while proceeding against the appellant. But, in case he eventually decides to adopt the procedure of s. 5 of the Act, he would, no doubt, take the circumstances of the case into consideration, and the circumstances are that although the appellant was convicted under s. 5, sub-s. (5), of the Act, on March 28, 1951, he was found begging again in a public place on October 7, 1951. It is not clear, as the record stands before us, whether the appellant escaped from the place of detention, or whether he was released under a license granted under s. 20 of the Act. Of course, no license granted under the Act can, and quite naturally so, permit begging. Therefore, even assuming that he might have been released under a license under s. 20 of the Act, there could be no justification in his begging in a public place after release. These circumstances will, no doubt, be borne in mind by the the learned Magistrate, in case he decides to use s. 5 of the Act against the appellant.

Order set aside: case remanded.

K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Gajendragadkar and Mr. Justice Chainani.

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Indian Penal Code (Act XLV of 1860), ss. 120B, 218—Criminal Procedure Code (Act V of 1898), s. 197—Charge of criminal conspiracy—Prosecution not bound to include all acts of conspirators in charge—Public servant charged with falsely framing several documents—Sanction to prosecute granted only in respect of one document—Trial in respect of other documents whether vitiated—Joint trial of several accused for more than one offence—Sanction necessary in respect of one offence committed by one of the accused—Absence of sanction—Whether whole trial becomes void without proof of prejudice to other accused—Duty of lawyers in cases where sanction is required.

In a case of criminal conspiracy the prosecution is not bound to make all the acts committed by the conspirators in pursuance of the conspiracy the subject-matter of the charge, and, therefore, the trial is not vitiated by reason of the fact that the charge does not include some of the acts of the conspirators.

* Criminal Appeal No. 454 of 1951 [with Cr. Rev. Appln. No. 799 of 1951 and Cr. Appeal No. 968 of 1951 (By Government) and Cr. Appln. No. 1102 of 1951.].

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Where a public servant is charged under s. 218 of the Indian Penal Code with falsely framing several documents, one of which is the principal document and the remaining subsidiary, but the sanction granted by the Provincial Government under s. 197 of the Criminal Procedure Code, 1898, to the prosecution of the accused is only in respect of the principal document, the Court has no jurisdiction to try the charge in respect of documents not covered by the sanction though they are ancillary, and the trial of the offence in respect of all documents other than the principal one is void.

Basdeo Agarwalla v. *Emperor*,[1] and *Gokulchand Morarka* v. *The King*,[2] followed.

Whenever more persons than one are tried for the commission of more offences than one and the trial of one of the accused in respect of one of the offences is vitiated by the absence of sanction under s. 197 of the Criminal Procedure Code, 1898, the whole of the trial in respect of all the offences charged against all the accused is not thereby necessarily vitiated. In such a case it is necessary to consider in respect of the other offences charged against all the accused whether the trial of such offences has been prejudiced by the introduction of the evidence in regard to the offence for which sanction was required. If the trial is a jury trial, prejudice against the accused in respect of the other offences will ordinarily be held to be implicit and the whole trial may be set aside. But if the trial is held without a jury, then the accused persons are not entitled to contend that the whole trial should be deemed to be void without proof of prejudice.

Hori Ram Singh v. *The Crown*,[3] followed.

Emperor v. *Rudragouda Rachangouda*[4] and *Emperor* v. *Ramchandra Rango*,[5] not followed.

Queen Empress v. *A. Morton and Moorteza Ali*[6] and *Subramania* v. *King-Emperor*,[7] distinguished.

Just as it is the duty of the Judges and Magistrates to consider the question of sanction, whenever public servants are charged before them, it is also the duty of the lawyers to take the point about the sanction at the earliest stage and invite the Court to decide it before proceeding to deal with the merits of the case.

Emperor v. *Lumbhardhar Zutshi*,[8] referred to.

CRIMINAL APPEAL against the order of conviction passed by V. A. Naik, Esquire, Sessions Judge of Dhulia at West Khandesh in Sessions Case No. 13 of 1950.

Hiralal Onkardas, Ramasa Krishnasa and Dagu Mohamad all residents of Taloda in West Khandesh formed a partnership (which later came to be named as 'Laldas Onkardas Company') with the object of purchasing trees in private survey numbers in the forest of Walheri. In September 1945,

[1] (1945) 47 Bom. L. R. 392 (F. C.).
[2] (1948) 50 Bom. L. R. 399 (P. C.).
[3] [1939] F. C. R. 159.
[4] (1937) 39 Bom. L. R. 70.
[5] (1939) 41 Bom. L. R. 98.
[6] (1885) 9 Bom. 288.
[7] (1901) 3 Bom. L. R. 540.
[8] (1947) 49 Bom. L. R. 609.

the partnership purchased trees in private survey Nos. 1 to 6 at Sojarbara for Rs. 150. At about the same time the firm also purchased trees in another private field at Goramal, a neighbouring village.

On March 8, 1946, a certificate was issued in the name of the partnership authorising it to cut and remove the trees from the forest. The authorisation certificate having expired on March 31, 1946, an application was made for one year's extension on June 4, 1946, and the extended authorisation was issued on December 4, 1946. In the meantime Hiralal Onkardas and Ramasa Krishnasa had withdrawn from the partnership and their places had been taken over by Laldas Onkardas (accused No. 1), Parashabhai Supadubhai (accused No. 2) and Jangubhai Vithaldas (accused No. 3). Dagu Mohamad continued to be the partner of the firm as before.

