave which was proposed to be granted to him, subsequent events which led to an investigation against the appellant and his suspension caused a change in the attitude of the Government of India and it decided to continue him in its employment in order that he should face a trial on the charges which were then the subject matter of investigation. There is no order reverting him to the Assam Government passed by the Govt. of India and there is no order passed by the Assam Government at all on this subject. Therefore there can be no doubt that at the relevant time, the appellant continued to be employed in

the affairs of the Federation.

It was then sought to be argued that the effect of SR 215 was that the reversion of the appellant to the Assam Government should be deemed to have taken effect from the date when the leave was granted to him by the Government of India. In our opinion, there is no substance in this argument. The portion on which the appellant relies is merely an administrative direction under the Rule and it cannot possibly over-ride the specific orders issued by the Government of India in respect of the appellant's leave and reversion. Besides, even the requirements of the said Rule are not satisfied in the present case. Therefore, the conclusion is inescapable that the appellant was employed in the affairs of the Federation at the time when the sanction was accorded.

That takes us to the question as to whether the Government of India was competent to grant the sanction even if the appellant was at the relevant time a person employed in connection with the affairs of the Federation. Mr. Chari contends that in the case of the appellant whose services had been loaned by the Assam Government to the Government of India, it could not be said that he was a parson permanently employed in connection with the affairs of the Federation and so, cl. (a) of s. 197 (1) would not apply to him at all. He was a person permanently employed in connection with the affairs of a State and that took the case under cl. (b) which means that it is the Governor of Assam exercising his individual judgment who could have a(,-corded valid sanction to the appellant's prosecution. We are not impressed by this argument. It is clear that the first part of s. 197 (1) provides a special protection, inter alia, to public servants who are not removable from their offices save by or with the sanction of the State Government or the Central Government where they are charged with having committed offenses while acting or purporting to act in the discharge of their official duties; and the form which this protection has taken is that before a criminal court can take cognizance of any offence alleged to have been committed by such public servants, a sanction should have been accorded to the said prosecution by the appropriate authorities. In other words, the appropriate authorities must be satisfied that there is a prima facie, case for starting the prosecution and this prima facie satisfaction has been interposed as a safeguard before the actual prosecution commences. The object of s.. 197(1) clearly is to save public servants from frivolous prosecution, Vide, Afzelur Rahman v. The King Emperor(1). That being the object of the section, it is clear that if persons happened to be employed in connection with the affair's of the Federation, it was the Governer-General who gave sanction and if persons happened to be employed in connection with the affairs of the State, it was the Governor. What is relevant for the purpose of deciding as to who should give the sanction, is to ask the question where is the public servant employed at the relevant time ? If he is employed in the affairs of the Federation, it must be the Governor-General in spite of the fact that such employment may be temporary and may be the result of the fact that the services of the public servant have been loaned by the State Government to the Government of India. Therefore, having regard to the fact that at the relevant time the appellant was employed in connection with the affairs of the Federation, it was the Governor-General alone who was competent to accord sanction. Therefore, our conclusion is that the sanction granted by the Governor- General for the prosecution of the appellant is valid. That still leaves the validity of the sanction to be tested in the light of the provisions of (1) (1943) F.C R. 7,12.

a. (6) of the prevention of the Corruption Act, 1947. At the relevant time, section 6 read thus:

"No court shall take cognizance of an offence punishable under section 161 or section 165 of the Indian Penal Code (XIV of 1860) or under sub-section (2) of section 5 of 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 Federation and is not removable from his office save by or with the sanction of the Central Government or some higher authority, Central Government.

(b) In the case of a person who is employed in connection with the affairs of a province and is not. removable from his office save by or with the sanction of the Provincial Government or some higher authority, Provincial Government:

(c) in the case of any other person, of the authority competent to remove him from his service".

It would be noticed that the scheme of this section is different from that of s. 197 of the Code of Criminal Procedure. The requirement of the first part of s. 197 (1) which constitutes a sort of preamble to the provisions of s. 197(1)(a) & (b) respectively, has been introduced by s.6 severalty in cls. (a) and (b). In other words, under els.

