(1956) 11 AHC CK 0023

Allahabad High Court (Lucknow Bench)

Case No: Criminal Appeal No. 162 of 1954

Laurie E. Jacobs		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: Nov. 28, 1956

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 190, 230, 4(1)
- Evidence Act, 1872 - Section 133
- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1947 - Section 6

Citation: AIR 1958 All 481 : (1958) CriLJ 827

Hon'ble Judges: A.N. Mulla, J

Bench: Single Bench

Advocate: Iqbal Ahmad, for the Appellant; P.N. Chaudhri, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Mulla, J.

Appellant Laurie S. Jacobs was tried u/s 161, I. P. Code and Section 5 (2) of the Prevention of Corruption Act (Act II of 1947). The trial Court convicted him u/s 161, I. P. Code and sentenced him to two years'' rigorous imprisonment and a fine of Rs. 500/-, in default further rigorous imprisonment for six months. It passed no orders in respect of the offence u/s 5 (2) of the Prevention of Corruption Act. Against this order of conviction the appellant has come up in appeal.

2. The prosecution story is that the appellant was employed as shed-man in the Loco Shed, Jhansi in the year 1950. A temporary gang of labourers was recruited in October, 1950 to do some emergent work. The Divisional Superintendent had written to Sri R.A. Hassett (D.W. 2), who was the Running-shed Foreman at Jhansi at that time to recruit this gang. Sri Hassett asked the appellant to carry out the orders of the Divisional Superintendent and engage the casual labour in consultation with

the Senior Inspector Fuel, but the appellant did not observe this direction and made the recruitment himself. This temporary gang of labour operated from the 4th of October, 1950 upto the 31st of October, 1950.

Sixteen labourers were recruited and they worked under a permanent hand Rameshwar Prasad (P-W. 12). Dilawar (P.W. 11) was the Muqaddam of this gang. It is alleged that on the 24th of October, 1950 the appellant ordered this gang to collect in the railway yard and he told them that if they pay Rs. 50/- each as illegal gratification for the Bara Sahib, then an employment card would be issued to them and a permanent employment would be secured for them. The appellant promised to recommend their cases to the officers concerned, if such a payment was made. Eara Sahib was the name by which the labourers called Sri Hassett, the Loco Foreman. The labourers agreed to pay this amount alter they received their wages.

3. On the next day the appellant again came to the labourers with the Employment Officer, Mr. Ward (D.W. 3) and the same demand was made in his presence. The labourers again made the same promise and the appellant wanted some one to stand surety for them. Rameshwar Prasad (P.W. 12), then stood surety for the labourers. After this Sri Ward issued the employment exchange cards. The appellant asked Rameshwar Prasad to collect these cards and to give them back to the labourers after the payment was made by them.

4. The same evening Rameshwar Prasad went to the house of Sri Bhusaran Sharma, R.S.O. in order to inform him. He, however, did not meet Sri Bhusaran Sharma, but his father met him. He left words with Sri Sharma''s father and came back.

5. The next important date in this case is the 31st of October, 1950. On that date Inspector Lal Charid of the Special Police Establishment (P.W. 13) accidentally visited Jhansi and met the father of Sri Bhusaran Sharma, who conveyed this information to him. Sri Lal Chand then immediately called Rameshwar Prasad and recorded his statement. Ho then contacted the District authorities so that a trap should be laid. On that very date the services of this gang were terminated and they were directed to come to the Loco-shod next morning to take their wages.

6. Next morning the labourers with Rameshwar Prasad (P.W. 12) and Dilawar Ali (P. W. 11) went to the railway station to receive their wages. It is alleged that the payment could not be made in the forenoon and the wages were actually paid in the afternoon. The labourers along with Rameshwar Prasad and Dilawar Ali waited in the garden outside the railway station.

7. Meanwhile the Additional District Magistrate, Jhansi, who was approached by Inspector Lal Chand, deputed Sri M.M. Agarwal, a first class Magistrate to supervise the trap which was to be laid. Sri Lal Chand and the Magistrate came to the railway garden and from behind some bushes they heard the conversation of the labourers. Sri Agarwal had also called Rameshwar Prasad and the statement made by him to Sri Lal Chand was verified. Sri Agarwal overheard the labourers telling each other

that the whole amount should not be paid immediately, but only a part of it should be paid. The labourers were also saying that the money was to be paid to the Bara Sahib as well as to the Employment Exchange Officer. They agreed to-pay part of the sum demanded after receiving their wages and pay the balance after they were given a permanent job. Meanwhile while the labourers were still in the garden one Sri P.D. Srivastava, an Assistant Station Master, who was on leave, happened to pass that way and Sri Lal Chand requested him to stop and become a witness of the trap.