On January 27, 1947, a pseudonymous application purporting to have been signed by D. T. Rathod was received by the Divisional Forest Officer alleging that the Range Forest Officer at Taloda (accused No. 4) had been bribed by one Balkisan, a partner of another firm which was similarly engaged in cutting trees in coupe No. 15 of the forest under a contract of their own, and that illegal operations for cutting Government trees were going on extensively in the Walheri forest. On receipt of that application, the Divisional Forest Officer directed the Assistant Divisional Forest Officer (accused No. 7) to hold a confidential enquiry in the matter. The accused No. 7 camped at Walheri between 9th and 13th February 1947, and toured the area. On February 11, 1947, he made a panchnama of about 118 cut stumps discovered by him in the forest. He also recorded statements of some persons and then left Taloda on the 13th. The investigation was thereafter continued by accused No. 4, the Special Forester (accused No. 5) and the Round Officer (accused No. 6). Panchnamas were made of logs of wood found concealed in the forest at different places and statements of two persons named Pukhlya and Atrya were recorded in which both of them confessed having unauthorisedly cut the trees for which they offered to pay the fine that may be imposed on them. At the end of the investigation the accused No. 4 made a report to accused No. 7 who in his turn sent two reports to the Divisional Forest Officer. In the first report he mentioned the panchnama, dated February 11, 1947, which he had made, and expressly exonerated accused No. 4 from any suspicion. In

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the second report he passed strictures against Balkishan, and suggested that since Balkishan was not a trustworthy contractor more effective steps should be taken to watch his operations.

On February 25, 1947, another pseudonymous application purporting to be signed by the same D. T. Rathod was addressed to the Conservator of Forests. In that application, the enquiry conducted by accused No. 7 was severely criticised and the Forest authorities were implored to make a thorough investigation and bring to book the offenders who were carrying on extensive operations in the Government Reserved Forests. This application was followed the next day by two more applications by the said Atrya and one Surji Kathya, one to the Divisional Forest Officer and the other to the Conservator of Forest. Atrya denied that he was the offender and stated that he had made the earlier confession under the instigation of accused Nos. 1 to 3. On May 1, 1947, the Conservator of Forests ordered the Divisional Forest Officer to enquire more carefully into the matter and thereupon Mr. D'Souza, who was the then Divisional Forest Officer, personally undertook the work of investigation. In the investigation, 1673 stumps were discovered as cut and total logs numbering 2196 were found lying scattered in the forest. As a result of these illegal operations it was estimated that the Government had suffered a loss of nearly Rs. 50,000.

On July 8, 1947, the Divisional Forest Officer submitted his final report and on November 1, 1947, a complaint was filed against accused Nos. 1 to 6, Dagu Mohamad and Balkishan. Logs found at different places were attached and the accused were arrested between 22nd March, and 20th April, 1948. On May 20, 1948, the investigating officer asked for sanction against accused No. 7 and the same was received on August 31, 1948. The sanction ran as follows:—

Whereas in the year 1946-1947, Mr. A. J. Andrade held the office of the Assistant to the Divisional Forest Officer, West Khandesh, Dhulia, and as such was a public servant not removable from his office save by or with the sanction of the Government of Bombay;

And whereas in or about December, 1946, (1) Mr. Laldas Onkardas of Taloda, (2) Mr. Sk. Dagu Sk. Moahamad of Virdel, Taluka Sindkheda, (3) Mr. Jangu Vithaldas of Nandurbar and (4) Mr. Parashabhai Supadubhai of Nandurbar who had a partnership business in respect of the forest contract of Sojarbara, survey Nos. 1 to 6 in the Taloda Range, West Khandesh and (5) Mr. H. P. Sanaf, Range Forest Officer, Taloda,

(6) Mr. M. V. Patil, Forest Havaldar of Dabashi and (7) Mr. E. G. Diale, Round Forest Officer, Taloda, entered into a criminal conspiracy to commit theft by illicitly cutting and removing Government trees from the forest area in Valheri jungle (hereinafter called "the Valheri forest area") in the neighbourhood of the said Sojarbara, Survey Nos. 1 to 6 in the Taloda Range;

And whereas in furtherence of the aforesaid criminal conspiracy, the above mentioned seven persons removed and committed theft of about 165 cart-loads of timber from the said Valheri forest area;

And whereas the said Mr. Andrade was entrusted with an enquiry into a pseudonymous petition, dated 27th January, 1947, concerning the said criminal conspiracy and theft and alleging *inter alia* that the Range Forest Officer, Mr. H. P. Sanaf, had received a bribe of Rs. 500 from the above mentioned partners in the business of forest contract;

And whereas the said Mr. Andrade while camping at Valheri between 9th and 13th February, 1947, conducting an enquiry into the aforesaid pseudonymous petition:—(*i*) purposely suppressed the true facts and framed a panchnama that only 118 trees were cut in the said Valheri forest area despite the fact that it was specifically brought to his notice on the spot that trees were cut in that area on a much larger scale,

(*ii*) entrusted the said enquiry into the petition to the said Mr. Sanaf with full knowledge that an allegation of bribery was made against the said Mr. Sanaf in the petition,

(*iii*) facilitated between 9th and 13th February, 1947, and also thereafter the removal of the trees which had been in pursuance of the aforesaid criminal conspiracy cut in the Valheri forest area and stacked close to the place where he was camping;

And whereas the said Mr. Andrade thereby joined the aforesaid criminal conspiracy and committed an offence of being a party to a criminal conspiracy to commit the offence of theft punishable under s. 120B read with s. 379 of the Indian Penal Code;

And whereas the said Mr. Andrade being a public servant and being as such public servant charged with the preparation of the aforesaid panchnama, framed the aforesaid panchnama in a manner which he knew to be incorrect with intent to cause or knowing it to be likely that he will thereby cause loss or injury to Government and also with intent thereby to save or knowing it to be likely that he will thereby save the abovementioned seven persons from legal punishment and thereby committed an offence punishable under s. 218 of the Indian Penal Code;

Now, therefore, in exercise of the powers conferred by sub-s. (*1*) of s. 197 of the Code of Criminal Procedure 1898 (V of 1898) the Governor of Bombay is pleased to sanction the prosecution of the said Mr. Andrade for the offences punishable (1) under s. 120B read with s. 379 and (2) s. 218 of the Indian Penal Code.

