

on judgment at 4 per cent on the total amount of the decree from the date of the filing of the suit till payment. The decree passed in Appeal No. 28 will be further modified with regard to the order for costs. The order for costs both of the suit and the appeal will be that both the parties must get costs in proportion to their success or failure with regard to the claim made. The cross-appeal No. 134 of 1953 filed by the Municipality will be dismissed with costs.

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*Decrees varied.*

K. B. S.

## APPELLATE CRIMINAL

*Before Mr. Justice Shah and Mr. Justice Vyas.*

S. N. RANEBENNUR v. THE STATE\*

*Prevention of Corruption Act (II of 1947) ss. 5 (1) (2) and (3), 6 (1) (c)—Sanction for prosecution under s. 5 (2) read with s. 5 (1) (a)—Whether s. 5 (3) creates an offence independent of the offence under s. 5 (1) and (2).*

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Section 5 (3) of the Prevention of Corruption Act does not create an offence independent of the offence under s. 5 (1) and (2) but lays down a rule of evidence viz., that if the pecuniary resources of a person reach a point which was disproportionate to his known or legitimate sources of income it shall be presumed, unless he satisfactorily accounts for it, that he had acquired them by the commission of an act or series of acts under s. 5 (1) and (2).

*Held*, therefore it was not necessary for the sanctioning authority to refer to s. 5 (3) when sanctioning a prosecution under s. 5 (1) and (2).

*Bishwabhusan v. The State*<sup>(1)</sup> dissented from.

*Bishwabhusan v. The State*,<sup>(2)</sup> referred to.

APPEAL against the conviction and sentence passed by M. S. Hegde, Esquire, Additional Special Judge, Kanara.

Charge under s. 5 (2) of the Prevention of Corruption Act.

Holding that the prosecution had proved that the accused, a Sub-Inspector of Police, at Honavar, from October 1952 to March 1954, was in possession of pecuniary resources disproportionate to his known sources of income, that the accused had failed to give a satisfactory account therefor, that the

\* Criminal Appeal No. 740 of 1955 with Criminal Revision Application No. 1105 of 1955.

1. [1952] A. I. R. Orissa 259.

2. [1954] A. I. R. S. C. 359.

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accused had also made a demand for illegal gratification upon certain persons and that in certain other cases he had not only demanded illegal gratification but accepted it, the Special Judge convicted the accused under s. 5 (2) and sentenced him to suffer one year's rigorous imprisonment and to pay a fine of Rs. 1,000 or in default to suffer 3 months' further rigorous imprisonment.

The accused appealed to High Court against the conviction and sentence and the State applied for enhancement of the sentence.

The appeal and the application were heard together before Shah and Vyas JJ.

Their Lordships dismissed the appeal without going into the specific instances of bribery which the learned Judge had held proved against the accused, on the ground that the accused was guilty under s. 5 (2) of the Prevention of Corruption Act inasmuch as he was in possession of pecuniary resources disproportionate to his known sources of income. The application for enhancement of sentence was also dismissed on the ground that the sentence imposed was proper in the circumstances. Only the portion of the judgment relevant to this Report is given below.

*Purshottam Tricumdas*, with *B. M. Kalagate* and *N. M. Patil*, for the Accused.

*A. A. Mandagi*, Assistant Government Pleader for the State.

*Vyas J.*—(After holding that the evidence in the case established that the accused was in possession of pecuniary resources disproportionate to his known income and the accused had failed to account for it and was, therefore, guilty of the offence under s. 5 (2) and after stating that it was not necessary, in the circumstances, to go through the evidence regarding specific instances of bribery alleged against the accused, the Judgment proceeded: ).....

Mr. Purshottam has contended that the sanction granted by the Inspector General of Police for the prosecution of the appellant was defective. The sanction recited thirteen specific instances in which the appellant was alleged to have accepted bribes or was alleged to have attempted to obtain bribes, and then the material part of the sanction stated:

"Whereas, it appears to the Inspector General of Police that the said Shri S. N. Ranebennur has thereby committed an offence under s. 5 (2) read with s. 5 (1) (a) of the Prevention of Corruption Act. Now, therefore, in exercise of the powers conferred by s. 6 (1) (c) of the Prevention of Corruption Act, II of 1947, I. Shri N. M. Kamte, B.A., I.P., Inspector-General of Police, State of Bombay, hereby accord sanction to the prosecution of the said Sub-Inspector for the said offence."

Now, Mr. Purshottam's contention that this sanction was defective has been made in this way. It is argued that the report submitted by Sub-Inspector Kamat to the Additional Assistant to the Inspector General of Police alleged certain facts against the appellant which would constitute an offence under s. 5 (1) (a) of the Act. The report also alleged certain other facts from which, says Mr. Purshottam, an inference of guilt under s. 5 (3) of the Act might arise. All these facts were brought to the notice of the Inspector-General of Police. Yet, the Inspector-General of Police granted sanction for the prosecution of the appellant under s. 5 (2) read with s. 5 (1) (a) only of the Act. Mr. Purshottam's submission is that, although the charge framed against the appellant, besides alleging specific instances of bribery, which would constitute an offence under s. 5 (1) (a), alleged further that the appellant was possessed of pecuniary resources which were disproportionate to his known sources of income, which was an allegation under s. 5 (3), the sanction granted was in respect of an offence under s. 5 (2) read with s. 5 (1) (a) only. According to Mr. Purshottam, the sanction fell short of setting out an offence under s. 5 (3) for which also the appellant was sought to be prosecuted. In other words, says Mr. Purshottam, the sanction being a sanction for the prosecution for an offence under s. 5 (2) read with s. 5 (1) (a) only, it is defective so far as the prosecution of the appellant upon a charge as framed against him is concerned, as it does not set out the allegation regarding the pecuniary resources of the appellant being disproportionate to his known sources of income.