Sri Srivastava agreed and then he went up to the labourers alleging that he was a brother of Rameshwar Prasad. He also heard the conversation of the labourers. Shortly afterwards the group of labourers along with Rameshwar Prasad, Dilawar Ali and Sri Srivastava left for the Loco-shed. The appellant met them there and directed them to go to Sukkhu''s Hotel and wait for him there. This Hotel is outside the Loco-shed. As soon as this arrangement was made Sri Srivastava came to the inspector and the Magistrate and informed them about this plan. The Magistrate and the Inspector then came to the Hotel of Sukkhu. They waited for the appellant but the appellant did not come to the Hotel.

Sri Srivastava was once again sent to the Loco-shed to find out when the appellant was coming to the Hotel Sri Srivastava on reaching the Locoshed found the appellant talking to Rameshwar Prasad and giving him directions that the coolies should be sent to the office of the Co-operative Society, which was near the railway bridge. Rameshwar Prasad then came to the Hotel and collecting the coolies went to the appointed place. The Magistrate and the Inspector then took their stand on the railway bridge. At about 5 in the evening the appellant was seen corning with Rameshwar Prasad from the Loeo-shed.

The two met the labourers and the money was demanded by the appellant. The labourers in accordance with the agreement reached by them in the garden outside the railway station expressed their willingness to pay only Rs. 30/- each at the moment, but they promised to pay the balance after getting permanent jobs. There was some talk between the appellant and the labourers and finally the appellant accepted the propsal of the labourers. He then asked Rameshwar Prasad to collect the money from the labourers. He also instructed Rameshwar Prasad to prepare a list containing the names of the labourers who were making the payment. By this time only eleven labourers were present, as the others had gone away. The appellant then fold the labourers that he would be coming back shortly alter a wash and meanwhile his directions should be carried out.

8. Rameshwar Prasad then collected Rs. 30/-each from the eleven labourers and the total came to Rs. 330/-. He also prepared a list in duplicate containing the names of the Coolies and the sum which they paid. He also took down the numbers of the notes on a separate paper, as he was instructed to do so by the Magistrate when Re had examined Rameshwar Prasad in the morning.

9. After some time the appellant came back on a cycle and a list Ex. P 20 and the notes of Rs. 330/- were given to him by Rameshwar Prasad. The appellant counted the notes and then checked them from the list. After checking the notes he put them in his pocket and began to ascend the railway bridge. Rameshwar Prasad and Sri Srivastava who was also in the group of the labourers followed. The appellant when he left the coolies told them that within a few days they would get a permanent job and he directed Rameshwar Prasad to give back the employment exchange cards to them. When the appellant reached the top of the stairs, he got on his cycle and began to move away Meanwhile Rameshwar Prasad and Sri Srivastava had given the pre-arranged signal to the Magistrate and the Inspector on the railway bridge and so the Magistrate stopped the appellant and disclosing his identity charged him with accepting illegal gratification. The appellant immediately brought out the notes from his pocket and handing them over to the Magistrate stated that Rameshwar Prasad had surreptitiously put them in his pocket.

The labourers had also reached the bridge by this time. The entire group then came down the bridge on the other side and then the Magistrate ordered the Inspector to search the appellant. The appellant then immediately took out a paper from his pocket, put it in his mouth and began to chew it. Sri Lal Chand, however succeeded in extracting this paper from the mouth of the appellant, but it was torn into six bits which are material Exhibits I to VI. A recovery list was prepared. Rameshwar Prasad also handed over the employment cards of the labourers which were with him. He also gave the paper on which he had taken down the numbers of the notes and the duplicate list of the coolies prepared by him. The Magistrate then recorded the statements of the labourers and the appellant was asked to give a statement. The appellant, however refused to do so and said that ne must consult a lawyer first.

10. Next day, i.e. on the 2nd of November, 1950 the Magistrate submitted his report to the District Magistrate and placed the recovered articles in the Government Treasury. He had already given permission to Inspector Lal Chand to investigate the case. Sri Lal Chand in the course of the investigation obtained the necessary sanction from the General Manager. Central Railways and then prosecuted the appellant.