At the trial after some witnesses were examined, the prosecution applied for and obtained pardon to Dagu Mohamad and then examined him as their witness. On April 24, 1950, the accused were committed to the Sessions Court.

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The sessions case being Case No. 13 of 1950 was tried by the Sessions Judge at West Khandesh with the aid of assessors. The charges framed against the accused were as follows:—

1. That you accused Nos. 1 to 6 and approver, Sk. Dagu Sk. Mohamad, about the beginning of December, 1946, at Taloda, and Walheri, Taluka Taloda, entered into a Criminal conspiracy to commit theft by illicitly cutting and removing Government trees in the Walheri Bari, Reserved Forest, in Hill Working Circle Felling Serial VII between villages Walheri and Sojarbara and thereby committed an offence punishable under s. 120B read with s. 379 of the Indian Penal Code.

2. That you accused No. 7, while camping at Walheri between 9th and 13th February, 1947, in connection with an inquiry into the illicit cuttings, made in pursuance of the aforesaid criminal conspiracy, joined the above criminal conspiracy and became a party to the same and thereby committed an offence punishable under s. 120B read with s. 379 of the Indian Penal Code.

3. That in pursuance of the aforesaid Criminal conspiracy, you accused Nos. 1 to 3 along with Sk. Dagu Sk. Mohamad, during the period from about the beginning of December, 1946, till about the end of April 1947, at Walheri, dishonestly cut Government trees extensively in the said Reserved Forest and removed from the said Walheri Bari, Reserved Forest, about 210 cartloads of timber out of the possession of Government without their consent causing thereby a wrongful loss to Government to the extent of about Rs. 50,000 and thereby committed an offence punishable under s. 379 of the Indian Penal Code.

4. That in pursuance of the above Criminal conspiracy, you accused Nos. 4 to 7 intentionally aided and facilitated the commission of above theft of the Government timber by accused Nos. 1 to 3 and Sk. Dagu Sk. Mohamad and thereby committed an offence punishable under s. 379 read with s. 109 of the Indian Penal Code.

5. That in pursuance of the aforesaid Criminal conspiracy, you accused No. 7, the Assistant Divisional Forest Officer, N. D., and as such public servant, being charged with the preparation of the record in connection of the enquiry of the above illicit cuttings in the Walheri Bari, Reserved Forest, in collaboration with accused Nos. 1 to 6, framed the panchnama of 118 trees only and appendices thereto, dated February 11, 1947, and other ancillary papers, viz. the two statements and the receipt of Balkisan Nathubhai of even date and your two reports, dated February 24, 1947, in an incorrect manner, knowing that you were framing the above 8 documents in an incorrect manner though the real illicit cutting of trees to your knowledge was far more extensive and that you did so with intent and knowledge that thereby you would cause loss or injury to Government and also with intent thereby to save or knowing it to be likely that you would thereby save accused Nos. 1 to 6 and said Sk. Dagu Sk. Mohamad from legal punishment and thereby committed an offence punishable under s. 218 of the Indian Penal Code.

6. That in pursuance of the aforesaid criminal conspiracy, you accused No. 4, being the Range Forest Officer, Taloda, and as such public servant, being charged with a preparation of a record in respect of the above illicit cuttings and theft of Government timber in the aforesaid area in collaboration with and with the aid of accused Nos. 1 to 3 and 5 to 7 and Sk. Dagu Sk. Mahomad, wrongfully framed in an incorrect manner, (though you knew that there were far more extensive cuttings in the aforesaid area), a panchnama of 198 trees only and the appendix thereto, dated February 22, 1947; that you further framed in an incorrect manner the statement of spurious offenders, viz. Pokhalya Lalji, Atrya Homa and their assistants, and the statement and the bail bond of Jalkisan Nathubhai and the panchnama of 51 pieces alleged to be produced by Pokhalya Lalji, the panchnama of 23 pieces alleged to be produced by Atrya Homa, dated February 19, 1947, and the two receipts passed by Khatrya Fulji, one for 51 pieces, dated February 19, 1947, and the other for 23 pieces, dated February 19, 1947, and the receipt and the bail bond passed by accused No. 1, of 175 pieces, dated February 22, 1947, and your reports, dated February 23, 1947, March 6, 1947, and April 16, 1947, knowing that Pokhalya Lalji and Atrya Homa were not real offenders and further you framed the above incorrect record of 16 documents with intent to save the real offenders viz. accused Nos. 1 to 3 and Sk. Dagu Sk. Mohamad and also to save accused Nos. 5 to 7 from legal punishments and with intent to cause or knowing it to be likely that you would thereby cause loss or injury to Government and thereby committed an offence punishable under s. 218 of the Indian Penal Code.

7. And that in pursuance of the aforesaid criminal conspiracy, you accused No. 6, Round Forester, Ekdhad round, and as such public servant, being charged with the preparation of a record in connection with the enquiry of the above illicit cuttings in the Walheri Bari in collaboration with the other accused and Sk. Dagu Sk. Mohamad, framed incorrectly the first offence report No. 21 of 198 trees only, dated February 22, 1947, and a panchnama of 9 pieces, a list of 30 pieces, a receipt of 9 pieces passed by Khatrya Fulji along with the first offence report No. 24, all dated March 24, 1947, and two inspection reports, dated March 6, 1947, and April 16, 1947, respectively knowing the above record of 7 documents to be incorrect, with intent to cause or knowing it to be likely that you will thereby cause loss or injury to Government and with intent thereby to save accused Nos. 1 to 4, 5 and 7 and Sk. Dagu Sk. Mohamad from legal punishment and thereby committed an offence punishable under s. 218 of the Indian Penal Code.