(a) and (b) of s. 197(1) the authority competent to grant the sanction is determined only by reference to one test and that is the test provided by ,,the affairs in connection with which the public servant is employed"; if the said affairs are the affairs of the Federation, the Governor General grants the sanction ; if the said affairs are the affairs of a Province, the Governor grants the sanction. That is the position under s. 197(1) as it then stood. The position under s. 6 of the Prevention of Corruption Act is substantially different. Clauses (a) & (b) of this section deal with persons permanently employed in connection with the affairs of the Federation or in connection with the affairs of the Province respectively, and in regard to them, the appropriates authorities are the Central Government and the Provincial Government. The case of a public servant whose services are loaned by one Government to the other, does not fall either under cl. (a) or under cl.(b), but it falls under el. (c). Having regard to the scheme of the three clauses of s. 6, it is difficult to construe the word "employed in cls. (a) &

(b) as meaning "employed for the time being". The said Words, in the context, must mean ,,,permanently employed". It is not disputed that if the services of a public servant permanently employed by a Provincial Government are loaned to the Central Govt., the authority to remove such public servant from office would not be the borrowing Government but the loaning Government which is the Provincial Government, and so, there can be no doubt that the employment referred to in cls. (a) & (b) must mean the employment of a permanent character and would not include the ad hoc or temporary employment of an officer whose services have been loaned by one Government to the other. Therefore, the appellant's case for the purpose of sanction under s. 6 will fall under el. (c) and that inevitably means that it is. only the Provincial Government of Assam which could have given a valid sanction under s. 6. At the relevant time, s. 6 had come into operation, and s. 6

expressly bars the cognizance of offenses under s.161 unless a valid sanction had been obtained as required by it. Therefore, in the absence of a valid sanction, the charge against the appellant under a. 161 and s. 163 could not have been tried and that renders the proceedings against the appellant in respect of those two charges without jurisdiction.

The result is that the contention of the appellant that the sanction required for his prosecution under section 161 and section 165 is invalid, succeeds and his trail in respect of those two offenses must, therefore, be held to be invalid and without jurisdiction. That being so, it is unnecessary to consider whether the finding of the High Court in respect of the charge under s. 161 is justified or not. So, we do not propose to consider the evidence led by the prosecution in respect of the said charge in relation to the two cases of Lala Shoo Karan Das and Sher Singh Arora.

The charge under section 467 or the alternative charge under Defence of India Rules still remains to be considered, because the said offenses are outside the scope of s. 6 of the Prevention of Corruption Act and the sanction accorded by the Governor-General in respect of the appellant's prosecution for the said offenses is valid under s. 197 of the Code of Criminal Procedure. What, then, are the material facts on which the conclusion of the High Court is based? The first point on which stress has been laid both by Mr. Chari and Mr. Sarjoo Prasad relates to the background of the case. Mr. Chari contends that the prosecution of the appellant is, in substance, the result of the attempts successfully made by the back-marketeers in Kanpur to involve the appellant in false charges and in support of his plea, Mr. Chari has very strongly relied on the evidence of Mr. Kanhaiya Singh. This witness was, at the relevant time, an Inspecting Assistant Commissioner of Income-tax at Kanpur and his evidence seems to show that unlike his predecessor Mr. Talwar, the appellant gave whole-hearted co-operation to the witness in discovering the illegal dealings of black- marketeers in Kanpur in iron. According to the witness, the black-marketeers came to know about the cooperation between him and the appellant and that disturbed them very rudely. Some lists were prepared by the appellant giving the witness detailed infor- mation about the activities of the black-marketeers and the witness suggested that in order to destroy the papers thus supplied to him by the appellant, a burgulary was arranged in his house in May or June, 1946. A similar burgulary took place in the appellant's house. There was also a fire in the appellant's house. The witness was asked whether any of the persons who have given evidence against the appellant in the present case, were included in the list supplied by the appellant to him, and the witness refused to answer the said question and. claimed protection under s. 54 of the Income Tax Act. Mr Chari's argument is that the activities of the appellant in cooperation with Mr. Kanhaiya Singh frightened the black-marketeers and so, they organised the present plot to involve the appellant in a false case. In that connection, Mr. Chari also relies on the fact that out of the ten instances, the story deposed to in respect of eight has been rejected by the High Court.