11. I will now give the defence taken up by the appellant. As the appellant was subjected to two trials, he has made no less than four statements in this case. I have already mentioned the first spontaneous exclamation made by the appellant when the Magistrate charged him on the bridge. At that time he had stated that the money was planted in his pocket by Rameshwar Prasad. The second statement was made by the appellant in the first trial on the 24th of November, 1951. In this statement again he admitted that Rs. 330/- in currency notes and the list Ex. P 20 were recovered from his possession, but he maintained that this money was planted by Rameshwar Prasad. In reply to some other question, he also admitted that he had tried to chew material Exs. I to VI and that some names were in his handwriting

in Exs. IV and VI. Exs. IV and VI contain the names of some of the labourers. The third statement was made by the appellant in the second trial on the 25th of October, 1952, It is on the same lines as the earlier statements; only he denied that he put any paper into his mouth or that Exs. I to VI were chewed by him. He added that the witnesses in this case were deposing against him, because he had reported against these men to the higher authorities. The last statement of the appellant is a written statement, which he submitted at the end of the second trial on the 18th of January, 1954. I will give the relevant portions of this statement in extenso :

"Paragraph 2. That P.W. 12 (Rameshwar Prasad) was not on good terms with the accused as the accused had occasion to report him to the authorities as stated by D.W. 5 (Mr. Hammill) for attempting to take bribes from coolies working under P.W. 12 and so P.W. 12 kept this in mind to harm the accused at the first opportunity.

5. D.W. 2 (Sri Hassett) informed accused to fell the temporary coolies that they would not be required after 28-10-1950 and on this date of 28-10-1950 orders to this effect were passed two or three times and then cancelled.

6. P.W. 12 (Rameshwar Prasad) made capital out of this incident to work up the men to his plot of harming the accused.

7. P.W. 12 (Rameshwar Prasad) made it clear to the sixteen coolies employed on 4-10-19.50 that it was the accused who was getting rid of them as he desired some bribe which was not forthcoming.

8. After this date P.W. 12 (Rameshwar Prasad) planned with the coolies to collect some money in the shape of bribe from the coolies and to trap the accused.

9. It appears on the 1-11-1950 P.W. 12 (Rameshwar Prasad) conspired with P.Ws. 4 and 13 (Sri Srivastava and Sri Lal Chand) and one Bhusaran Sharma the R. S. O. to set a trap for the accused as the said P.W. 12 made out that he was wanting bribe from the coolies.

10. On the other hand P.W. 12 (Rameshwar Prasad) who had the sixteen coolies working under him persuaded them to give him some money on 1-11-1950 which was to be given to the accused so that P.W. 12 would secure permanent job for the sixteen coolies.

11. As P.W: 12 (Rameshwar Prasad) was working with accused he arranged to move along with the accused, when the latter was going home in the evening of 1-11-1950 and so further strengthened the impression on the coolies that it was accused really who desired bribe and if it was given then the permanent jobs would be secured.

12. P.W. 12 (Rameshwar Prasad) and 4 (Sri Srivastava) collected some money from the coolies and most probably made up the lists etc, and then knowing that accused was attending some meeting and would be coming back waited for him at the bridge and on the pretext of interceding for the coolies moved with the accused up

the bridge and on way dropped some notes in the pocket of the accused. This dropping was done by P.W. 12 as he was the master-mind and nearest the accused.

13. Prior to this P.W. 12 (Rameshwar Prasad) had taken a bold chance to accompany P.W. 13 (Sri Lal Chand) to Magistrate and arrange a trap.

14. Having dropped the notes in the pocket accused was arrested on the top of the bridge and when questioned, naturally the accused put his hand in his pocket and finding some notes in it, handed over the same to the Magistrate P.W. 3 (Sri M. M. Agarwal).

15. Later on going down the bridge and P.W. 12 (Rameshwar Prasad) asking for a further search, because P.W. 12 knew that besides notes he had also put in some paper into the pocket of the accused on the slope of the bridge on the ether side, the accused again looked into his pocket and found some other papers.

16. This being the first time such an incident occurred to the accused, he got confused and lost his nerve and feeling that some incriminating things had been planted he got confused and the S. I. P.W. 13 (Sri Lal Chand) tried to snatch them away. It is alleged that accused tried to chew the papers.