8. And that in pursuance of the aforesaid criminal conspiracy, you accused Nos. 1 to 3 and 5 along with Sk. Dagu Sk. Mohamad aided and assisted accused Nos. 4, 6 and 7, public servants, in the commission of the above offences and in framing the incorrect record and thereby committed an offence punishable under s. 218 read with s. 109 of the Indian Penal Code.

Another case being Sessions Case No. 14 of 1950 was started against some of these accused viz. Nos. 1 to 4 and 6 in the former case. In that case the charge was that the accused

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had entered into a conspiracy to commit thefts of Government trees in Goramal and Rapapur forests at about the same time and in the same manner as in the other case.

Both the cases were tried one after another and the judgment in both of them was delivered on April 4, 1951. In the first case the learned Judge agreed with the assessors in regard to accused Nos. 5 and 7 and acquitted them of all the offences charged. As regards the other accused, the learned Judge differed from the opinion of the assessors and convicted accused Nos. 1 to 3 of the offences punishable under s. 120B read with s. 379 and sentenced them to suffer six months' rigorous imprisonment and to pay a fine of Rs. 2,000 each. They were also convicted of the offences punishable under s. 218 read with s. 109 and sentenced to a term of three months' rigorous imprisonment and to pay a fine of Rs. 1,000 each. Substantive sentences passed against them were ordered to run concurrently. Accused No. 4 was sentenced to suffer six months' rigorous imprisonment and to pay a fine of Rs. 1,000 under s. 120B read with s. 379. He was also convicted of the offences under s. 218 and sentenced to suffer six months' rigorous imprisonment. Substantive sentences were to run concurrently. Accused No. 6 was convicted under s. 120B read with s. 379 and sentenced to suffer three months' rigorous imprisonment. He was also convicted under s. 218 and was also sentenced to suffer three months' rigorous imprisonment. Substantive sentences were to run concurrently. The learned Judge did not pass any order as to conviction and sentence in regard to the third and fourth charges.

Accused Nos. 1 to 4 and 6 preferred an appeal to the High Court against the order of their conviction. The State of Bombay preferred an appeal against the order of acquittal passed in respect of accused No. 7 and also filed a revision application for the enhancement of sentences passed against accused Nos. 1 to 4 and 6. Accused Nos. 1 to 3 also filed an application under s. 428 of the Criminal Procedure Code for calling record and judgment in Sessions Case No. 14 of 1950 and admitting the same as additional evidence in their appeal.

In Sessions Case No. 14 of 1950, the conspiracy was held not proved and all the accused therein were acquitted. No appeal was filed by the State against that order of acquittal.

All the matters were heard together.

Appeal No. 454 of 1951

R. A. Jahagirdar, with *Messrs. Hiralal M. Mehta & Co.,* for accused Nos. 1 to 3.

S. B. Kotwal, for accused No. 4.

H. M. Choksi, Government Pleader, for the State.

Revision Application No. 799 of 1951

H. M. Choksi, Government Pleader, for the State.

Messrs. Hiralal M. Mehta & Co., for accused Nos. 1 to 3.

S. B. Kotwal, for accused No. 4.

V. H. Kamat, appointed for accused No. 6.

Appeal No. 968 of 1951

H. M. Choksi, Government Pleader, for the State.

S. B. Kotwal, for accused No. 7.

Application No. 1102 of 1951

R. A. Jahagirdar, with *Messrs. Hiralal M. Mehta & Co.,* for accused Nos. 1 to 3.

H. M. Choksi, Government Pleader, for the State.

GAJENDRAGADKAR J. [After setting out facts the judgment proceeded:]

At the hearing of this appeal Mr. Jahagirdar has raised two points of law and it would be convenient to deal with them before proceeding to consider the merits of the case. Mr. Jahagirdar says that the course adopted by the prosecution in the present case is unusual in that two separate cases have been filed against the accused virtually in respect of the same conspiracy. Sessions Case No. 13 of 1950 from which the present appeal arises is based upon the conspiracy between the four partners of the firm and four forest officers. The object of this conspiracy was that the partners of the firm should illegally cut the trees in the Government forest and remove them and in accomplishing this object the forest officers had agreed to assist the partners by making false *panchnamas* and by abetting the illegal cutting and removal of Government trees. The prosecution case is that this conspiracy was formed between the members of the firm themselves in the beginning of December 1946, and the forest officers joined this conspiracy later. The scene of operation of this conspiracy

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was in the Walheri Bari reserved forest, Hill Working Circle, between the villages of Walheri and Sojarbara. That is why the members of the firm have been substantively charged with the offence of committing theft under s. 379 and the forest officers have been charged with the offence of framing false record under s. 218. There are besides the charges of conspiracy and abetment against all the accused. Another criminal case was started against the partners of the same firm and two forest officers Haribhau Sanaf and Mahadev Vedu, who are accused Nos. 4 and 6 in case No. 13 of 1950. This case was Sessions Case No. 14 of 1950. In this case the prosecution alleged that all the accused had entered into a conspiracy to commit thefts of Government trees in Goramal and Rapapur forests. The time when this conspiracy was formed is the same as the other conspiracy and the modus alleged to have been adopted by the conspirators is also the same. Mr. Jahagirdar says that the procedure thus adopted by the prosecution in starting two criminal cases against the accused was not only unfair, but is illegal. His contention is that in substance the prosecution case must be taken to be that there was one general conspiracy and that in pursuance of this conspiracy Government trees were cut by some of the conspirators in all the places covered by the two respective cases and the forest officers abetted the commission of this offence by framing false official record; if that is so it was the duty of the prosecution to have put all the evidence against the accused in one case and not to have exposed them to two different cases. In this connection Mr. Jahagirdar has also referred to the fact that both the sessions cases were decided on the same day. Sessions Case No. 13 of 1950 ended in the conviction of the accused, whereas Sessions Case No. 14 of 1950 ended in their acquittal. The present appeal arises from the order of conviction and sentence passed by the learned Sessions Judge against the accused in Sessions Case No. 13 of 1950, and there has been no appeal by the State against the order of acquittal passed by the learned Sessions Judge in favour of the accused in Sessions Case No. 14 of 1950. Mr. Jahagirdar has attempted to rely upon some of the findings of the learned Sessions Judge in Case No. 14 of 1950. In fact, he has applied to us for leave to adduce as additional evidence the record of the said case and the judgment in particular in the appeal before us. It is true that in Sessions Case No. 14 of 1950 the learned Sessions Judge