This contention of Mr. Purshottam postulates as its basis that s. 5 (3) creates an independent offence, i. e. an offence independent of an offence created under s. 5 (1). In our view, however, this basis itself is non-existent and, therefore, the contention of Mr. Purshottam must fail. Section 5 (1) creates an offence of criminal misconduct and speaks of various acts by the doing of which a person would commit that offence. Section 5 (2) prescribes a penalty for that offence. Section 5 (3) does not create any offence. It does not speak of any specific, individual act of a person or his attempt at any specific act, but refers to a state of his pecuniary position as contrasted with his known earnings, which might be a cumulative result of acts done by him, which would fall under s. 5 (1). In enacting sub-s. (3) of s. 5, the Legislature did not intend to create an offence, separate from the one created under sub-s. (1), but intended to lay down a rule that if a person's pecuniary resources, as compared to his known or legitimate sources of income, reached a point which was disproportionate to the said income, it shall

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be presumed, unless the person concerned accounted satisfactorily for it, that he had acquired those pecuniary resources by the commission of an act or series of acts under s. 5 (1). Possession of pecuniary resources disproportionate to the known sources of a person's income is not one particular act of a person, but is a consequence arising out of his habitual acceptance of bribes, in other words a consequence of habitual commission of offences by him under s. 5 (1). Acquisition of such a pecuniary position is not, and cannot be, a separate or distinct offence from an offence under s. 5 (1). One rule of evidence for proving an offence of criminal misconduct, which is an obvious rule, is to lead evidence as to specific acts of bribery or attempts at bribery. But, so far as the Prevention of Corruption Act is concerned, the Legislature, in addition to the abovementioned obvious rule, has also laid down a special rule of evidence for proving an offence of criminal misconduct in cases where evidence as to specific acts of acceptance of, or demand for, bribes is made scarce or rendered unavailable. This special rule of evidence is embodied in s. 5 (3) of the Act. Just as it is a rule of evidence that a person in possession of stolen goods soon after theft is either a thief or a receiver of stolen property unless the contrary is shown by him, so also the Prevention of Corruption Act has enacted a rule of evidence, in sub-s. (3) of s. 5, that a person possessed of pecuniary resources disproportionate to his known sources of income shall be presumed to be guilty of an offence of criminal misconduct unless he can give a satisfactory account of the said possession. In short, s. 5 (3) does not create a separate offence of criminal misconduct independently of sub-s. (1), but is only a rule of evidence, and that being so, it was not necessary for the sanctioning authority to refer to s. 5 (3) in the sanction.

Mr. Purshottam says that the sanction must *ex facie* show facts on which the prosecution case rests and that, therefore, the sanction in this case should have stated that the appellant was possessed of pecuniary resources disproportionate to his known sources of income. The submission of Mr. Purshottam must fail, as possession of pecuniary resources out of proportion to the known sources of a person's income is not a fact constituting an offence, but is evidence raising a presumption that the person concerned is guilty of an offence of criminal misconduct under sub-s. (2) of s. 5 of the Act, and it is well-settled that it is not necessary that a sanction must refer to all the evidence on which the prosecution may rely for proving a charge against the accused. In this particular case, as I have said, the sanction was a sanction for prosecution under s. 5 (2) read with s. 5 (1) (a) of the Act and in order to prove this charge of criminal misconduct against the appellant, the prosecution is relying on the

evidence of the appellant's possession of pecuniary resources disproportionate to his known sources of income.

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Mr. Purshottam for the appellant has invited our attention to a decision of the Orissa High Court in *Biswabhusan v. The State*.<sup>(3)</sup> In that case, although the Court observed that it was partly true that sub-s. (3) of s. 5 did not create an offence by itself, but was only in the nature of a rule of evidence as to what constituted criminal misconduct, the learned Chief Justice and Mr. Justice Panigrahi proceeded to say that in view of the provisions that on proof of unexplained possession of resources or property disproportionate to known sources of income, a presumption of misconduct was to be made against the accused and a conviction could be based solely on that presumption, it was virtually the creation of a distinct head of the offence of criminal misconduct. Mr. Purshottam relies upon these observations in support of his contention that a distinct head of the offence of criminal misconduct was created by sub-s. (3) of s. 5 of the Act. In this connection, it is pertinent to note that in this very case which went up to the Supreme Court in *Biswabhusan v. The State*,<sup>(4)</sup> their Lordships of the Supreme Court made no observations which would support the abovementioned view of the Orissa High Court that sub-s. (3) of s. 5 created a distinct head of the offence of criminal misconduct. Therefore, with great respect to the learned Judges of the Orissa High Court, we are unable to share their view which appears to us to be inconsistent. It is an inconsistent view to say in the earlier part of the judgment that sub-s. (3) of s. 5 did not create an offence by itself and at the same time to say in the same judgment that virtually a distinct head of the offence of criminal misconduct was created by it. I have already stated that in our view sub-s. (3) of s. 5 does not create a separate offence and that, therefore, it was not necessary for the sanctioning authority to refer to sub-s. (3) in the sanction. In our view, the sanction granted by the I. G. P. is a good sanction.....

[The rest of the Judgment is not material for this report.]

In the result, the appeal filed by the appellant must fail and be dismissed.

*Appeal dismissed.*

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3. [1952] A. I. R. Orissa 289.

4. [1954] A. I. R. S. C. 359.