17. Due to the confusion, and the circumstances that accused was under arrest and the first time in his life and being a respectable person, without legal knowledge, it is not remembered at the moment whether the papers were actually bitten or torn in the scuffle because it may have been that due to P.W. 13 (Sri Lal Chand) using force to see the papers the accused may have tried to snatch his hand away or even tried to bite the hands of P.W. 13 and in that confusion the papers may have been bitten also.

18. Reading the papers Exts. I to VI they have nothing to do with this case and so it is clear that it was in confusion that the papers got torn.

19. Later after the arrest P-W. 12 (Rameshwar Prasad) tutored the coolies which now numbered only II to make the statements they have made and the inducement was that they would be made permanent, which according to them, they have been made permanent.

22. In his desire for revenge P.W. 12 (Rameshwar Prasad) had taken this chance of even informing the authorities and bringing them down and even if the plan had failed. P.W. 12 would have pocketed the Rs. 330/- he put into the pocket of the accused on the. bridge and so in any case P.W. 12 would not have lost.

30. P.Ws. 1, 2, 5, 6. 8, 9, 11 are coolies and were wholly under the control of the police and authorities.

32. P.W. 12 (Rameshwar Prasad) and P. W. 13 (Sri Lal Chand) arc highly interested witnesses who have concocted this false case."

12. From the four statements of the appellant mentioned above, it is clearly made out that his main contention is that the notes were planted by Rameshwar Prasad.

13. In view of the defence taken by the appellant there is only one question for decision before me. That question is whether there is a reasonable possibility of these notes being planted and the appellant being in unconscious possession of these notes. In my opinion the prosecution case is proved not only by means of the oral evidence examined in this case, but also from certain other pieces of evidence which strongly support it. The conduct of the appellant by itself is inconsistent with his innocence. There are also certain broad features which not only negative the theory of plantation, but which make it absolutely impossible.

It is impossible for me to accept that 11 coolies would contribute Rs. 30/- each for the purpose of putting the appellant in trouble. Nothing was elicited in the cross-examination of these coolies to show that they had any animus against the appellant. It was not even suggested in cross-examination, although these witnesses were subjected to long cross-examinations in two successive trials. I put this question to the counsel for the appellant whether it is possible to accept that the coolies would part with a sum of Rs. 30/-each, which is a big amount for them, merely on the chance of implicating the appellant, when there was no animus in their hearts against him.

14. The counsel for the appellant gave two replies to the above question. Firstly, he contend-ed that the coolies were confident that after the trial was over the money would come back to them and so they felt no hesitation in parting with this amount. This answer is obviously quite unsatisfactory. The money is still with the Court and it is not possible for me to accept that on the chance of recovery at some future date the coolies would part with such big amounts merely to satisfy a grudge which is non-existent. The second reply was that the coolies did not pay this money but it was Rameshwar Prasad who planted this money and persuaded the coolies to adopt the story which he gave out. This explanation obviously cannot be accepted. Firstly, It is inconceivable that a person in the position of Rameshwar Prasad would be willing to lose Rs. 330/- for such a purpose. It is even doubtful whether he alone could raise such an amount of money.

Again no animus has been proved against Rameshwar Prasad. The only piece of evidence on which the defence relies is the statement of Sri Hammill (D.W. 5), Sri Hammill stated that once or twice the appellant brought it to his notice verbally that Rameshwar was not getting the coal mixed properly. It is, therefore obvious that Sri Hammill does not support the contention of the appellant that any reports were made to him that Rameshwar Prasad was taking any illegal gratification from the coolies. Apart from this I feel no hesitation in rejecting the statement of Sri Hammill. His statement in my opinion is quite untruthful in material details. For example, Sri Hammill alleges that the payment was made to the labourers in the forenoon of the 1st of November, 1950 and not in the afternoon, as alleged by the prosecution.

Sri Hammill has no record to support his statement. He was examined on the 21st of May, 1953, which is more than 2 1/2 years after the date when the payment was made, and yet he has come forward to give this unbelievable statement in order to support the defence case. Sri Hammill is also very closely associated with the appellant and I agree with the trial Court that his statement cannot be believed. Although Sri Hammill was a witness of this character, yet he did not support the appellant that Rameshwar prasad was suspected of taking any illegal gratification. I am, therefore, satisfied that Rameshwar Prasad had no reason to falsely implicate the appellant and the reason suggested by the defence is quite untenable.