took the view that the trial of the accused in the said case was vitiated by reason of the fact that the charge in the said case was not included in the earlier Case No. 13 of 1950. In his opinion there was only one conspiracy charged against the accused, and it was illegal to have split up this conspiracy into two different charges presented in two different cases. It is also true that on the merits the learned Sessions Judge has made several findings which are in favour of the accused. In fact, the learned Sessions Judge has made several findings which are in favour of the accused. In fact, the learned Sessions Judge was not satisfied at all that the prosecution had proved their case against the accused even on the merits and so he acquitted them of the offences charged. We do not think that we can allow this judgment or the evidence on which it is based to be tendered as additional evidence under s. 428 of the Criminal Procedure Code. The two cases were separately tried, evidence was led separately in both of them and obviously the conclusions of the learned Sessions Judge in both the cases are based upon the evidence recorded in each of those cases. In our opinion, the application for additional evidence purporting to have been made under s. 428 is clearly misconceived and must be rejected. It is, therefore, unnecessary for us to consider whether the learned Sessions Judge was right in holding that the result of the splitting up of the conspiracy was to vitiate the second trial. There has been no appeal against the judgment of acquittal and we are not called upon to consider the propriety or correctness of the said conclusion of the learned Sessions Judge. But, whatever may be the position with regard to the second case, we do not see how the trial of the first case can be said to be vitiated. We are prepared to assume that according to the prosecution case there was one general conspiracy between the accused and in pursuance of this conspiracy Government trees were illegally cut and removed and false documents were prepared in regard to such cuttings both in the area covered by the present case and in the area covered by the other case. Even so, if in proving the charge of conspiracy under s. 120B read with ss. 379 and 218 the prosecution choose to rely upon some acts of the conspirators committed by them in pursuance of the conspiracy they would be entitled to ask for a conviction of the accused if they succeeded in proving the charge. It is clearly not incumbent upon the prosecution to make all the acts committed by the conspirators the subject-matter of

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the charge. It is open to them to select some of the acts and charge the accused in respect of them. The argument that the splitting up of a conspiracy into two cases is bad may at best affect the second trial. It cannot affect the validity of the first trial at all. We must, therefore, hold that there is no substance in the argument urged by Mr. Jahagirdar that the present trial is vitiated by reason of the fact that some of the acts committed by the accused in pursuance of the alleged conspiracy were not included in the charge in the present case.

The second point of law which Mr. Jahagirdar has urged is based upon the charge framed against accused No. 7 under s. 218 of the Indian Penal Code. This is Charge No. 5 in the charges framed by the learned Sessions Judge and under it the prosecution case was that accused No. 7 who is the Assistant Divisional Forest Officer was a public servant and had been charged as such public servant with the preparation of the record in connection with the inquiry of the illicit cuttings in the Walheri forest; according to the prosecution while making this inquiry accused No. 7 "in collaboration with accused Nos. 1 to 6 framed the *panchnama* of 118 trees only and appendices thereto, dated 11th February, 1947, and other ancillary papers viz., the two statements and the receipt of Balkisan Nathubhai of even date" and his two reports, dated February 24, 1947, in an incorrect manner with the necessary knowledge and intention as required by s. 218. Mr. Jahagirdar's contention is that the learned Sessions Judge had no jurisdiction to take cognizance of the charge thus framed under s. 218, because the requisite sanction under s. 197 (*1*) (*b*) of the Code of Criminal Procedure has not been obtained by the prosecution. If that is so, not only is the trial of accused No. 7 in respect of this particular charge void, but the whole of the trial of all the accused persons in respect of all the charges is rendered void by the absence of the requisite sanction, says Mr. Jahagirdar. We must, therefore, first consider whether the sanction obtained by the prosecution against accused No. 7 is valid under s. 197 (*1*) (*b*).

On August 31, 1949, by the order of the Governor sanction was granted to the prosecution of accused No. 7 (Exhibit 404). This document in its preamble no doubt refers to the material facts on which the sanction was asked for. It is stated in the preamble that accused No. 7 held the office of the Assistant to the Divisional Forest Officer, West Khandesh, in 1946-1947,