On the other hand, Mr. Sarjoo Prasad has argued that as soon as the appellant took charge from Mr. Talwar, he evolved a very clever scheme of establishing personal contacts with the black marketeers; dispensed with the enquiry which used to be held prior to the granting of licences to them and. thus introduced a practice of direct dealings with the black-marketeers which facilitated the commission of the offenses charged against him. He has also referred us to the evidence given by Mr. Sen which tends to show that the appellant was frightened by the prospect of investigation and so, suddenly left

Kanpur under the pretext of illness. In other words, Mr. Sarjoo Prasad's argument is that the appellant deliberately adopted a very clever modus operandi in discharging his duties as a public servant and has, 'in fact, committed the several offenses charged against him. We do not think that the ultimate decision of the narrow point with which we are concerned in the present_ appeal can be determined either on the basis that the appellant is more sinned against than a sinner or that he is a cold-blooded offender. Ultimately, we will have to examine the evidence specifically connected with the commission of the offence and decide whether that evidence can legitimately sustain the charge under s. 467. Let us take the case as disclosed by the evidence of Sheo Karan Das in respect of the charge under s. 467. According to Sheo Karan Das, the two applications Exts. 35 and 36 were given by him in the office of the appellant on the 29th or 30th March, 1946, but the appellant asked the witness to get other applications in which the date should be prior to 23rd of March. Accordingly, the witness put the date 22nd March on his applications. On the 29th or 30th March when the witness met the appellant, he asked for 130 tons and the appellant told him that he could give him more than that, provided, of course, the appellant got his profit. Accordingly, after these applications were antedated, the appellant passed orders and licences were issued. Thus, it would be seen that the prosecution case is that the applications which were presented by Sheo Karan Das on the 29th or 30th of March, were deliberately ante-dated in order that the orders subsequently passed by the appellant and the licences issued thereunder should also appear to have been issued prior to the 23rd of March and that, in substance, is the essence of the charge under s. 467.

When this case was put to the appellant, he made a somewhat elaborate statement which it is necessary to consider. According to this statement, the appellant left Kanpur on March 23, 1946, for a meeting with Mr. Spooner who was the Iron Steel Controller at Calcutta. Mr. Spooner told him in confidence that there would be no more need to issue licences after March 31, on account of decontrol. He also expressly desired that no further licences need be issued by any Regional Dy. Iron & Steel Controller after March 26, 1946. The appellant returned to Kanpur on March 28, and attended office on ,he 29th. He then found that the office had placed on his table a number of licences for which he had already issued orders before he left Kanpur on the 23rd. Some new applications had also come thereafter and these included applications from Government bodies and other public institutions. These were also placed on his table. The appellant urged that statutorily he had the power to issue licences until March 31, even so, in order to comply with the desire expressed by Mr. Spooner, he ordered that all licences should be issued as on March 23. The appellant emphasised that even if he had dated the licences and his own orders as on the 30th or 31st March, that would have introduced no invalidity in the orders or licences respectively, and so, he contended that even though in form, the orders and the licences can be said to have been ante-dated, the ante-dating did not introduce, any criminal element at all. It appears that after his return to Kanpur on the 28th, a large number of licences were issued in this way. This statement of the appellant thus shows that even on applications admittedly received after the 23rd, licences were issued as on the 23rd and orders had been passed by the appellant in support of the issue of such licences. This antedating of the licences is a circumstance on which the prosecution strongly relies in support of the charge under s. 467.