15. I also find that apart from other witnesses, P.W. 3 Sri Agarwal, the Magistrate, clearly states that the money was collected from the coolies. It is therefore, obvious that the money was taken from the coolies and handed over to the appellant. I have already given the extracts of the written statement submitted by the appellant and even in this statement it is clearly mentioned in paragraph 10 that some money was taken from the coolies. The presence of Rs. 330/-in the pocket of the appellant cannot be explained on any other ground except the story given by the prosecution. The theory of plantation on the face of it is unbelievable.

16. The prosecution case rests on the testimony of six coolies, who were amongst the 11 who contributed a sum of Rs. 30/- each. These coolies are P.W. 1 Babulal, P.W. 2 Nathu, P.W. 5 Rana, P.W. 6 Deena, P. W. 8 Baiju and P.W. 9 Gopal. The testimony of these six witnesses is supported by the evidence of P.W. 11 Dilawar Muqaddam, and P.W. 12 Rameshwar Prasad. Rameshwar Prasad no doubt acted as a decoy, but that is not sufficient to reject his testimony, when it is supported in every particular by the other witnesses.

In addition to this evidence we have the testimony of P. W. 4 Sri Srivastava, the Assistant Station Master. No doubt the prosecution has not given a good explanatoin for the presence of Sri Srivastava in this affair but his presence cannot be doubted because P.W. 3 Sri Agarwal, the Magistrate fully corroborates the testimony of Sri Srivastava.

No criticism has been offered against this evidence, except the allegation that these witnesses are under the influence of either Rameshwar Prasad or the police. Nothing has been urged as to why the police should try to implicate the appellant. It was urged that the labourers were provided permanent jobs and so they have become willing tools in the hands of the prosecution. I have not been able to understand this contention. Admittedly it is the railway authorities who can give permanent jobs and the police or Rameshwar Prasad could not secure these jobs for these labourers.

On the other hand the appellant and his friends who have appeared as witnesses for defence in this case could provide such jobs to the labourers in the hope that perhaps the witnesses would resile from the statements which they had made to the

Magistrate on the 1st of November. There are indications that one or two labourers who were examined in the first trial were not produced by the prosecution in the second trial. This criticism, therefore, cannot discredit the six labourers, whose testimony is without any flaw.

17. The conduct of the appellant also clearly proclaims his guilt. I have mentioned above that the moment the appellant was challenged, he took out the notes from his pocket and stated that Rameshwar Prasad had planted these notes. This spontaneous exclamation shows that the appellant was not only conscious that there were notes in his pocket but that these notes came to him from the hands of Rameshwar Prasad. If these notes had been surreptitiously planted, the appellant would not have been aware of the presence of these notes in his pocket. They would have been recovered after a search. The spontaneous action of the appellant in taking out these notes is a clear proof of his knowledge. Similarly the statement that Rameshwar Prasad had planted them indicates that he wanted to give an innocent turn to a guilty transaction. Over and above this the conduct of the appellant in trying to chew a paper on which the names of the coolies were written shows his guilty mind.

It was obviously an attempt to destroy some evidence which he thought would incriminate him. While dealing with the statements of the appellant, I have mentioned that in his statement of the 24th of November, 1951 the appellant not only admitted that he tried to chew Exs. I to VI but that two of these exhibits were also in his handwriting. He denied this when he was examined on the 25th of October, 1952, but in his written statement which bears his signatures on every page he again admitted the possibility of his chewing a paper, on account of his confusion and nervousness. I am, therefore, satisfied that the conduct of the appellant proclaims his guilt, as an innocent man would not have behaved in this manner.

18. In addition to this I may mention the conduct of the coolies also. It is proved from the evidence of Sri Agarwal (P.W. 3) that when he over-heard the conversation of the labourers in the garden they were saying that a part of the illegal gratification will be paid by them and the balance would be paid subsequently after they had secured permanent jobs. This conduct of the labourers strongly corroborates their statement in Court. In addition to this it is proved that all the employment cards were found in the possession of Rameshwar Prasad. This circumstance again corroborates the prosecution story for otherwise the cards would have been with the labourers. I am, therefore, of the opinion that there is overwhelming evidence to prove the guilt of the appellant and he has been rightly convicted.

19. The counsel for the appellant has advanced some contentions before me. but they pale into insignificance before the weight of evidence which I have mentioned above. It was first contended that the way the prosecution alleges that the appellant demanded an illegal gratification is hardly believable. It was contended that this

demand was made in a place which was not private and no offender would be so careless as to make a demand in this manner. In support of this contention it was also pointed out that it is highly improbable that the appellant will not only make a demand from the labourers but will make it in the presence of Sri Ward (D.W. 3), the Employment Officer.