that in or about December 1946 accused Nos. 1 to 3 and Dagu entered into a criminal conspiracy with the other forest officers (accused Nos. 4 to 6) who have been charged in this case, that in furtherance of this aforesaid criminal conspiracy the partners of the firm had committed theft of 165 cartloads of timber from the Walheri forest area, that accused No. 7 himself had been entrusted with the inquiry into a pseudonymous petition, dated 27th January 1947, concerning the said conspiracy and theft, that accused No. 7 had camped at Walheri between the 9th and 13th February 1947 for conducting the said inquiry and he had then purposely suppressed the true facts and framed a *panchnama* that only 118 trees had been cut in the said forest, though it had been specifically brought to his notice that the trees had been cut in that area on a much larger scale; that he facilitated between February 9 and 13, 1947, and also thereafter the removal of the trees which had been cut in pursuance of the aforesaid criminal conspiracy; that thereby he joined the conspiracy himself, that as a public servant No. 7 had framed the aforesaid *panchanama* in a manner which he knew to be incorrect with the intention and knowledge mentioned in s. 218. Having recited all these facts, the document goes on to say that "the Governor of Bombay is pleased to sanction the prosecution of the said Mr. Andrade for the offences punishable (1) under s. 120B read with s. 379 and (2) s. 218 of the Indian Penal Code." Now, this document has been criticised by Mr. Jahagirdar as having been drawn carelessly and in a casual manner. Mr. Jahagirdar says that it does not appear from this document that the sanctioning authority had applied his mind to the material placed before him before granting the sanction. The document refers to the theft of 165 cartloads of timber, whereas the prosecution case is that 210 cartloads of timber have been stolen by the conspirators. The document refers to a bribe of Rs. 500 as being alleged to have been paid by the partners of the firm to the Range Forest Officer, when in fact the pseudonymous application does not make any such allegation. The two statements on which Mr. Jahagirdar has relied are no doubt inaccurate; but we do not think that these inaccuracies would affect the validity of the sanction. But the more serious infirmity in this document on which Mr. Jahagirdar has relied arises from the fact that the sanction refers only to one document as having been falsely framed by accused No. 7, and that is the *panchanama* made by him in respect of 118 trees. It is clear that the

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sanctioning authority gave sanction to the prosecution of accused No. 7 only in respect of one document and that is the *panchanama* about 118 trees (exhibit 115). It is quite clear that in respect of the charge under s. 218 this document does not refer either directly or indirectly to any other document falsely made by accused No. 7. On the contrary, the charge framed against accused No. 7 under s. 218 refers to as many as eight documents. It refers to the *panchanama* and its appendices and five other documents as having been falsely made by accused No. 7 Mr. Jahagirdar says that the learned Sessions Judge had no jurisdiction to try the charge framed against accused No. 7 under s. 218 in respect of documents not covered by the sanction. We think Mr. Jahagirdar is right. It may be that the other documents included in the charge are in a sense ancillary; the prosecution case is that the *panchanama* which has been falsely made by accused No. 7 is the principal document and the other documents included in the charge are merely subsidiary. But if accused No. 7 was charged with falsely framing these other documents as well, it was necessary to obtain the sanction in respect of these documents before the learned Sessions Judge could take cognizance of this charge. It is not disputed that accused No. 7 is a public servant not removable from his office save by or with the sanction of the Provincial Government and as such he is entitled to the protection of s. 197 of the Criminal Procedure Code. The prosecution themselves have obtained sanction for the charge under s. 218 and so it cannot be seriously urged by them that no sanction was required at all. Accused No. 7 was asked to hold an inquiry into the pseudonymous petition received and he was clearly holding this inquiry as an Assistant Divisional Forest Officer. He had to make the *panchnama* as such public officer and the other documents which are alleged to have been falsely made were made in the course of this inquiry. The reports that he sent at the end of this inquiry were clearly made by him as such public officer, and there can be no doubt that with regard to these reports sanction was required under s. 197 of the Criminal Procedure Code. The learned Government Pleader has faintly attempted to suggest that the inquiry which accused No. 7 held and the documents which were framed in the course of this inquiry would not attract the provisions of s. 197 since it was not a part of the official duties of accused

No. 7 to hold such an inquiry. But we do not think there is any substance in this contention. We have no doubt that the offence with which accused No. 7 stands charged was committed by him while acting or purporting to act in the discharge of his official duty. The test which has to be applied in deciding such questions has been recently laid down by the Privy Council in *Gill* v. *King*[1].

> "A public servant", observed Lord Simonds in delivering the judgment in this case, "can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of official duty.....The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office."

Applying this test we must hold that the act with which accused No. 7 stands charged attracts the provisions of s. 197. Therefore, in our opinion, sanction was required for the prosecution of accused No. 7 in respect of the documents which are alleged to have been falsely made by him.

The next question which arises for decision is, what is the effect of the infirmity introduced by the absence of sanction in respect of some of the documents which are the subject-matter of the charge under s. 218. It is now well settled that if a public officer is tried without obtaining the sanction required under s. 197 the whole of the trial in respect of that offence is void. In *Basdeo Agarwalla* v. *Emperor*,[2] the Federal Court had to deal with the absence of sanction required under cl. 16 of the Drugs Control Order, 1943. It was held that the requirement as to sanction was not a mere technical matter and that it was essential that the provisions with regard to such sanction should be observed with complete strictness. Spens C. J. in delivering the judgment of the Court observed that "where prosecutions have been initiated without the requisite sanction, they should be regarded as completely null and void, and if sanction is subsequently given, new proceedings should be commenced *ab initio*." The same view was expressed by the Privy Council in *Gokulchand Morarka* v. *The King*.[3] In this case the sanction was required under s. 33 of the Cotton Cloth and Yarn (Control) Order 1943, and the Privy Council held that the sanction which had been obtained was not a valid sanction, with the result that the whole of the trial was held to be void. Thus there can

[1] (1948) 50 Bom. L. R. 399, P.C. [2] (1945) 47 Bom. L. R. 392.
[3] (1937) 39 Bom. L. R. 70.

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be no doubt that the trial of accused No. 7 with regard to the offence under s. 218 of the Indian Penal Code, in respect of all documents other than the *panchnama* about 118 must be held to be wholly void.