It is, however, significant that besides the testimony of the accomplices, there is no other evidence on the record to show that the applications given by Sheo Karan Das had been brought to the office

of the appellant for the first time on the 29th or 30th of March as deposed to by him. No register had been produced from the office showing the date of the receipt of the said applications. It is true that in the quota register, dates had been tampered with, but there is no evidence to show who tampered with those dates and so, the fact that dates had been tampered with will not afford any legal evidence in support of the case that the applications presented by Sheo Karan Das had in fact, been presented for the first time on the 29th of March and had not been filed on the 22nd of March as pleaded by the appellant. The ante-dating of the applications is a very important fact and of this fact there is no other evidence at all. Therefore, in our opinion, the crucial fact on- which the charge under s. 467 is based is deposed to only by accomplice witnesses and their statements are Dot corroborated by any other evidence on the record. The admission made by the appellant does not necessarily show that the applications had been ante-dated. Indeed, it is very curious that the appellant should have passed necessary orders and should have directed the issue of licences as on the 23rd of March even in regard to the applications received by him subsequent to the 23rd March and this has been done in respect of applications received from Government bodies and public institutions. This fact lends some support to the appellant's theory that he did not want to appear to have contravened the desire expressed by Mr. Spooner that no license should be issued subsequent to the 26th March. There is no doubt that the appellant was competent to issue licences until the 31st of March and so, it is not as if it was essential for him to ante-date his orders or to ante-date the licences issued in accordance with them. Then as to the orders passed by the appellant on the applications presented by Sheo Karan Das, there is no date put by the appellant below his signature, though the date 22nd March appears at the top of the document. But it may be assumed that the order was passed on the 29th. That, however, does not show that the applications were made on the 29th and without proving by satisfactory evidence that the applications were made on the 29th, the prosecution cannot establish its charge against the appellant under s. 467. In our opinion, the High Court appears to have misjudged the effect of the admissions alleged to have been made by the appellant when it came to the conclusion that the said admissions corroborated the accomplice's case that the applications had been presented by him for the first time on the 29th March. The fact that there is no evidence offered by any of the prosecution witnesses examined from the appellant's office to show the dates when the applications were received, has not been considered by the High Court at all. Therefore, the finding of the High Court on the essential part of the prosecution story in respect of the charge under s. 467 really rests on the evidence of the accomplice uncorroborated by any other evidence. That being so, we must hold that the High Court erred in law in making a finding against the appellant in respect of the charge under s. 467 as well as the alternative charge under the relevant Defence of India Rules. What we have said about this charge in respect of the licences issued to Sheo Karan Das applies with the same force to the said charge in respect of the licences issued to Sher Singh Arora. In respect of those licences also, there is no evidence to show that the applications made by Sher Singh Arora had been ante-dated, and so, the charge in respect of the said licences also cannot be held to have been established.

The result is, the finding Of the High Court in respect of the charge against the appellant under s. 467 or the alternative charge under the relevant Defence of India Rules must be reversed, his conviction for the, said offenses set aside and be should be ordered to be acquitted and discharged in respect of those offenses.

That raises the question as to whether we should order a retrial of the appellant for the offence under s. 161. Mr. Sarjoo Prasad has argued that the interests of justice require that the appellant should be asked to face a new trial in respect of the charge under a. 161, Indian Penal Code if and after a valid sanction is obtained for his prosecution for the same. We are not inclined to accept this argument. Two facts have weighed in-our minds in coming to the conclusion that a retrial need not be ordered in this case. The first consideration is that the accused has had to face a long and protracted criminal trial and the sword has been hanging over his head for over 14 years. The accused was suspended in 1947 and since then these proceedings have gone on all the time, The second factor which has weighed in our minds is that though the prosecution began with a charge of a comprehensive conspiracy supported by several instances of bribery, on the finding of the High Court it is reduced to a case of bribery offered by two persons; and then again, the substantial evidence is the evidence of accomplices supported by what the High Court thought to be corroborating circumstances. It is true that offenses of this kind should not be allowed to go unpunished, but having regard to all the facts to which our attention has been drawn in the present case, we are not inclined to take the view that the ends of justice require that the accused should be ordered to face a fresh trial. The result is that the conviction of the appellant under section 161 is set aside on the ground that his trial for the said offence was without jurisdiction since his prosecution in that behalf was commenced without a valid sanction as required by s.6 of the prevention of Corruption Act.

Appeal allowed.