Another point urged in this connection was that if such a demand had been made the labourers would have gone and reported to the Loco Foreman and the very fact that no such report was made in the case shows that no such demand was made. I have found no force in these contentions. A railway yard is not such a public place where such a demand cannot be made. I also feel no hesitation in accepting the prosecution story that the demand was made in the presence of Sri Ward. The least inference that can be drawn from this circumstance is that the appellant felt no apprehensions from Sri Ward. It is the prosecution case that the appellant was demanding money not only for himself, but for Sri Hassett and Sri Ward also.

If Sri Ward had stakes in the game, it is obvious that his presence will not disturb the appellant. On the other hand, his presence would indicate that if the demand was satisfied he would be able to fulfil the promise made by him. Similarly the labourers will obviously not go and report the matter to Sri Hassett, when the demand was being made in the name of the Sahib himself. I, therefore, see no improbability in the prosecution case, nor is there anything in the conduct of the labourers which would indicate that the appellant did not make the demand on the 24th and the 25th of October as alleged by the prosecution.

20. A last point urged before me was that there is no explanation why the appellant did not accept the money earlier in the day and why he postponed taking it from hour to hour, if he had really made that demand and if the money was actually paid to him. It was suggested that the money could not be planted upon the appellant earlier and so this delay occurred. I have not been impressed by this contention. It is not for me to determine why the appellant did not accept the money in the Loco-shed. That he did not accept it near the Co-operative Office can be explained. The money had to be collected from the coolies and a list had to be prepared. The appellant did not want to stay there for any length of time. It was easier for him to make Rameshwar Prasad do the dirty work for him and collect the money on his way to the Club. I am, therefore, of the opinion that from whatever angle you might approach the evidence, the guilt of the appellant is proved beyond any reasonable doubt.

21. But the main contention of the counsel for the appellant was that as the sanctioning authority had sanctioned the prosecution of the appellant only u/s 161, I. P. Code, the trial Court had no jurisdiction to try him u/s 5 (2) of the Prevention of Corruption Act and though the trial Court did not convict the appellant u/s 5 (2) still the fact that he was tried u/s 5 (2) vitiated the trial and the conviction of the appellant u/s 161. I. P. Code also cannot be maintained in law. Reliance) for this

contention was placed on a case decided by a single Judge of this Court which is reported in Dharam Sarup Vs. The State, . The learned Judge, who gave this decision, observed:

"The offences u/s 5 (1) are not necessarily covered by Section 161. In some cases they may be so covered but in others they may not. The offence u/s 5 (1) is undoubtedly a graver offence than the one u/s 161, the former being punishable for seven years, while the maximum sentence under the latter section is only three years. Where sanction is accorded u/s 161, Penal Code, it does not amount to a sanction for a graver offence defined in Section 5 (1) and made punishable u/s 5 (2). As already stated, there was no sanction for the prosecution of the appellant u/s 5 (2). The facts alleged in the present case do, no doubt, fall both u/s 161, Penal Code and Section 5 (1) (d), Prevention, of Corruption Act. The question is whether sanction having been granted for prosecution u/s 161 could be availed of by the prosecution for the prosecution of the appellant u/s 5 (2) of the Act.... .....

It was urged that on the analogy of Section 238, Criminal Procedure Code, it may be held that where sanction is granted for a minor offence and no sanction is granted for a major offence and the minor offence is established from the evidence on the record the conviction of the accused may be altered from the major offence to that of a minor offence. In my judgment, this cannot be done. Section 238 assumes that the trial of the accused for the major offence was valid in law. When the trial is valid and it is found that the person charged with a major offence is not guilty of that offence, but is guilty of a minor offence, he may be convicted of the minor offence.

But when the trial itself is vitiated on account of certain extraneous facts, like the absence of a previous sanction, the authority of the Court to alter the conviction does not come into play, because the whole trial is vitiated and there is nothing before the Court upon which it can exercise the discretion vested in it u/s 238, Criminal Procedure Code. There being no sanction for the prosecution of the appellant u/s 5 (2), Prevention of Corruption Act, he cannot be convicted u/s 161, Indian Penal Code." I have given anxious thought to the view expressed above but with all respect to the learned Judge I find myself in disagreement with this view. In my opinion the learned Judge came to his conclusions because he accepted certain premises which he did not test. It also appears from the extract quoted above that Section 230, Criminal Procedure Code which was the relevant section was not placed before him and the counsel for the State wrongly relied on Section 238, Criminal Procedure Code which was entirely inapplicable. A very important and relevant part of the Privy Council decision reported in AIR 1948 82 (Privy Council) also escaped the attention of the learned Judge.