Mr. Jahagirdar, however, contends that this infirmity makes the trial of all the accused persons in respect of all the offences void. In other words, the whole of the trial is void and the order of conviction and sentence passed by the learned Sessions Judge against the other accused in respect of the other offences also must be set aside for that reason. We find it difficult to accept this contention. There is no doubt that so far as the other accused persons are concerned they were properly charged and have been properly tried. The joinder of the persons, and the joinder of the charges against them, are wholly consistent with the provisions of the Criminal Procedure Code. The learned Sessions Judge had jurisdiction to try the other offences charged against all the accused including accused No. 7. If the trial of accused No. 7 in respect of the offence under s. 218 along with the trial of the other charges is shown to have caused any prejudice to the other accused or even to accused No. 7 in respect of the other charges framed against him, it would be a different matter. But without the proof of prejudice we do not see on what principle the whole of the trial could be treated as void merely because a part of the trial of one of the accused persons has become void under s. 197. But Mr. Jahagirdar argues that this point is covered by decisions of this Court by which we are bound. The first decision on which Mr. Jahagirdar has relied is *Emperor* v. *Rudragouda Rachangouda.*[1] In this case accused No. 1, who was found to be a public servant, was charged with offences under ss. 466 and 409 of the Indian Penal Code. As regards the offence under s. 466 it was necessary to obtain the sanction under s. 197 before prosecuting him and since no sanction had been obtained his prosecution under s. 466 was found to be illegal. Mr. Justice Sen, who delivered the principal judgment of the Bench, came to this conclusion and added:—

"It, therefore, becomes unnecessary, in our opinion, to examine the question whether the other act of accused No. 1 alleged to constitute an offence under s. 409 was also done or purported to be done by him in the discharge of his official duty. It is clear from *Queen-Empress* v. *A. Morton,*[2] as well as from the principle enunciated in *Subrahmania*

[1] (1948) 50 Bom. L. R. 399, P. C. [2] (1885) 9 Bom. 288.

Ayyar v. *King-Emperor*,[1] that where the Court has acted without jurisdiction with regard to a part of the trial, the whole proceedings are vitiated by the illegality committed and that any conviction based on such proceedings cannot stand."

Accordingly it was held that this principle would apply not only to the trial of accused No. 1 under s. 409, but also the trial of accused No. 2 in the said case. Mr. Justice Broomfield was content to express his concurrence with this conclusion by merely observing that sanction was necessary to the trial of accused No. 1 on the charge of forgery at any rate, and that no sanction having been obtained the whole trial must be considered to be invalid. This decision undoubtedly supports Mr. Jahagirdar's contention because it was held by the learned Judges that the trial of accused No. 1 in respect of s. 409 was vitiated even though no sanction may be required for the trial of the said charge and that the trial of his co-accused was also vitiated for the same reason, though there was no question of obtaining any sanction for prosecuting the said co-accused. This view was accepted in *Emperor* v. *Ramchandra Rango*,[2] 41 B. L. R. 98, by Wassoodew and Sen JJ. It may, however, be added that neither Mr. Justice Wassoodew nor Mr. Justice Sen has given any reasons in support of the view accepted by them. Both the learned Judges merely refer to the earlier decision and express their agreement with it. Even in the earlier judgment, with respect, we do not find any discussion of this question at all. In fact, as I have just mentioned Mr. Justice Sen, refers to two earlier judgments and concludes that the said judgments support the view which he was disposed to take.

Now, if we examine these two earlier decisions, they do not seem to support the conclusion drawn by Mr. Justice Sen. In *Queen Empress* v. *A. Morton and Moorteza Ali*[3] it was found that Colonel Dobbs had no jurisdiction to commit the case against Morton, who was a public officer. Even so, the principles of s. 532 were pressed into service and it was held that the High Court could accept an irregular commitment and proceed with the trial if it considers that the accused had not been injured thereby. Accordingly the Full Bench directed that the Judge presiding over the Court of Criminal Sessions had power in his discretion under the provisions of s. 532 to accept the commitment and proceed with the trial. In other words, this

[1] (1937) 39 Bom. L. R. 70.

[2] (1901) 25 Mad. 61 at p. 97, s. c. 3 Bom. L. R. 540.

[3] [1939] F. C. R. 159.

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decision was concerned more with s. 532 than s. 197 of the Code. Along with Mr. Morton, who was a public officer, another accused had been charged, and the Full Bench ultimately directed that if the Judge presiding over the Sessions decides to proceed with the trial of Mr. Morton, then his co-accused may also be tried; but if the commitment of Mr. Morton was quashed, the commitment of the co-accused must also be quashed. With respect, this decision in our opinion, may not necessarily lead to the conclusion that if the trial of one of the accused is vitiated by absence of sanction under s. 197, the trial of the co-accused is also vitiated, even though no prejudice against him may be proved. In this case even the public officer against whom the requisite sanction had not been obtained was ordered to take his chance before the Judge presiding over the sessions and the direction was to proceed with the trial unless it was found that the irregular commitment had caused prejudice to the accused. The other case to which Mr. Justice Sen, has referred is the well known case of *Subramania* v. *King-Emperor*,[1] where a large number of charges had been joined in one trial and the Privy Council treated this joinder as vitiating the trial. As I have already mentioned the present case cannot be regarded as one of misjoinder at all. The joinder of the several accused persons and the joinder of the several charges against them are fully justified by the provisions of the Code. The defect in the trial arises in respect of one of the charges against one of the accused and this defect is caused by the absence of the requisite sanction. It would not, in our opinion, be correct to treat the trial which suffers from this defect as anologous to a trial which is vitiated by misjoinder. Even so, since there are two decisions of this Court which have taken a contrary view we were ourselves thinking of referring this question to a larger Bench so that it should be examined on the merits again. In fact, the case had been adjourned for this purpose. Meanwhile, before, the question was referred to a larger Bench Mr. Jahagirdar himself in fairness invited our attention to a decision of the Federal Court which supports the view which we were ourselves disposed to take. In *Hori Ram Singh* v. *The Crown*,[2] the Federal Court had to deal with the case against a Sub-Assistant Surgeon who had been charged under ss. 409 and 477A of the Indian Penal Code. The Federal Court held that the Sub-Assistant

[1] (1939) F. C. R. 159.

[2] (1947) 49 Bom. L. R. 60.