22. The rule of sanction as incorporated in Section 6, Prevention of Corruption Act, is based on the principle that public servants should be protected from malicious and irresponsible prosecutions. The right to prosecute them has been taken away from individuals and the prosecuting agencies and it has been vested in the departmental

heads which are called sanctioning authorities. It is not necessary to enumerate the administrative reasons which have necessitated this salutary rule. This rule acts as a brake on the course of the general law and the sanctioning authorities alone can unloosen this brake, as observed by the learned Judges in Indu Bhusan Chatterjee Vs. The State, :

"The provision for sanction is a most salutary safeguard. The sanctioning authority is placed somewhat in the position of a sentinel at the door of criminal Courts in order that no irresponsible or malicious prosecution can pass the portals of the Court of justice."

It was, therefore, necessary for the prosecution not only to procure the order sanctioning prosecution of an offender but also to satisfy the Court that this order was given after the sanctioning authority had fully applied his mind to the facts on the basis of which a charge was levelled against the offender.

23. In the Calcutta case cited above the learned Judges observed :

"It has now been authoritatively decided that where the terms of a section are as imperative as those of Section 6 of Act II of 1947, a valid sanction is a condition precedent to a valid prosecution. A valid sanction means sanction given after a consideration of all relevant facts."

24. In this case it cannot be challenged that the sanction to prosecute the appellant was given after full consideration. This is apparent from the contents of the sanction itself. In paragraph 1 the detailed facts of the case are enumerated and then comes the second paragraph which runs as follows :

"I Hiranand Pessumal Hira, General Manager, G.I.P. Railway, have gone into the facts of the case and have applied my mind. I am of the opinion that L. Jacobs should be tried in a Court of law, for having committed the above alleged offences." Then follows paragraph 3 which is as follows :

"Whereas u/s 6 (c) of Act II of 1947, no Court can take cognizance of offences punishable u/s 120-B/161, I-P-C. and Section 161/109, I. P. Code alleged to have been committed by a public servant except with the previous sanction of the authority competent to remove him from office..... .....

I do hereby accord sanction for institution of criminal proceedings against L. Jacobs, for having committed the above alleged offences..... ....."

25. In my opinion even if the first part of paragraph 3 had not been included, it would still have been a perfectly valid sanction. The rule of sanction only requires that the sanctioning authority should remove the brake placed on the normal course of law after due consideration of all the relevant facts. It does not and cannot expect a departmental head to be an expert in criminal law and to determine with certainty as to which label will appropriately cover the offence committed by an

offender. The same illegal act or omission may be punishable under more than one penal statute and so long as sanction is given to prosecute an offender for a particular act or omission which is clearly stated, it is irrelevant and immaterial whether this illegal act or omission constitute the offence mentioned in the order of sanction or some other offence. In other words, the order of sanction only amounts to a permission given by the appropriate authority that a public servant who has committed an offence should be tried for that offence and not that he should be tried under a particular section of any penal statute.

26. Offence is defined in Sub-section (o) of Section 4 of the Criminal Procedure Code. The definition runs as follows :

" ''Offence'' means any act or omission made punishable by any law for the time being in force.....--"

27. When a sanction is given, it confers jurisdiction on a competent Court to try the of fender for an offence meaning thereby the alleged illegal act or omission and not merely to try him under that particular label which is given to it by the sanctioning authority. It is obvious that the rule of sanction does not restrict the rights of any criminal Court conferred upon it by the Criminal Procedure Code once the brake is removed and the criminal proceedings are initiated. The learned Judge who decided Dharam Sarup Vs. The State, , in my opinion overlooked this distinction between an offence and the label put upon that offence. He seemed to think that sanction is given for the label and not for the offence. A valid sanction is necessary only for taking cognizance of a case but once a proper cognizance is taken, the Court can exercise and should exercise all the rights given to it under the Criminal Procedure Code. As observed by a learned Judge in Ram Pukar Singh Watchman Vs. The State, .

"Sanction to prosecute is required only for the purpose of taking cognizance of an offence; once the cognizance is taken, its utility is exhausted and it is no longer needed, either during the enquiry into the guilt of the accused or for the purpose of convicting him." I am in agreement with this view. In my opinion it is the duty of the Court to try the offender under that section which in its opinion most appropriately covers the illegal act or omission of the offender. This discretion is given under the provisions of Section 230, Criminal Procedure Code. The section runs thus :

"If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded."

Under this section if the Court finds that certain fresh facts have come to its knowledge which have changed the aspect of the case and necessitate an alteration or addition of a charge for which a fresh sanction is necessary then it would stop proceedings in the case and await the new sanction but where the facts remain the

same, it will proceed with the altered and added charge on the basis of the sanction already obtained. The real test is whether the new or altered charge is based on the same facts which have already been considered by the sanctioning authority or whether some new facts have come to light in evidence which require its reconsideration. The stress is clearly on facts and not on the penal section applied to those facts. This point was fully dealt with by the Privy Council in AIR 1948 82 (Privy Council) They observed as follows:

"Mr. Megaw for the respondent has suggested that this view of the law (that the sanctioning authority must apply its mind to the facts of the case) would involve in every case that the Court would be bound to see that the case proved corresponded exactly with the case for which sanction had been given. But this is not so. The giving of sanction confers jurisdiction on the Court to try the case and the Judge or Magistrate having jurisdiction must try the case in the ordinary way under the Code of Criminal Procedure. The charge need not follow the exact terms of the sanction, though it must not relate to an offence essentially different from that to which the sanction relates."

Their Lordships then quoted Section 230, Criminal Procedure Code and observed :

""The latter words indicate that the Legislature contemplated that sanction under the Code would be given in respect of the facts constituting the offence charged."

It can thus safely be held that sanction to prosecute is given on facts and not under any particular section of any penal law.

28. The rule of sanction is incorporated in the Criminal Procedure Code though in another form. Sections 195 to 199, Criminal Procedure Code lay down that in certain cases proceedings can only be initiated by particular persons or authoritios. There are certain offences in which only a Court can file a complaint. Sections 193 and 194, I.P.C. are amongst these offences. Both these sections deal with giving false evidence on oath in a judicial proceeding. Section 194 is a graver offence as compared to Section 193 and while the maximum punishment u/s 194 is transportation for life, the highest punishment u/s 193 is only seven years. If the reasoning given in Dharam Sarup''s case (A) is accepted, then where a Court files a complaint u/s 193, I. P. Code against an offender, the Court who takes cognizance of the case cannot convict him u/s 194 although perjury was committed by the accused at the trial of an offence punishable with death. I am unable to accept this reasoning for it ignores the provisions of Section 230, Criminal Procedure Code.

29. I am, therefore, of the opinion that the trial Court acted within its rights when it tried the appellant u/s 5 (2) of the Prevention) of Corruption Act. It could do so under the latter half of Section 230, Criminal Procedure Code. Nothing has been placed before mo to show that the appellant was in any way prejudiced by the addition of the charge. I find no force in this legal contention as no irregularity or illegality was committed by the trial Court.

30. It was urged in the end that the sentence inflicted by the trial Court was very severe as the appellant had already lost his job. Whenever a public servant is convicted of such an offence invariably he will be dismissed from service. This consideration alone therefore, can never be a good reason for inflicting a light sentence when the Legislature treats it as a grave offence as is evident from the preamble of the Prevention of Corruption Act (Act II of 1947). But there are two other circumstances which have influenced me in coming to the conclusion that the sentence passed in this case was excessive. The offence was committed on the 1st of November, 1950 more than six years ago and the appellant was subjected to two long and protracted trials not on account of any delaying tactics adopted by him but because the law was changed.

In defending himself he had to incur a huge expenditure. Again I find that according to the prosecution case itself he was acting only as a tool of some persons who were higher up and the first charge framed against him on 24-11-1951 also points the same way. I cannot help feeling that the major part of the illegal gratification collected by the appellant would have gone to other pockets. For these reasons I am of the opinion that a sentence of fine alone will meet the ends of justice in this case. I, therefore, set aside the sentence of imprisonment but increase the-amount of fine from Rs. 500/- to Rs. 1,000/-. In default of payment of fine the appellant shall undergo one year''s R. I. The fine should be deposited within three months. The appellant is on bail. He need not surrender.

31. With the modification mentioned above, the appeal is dismissed.