Surgeon was a public servant entitled to the protection of s. 270 (*1*) of the Constitution Act; they also held that the consent of the Governor was not required for the institution of the proceedings against him under s. 409, but that such consent was required for the institution of the proceedings under s. 477A. The Sub-Assistant Surgeon had been convicted by the Magistrate of both the offences, but had been acquitted by the Sessions Judge on appeal solely on the ground that the previous consent of the Governor had not been obtained under s. 270 (*1*) of the Constitution Act. The High Court of Lahore took the view that no consent was necessary and remitted the case to the Sessions Judge to be disposed of on the merits. That is how the matter had gone to the Federal Court. In view of their conclusion that the consent was required for the offence under s. 477A but not for the offence under s. 409, their Lordship of the Federal Court ultimately directed that the order of acquittal passed by the Sessions Judge be set aside, all the proceedings, so far as they related to the charge under s. 477A, be quashed and the case with regard to that offence dismissed on the sole ground of want of consent of the Governor, without acquitting the accused of the charge, leaving the door open for a fresh prosecution under s. 477A if consent of the Governor in his discretion was obtained thereafter. With regard to the charge under s. 409 their Lordships sent back the appeal to the Sessions Judge for re-hearing as regards the said charge leaving it open to the Sessions Judge to order a retrial if he came to the conclusion that the joinder of the two charges had occasioned a failure of justice. Thus it is quite clear that the Federal Court did not take the view that the absence of sanction with regard to the prosecution for the offence under s. 477A rendered the whole of the trial void; it was only the trial with regard to the said offence under s. 477A that was rendered void by the absence of sanction. It is true that the decisions of the Bombay High Court which have taken a contrary view were not cited before the Federal Court. But the question of law has been considered in the judgment of Sulaiman J. The learned Judge has pointed out that in the case of a jury trial he would have had no hesitation in holding that the whole trial was illegal inasmuch as the accused would have been gravely prejudiced by the production of evidence relating to the offence under s. 477A for which the Court had no jurisdiction to try the accused. But the case with which the Federal Court was

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dealing had not been tried by a jury and under s. 537 of the Criminal Procedure Code the appellate Court had to be satisfied whether the defect in question had in fact occasioned a failure of justice before altering the order relating to the offence under s. 409. In view of this clear statement of the law we must hold, with respect, that the two decisions of this Court on which Mr. Jahagirdar relied cannot be treated as binding on us. Their authority is considerably shaken and the general proposition accepted in these two decisions that the absence of sanction with regard to one of the offences charged against one of the accused renders void the whole of the trial in respect of all the offences charged against all the accused can no longer be treated as good law. Whenever, it is discovered that more persons than one are tried for the commission of more offences than one, that sanction was required under s. 197 in respect of one of the offences alleged to have been committed by one of the accused persons and that such sanction has not been obtained, it would be necessary to consider in respect of the other offences charged against all the accused whether the trial of such offences has been prejudiced by the introduction of the evidence in regard to the offence for which sanction was required. If the trial of such a type was a jury trial, prejudice against the accused in respect of the other offences can ordinarily be held to be implicit and the whole trial can be safely set aside without any difficulty. But if the trial has been held by a Magistrate or a Sessions Judge without a jury, then the accused persons would not be entitled to contend that the whole trial should be deemed to be void without proof of prejudice. That was in terms the direction given by the Federal Court in *Hori Ram Singh's* case, and we propose to adopt the principle underlying the said direction in dealing with the case before us. We may as well add that in this particular case the stage to consider whether the illegal trial of one charge has caused prejudice to the trial of the other charges would not arrive because, for the reasons which we will presently set out, we have come to the conclusion that as regards these other charges on the merits the prosecution have failed to prove their case beyond a reasonable doubt.

Before we part with this topic, however, we would like to repeat the note of caution which has been already struck by Stone C. J. and Lokur J. in *Emperor* v. *Lumbhardhar Zutshi*.[1] Judges and Magistrates," it was observed in this

[1] (1947) 49 Bom. L. R. 609.

case, "cannot be too strongly urged that whenever a Government servant is charged with an offence they should consider at the very earliest possible stage whether sanction under s. 270 of the Government of India Act, 1935, or s. 197 of the Criminal Procedure Code, 1898, is in law necessary, and whether, if it is, it has been duly given and they should express a definite opinion on the question." In the present case it no doubt appears that it was urged before the learned Sessions Judge on behalf of accused No. 7 that the sanction obtained against him in respect of the offence under s. 218 was defective. But the record does not show that the point was fully argued in the manner it has been done before us or that the decisions on which reliance has been placed before us on behalf of accused No. 7 were cited before the learned Judge. Naturally the learned Sessions Judge did not seriously consider this point, particularly because he had come to the conclusion that on the merits the prosecution case had not been proved against accused No. 7. It is hardly necessary to emphasise that just as it is the duty of the Judges and Magistrates to consider the question of sanction whenever public servants are charged before them, it is also the duty of the lawyers to take the point about sanction at the earliest stage and invite the Judge or the Magistrate to decide it before proceeding to deal with the merits of the prosecution case.

[His Lordship then considered the points urged on behalf of the accused on merits and ultimately passed the following order:]

The result is that Criminal Appeal No. 454 of 1951 which has been preferred by the accused against the orders of conviction and sentence passed against them succeeds, the orders under appeal are set aside and the accused are ordered to be acquitted and discharged. Criminal Application No. 968 of 1951, preferred by the State against accused No. 7 in respect of the order of acquittal passed by the learned Sessions Judge fails and must be dismissed. Since the appeal filed by the accused against the order of conviction and sentence passed against them succeeds, the rule issued in Criminal Revision Application No. 799 of 1951 for enhancement of sentences must be dismissed. Criminal Application No. 1102 of 1951 made by the accused for additional evidence is dismissed.

Orders accordingly.

M. W. P.