Sajjan Singh

Vs

The State of Punjab

Criminal Appeal No. 98 of 1960

(CJI S. K. Das, M Hidayatullah, K. C. Das Gupta JJ)

28.08.1963

JUDGMENT

DAS GUPTA J. –

Sajan Singh, son of Chanda Singh, jointed the service of the Punjab Government in January 1922 as an Overseer in the Irrigation Department. He continued as Overseer till July 1944 when he became a Sub-divisional Officer in the Department. From the date till May 1947 he worked as Sub-Divisional Officer in that part of Punjab which has now gone to West Pakistan. From November 30, 1947 to September 26, 1962 he was employed as Sub-Divisional Officer of Drauli Sub-Division of the Nangal Circle, except for a short break from November 8, 1950 to April 3, 1951, when he was on leave. The work of excavation for the Nangal Project within the Drauli Sub-Division was carried out by several contractors, including Ramdas Chhankanda Ram and M/s. Ramdas Jagdish Ram. On December 7, 1952, the General Manager, Bhakra Dam, made a complaint in writing to the Superintendent of Police, Hoshiarpur, alleging that Sajjan Singh and some other officials subordinate to him had by illegal and corrupt means and by abusing their position as public servants, dishonestly and fraudulently, obtained illegal gratification from the contractors Ramdas Chhankanda Ram and M/s. Ram Das Jagdish Ram by withholding their payments and putting various obstacles in the smooth execution of the work entrusted to them. A case under s. 45(2) of the Prevention of Corruption Act, 1947 was registered on the basis of this complaint, which was treated as a first information report and after sanction of the Government of Punjab had been obtained for the prosecution of Sajjan Singh under s. 5(2) of the Prevention of Corruption Act and s. 161/165 of the Indian Penal Code, Sajjan Singh was tried by the Special Judge, Ambala, on a charge under s. 5(2) of the Act.

The learned Special Judge convicted him under s. 5(2) of the Prevention of Corruption Act and sentenced him to rigorous imprisonment for one year and a fine of Rs. 5000/- in default of payment of fine, he was directed to undergo rigorous imprisonment for six months. The conviction and sentence were confirmed by the Punjab High Court, on appeal. The High Court however rejected the State's application for enhancement of the sentence. The present appeal is by Sajjan Singh against his conviction and sentence under s. 5(2) of the Prevention of Corruption Act by special leave of this Court.

The prosecution case is that after work had been done by the firm Ramdas Chhankandas for several months, and some 'running' payments had been received without difficulty, the appellant demanded from Ram Das, one of the partners of the firm, his commission on the cheques issued to the partnership firm. It is said that Ram Das at first refused. But, ultimately when the appellant started unnecessary criticism of the work done by them and even withholding some running payments the

partners of the firm decided to pay commission to him as demanded. The first payment, it is said, was made on March 21, 1949 and further payments were thereafter made from time to time. The case is that the partnership paid altogether a sum of Rs. 10,500/- in cash as commission to the appellant, besides paying Rs. 2,000/- to him for payment to the Executive Engineer and Rs. 241/12/- made up of small sums paid on different occasions on behalf of the accused. All these payments made to the appellant were fully entered in the regular Rokar and Khata Bhais of the partnership under a fictitious name of Jhalu Singh, Jamadar, though a few of the later payments were entered in these books in Sajjan Singh's own name. In order to allay suspicion some fictitious credit entries were also made in the books. The prosecution also alleged payment to the appellant of Rs. 1,800/- by another firm M/s. Ram Das Jagdish Ram. But as that has not been found to be proved it is unnecessary to mention details of the allegations in that connection.

To prove its case against the appellant the prosecution relied on the testimony of three partners of the firm who claimed to have made payments and on various entries in the several books of account of the firm. The prosecution also tried to prove the guilt of the accused by showing that the pecuniary resources and property that were in the appellant's possession or in the possession of his wife, Daya Kaur, and his son, Bhupinder Singh, on his behalf were disproportionate to the appellant's known sources of income. The learned Special Judge mentioned the possession of pecuniary resources and property disproportionate to his known sources of income in the charge framed against the accused. According to the prosecution the total assets held by the appellant, and his wife, Daya Kaur, and his son Bhupinder Singh on his behalf, on December 7, 1952 amounted to Rs. 1,47,502/12/-, while his total emoluments upto the period of the charge would come to about Rs. 80,000/-.

The main defence of the appellant as regards this allegation of possession of pecuniary resources and property disproportionate to his known sources of income was that the property and pecuniary resources held by his wife and son were not held on his behalf and that what was in his possession amounted to less that what was in his possession amounted to less than Rs. 50,000/- and can by no means be said to be disproportionate to his known sources of income. In denying the charge against him the appellant also contended that false evidence had been given by the three partners and false and fictitious books prepared by them in support of their own false testimony.

The learned Special Judge rejected the defence contention that the account books on which the prosecution relied had not been kept regularly in the course of business and held the entries therein to be relevant under s. 34 of the Indian Evidence Act. He accepted the defence contention that evidence of the partners who were in the position of accomplices required independent corroboration and also that the account books maintained by themselves would not amount to independent corroboration. Independent corroboration was however in the opinion of the learned Judge furnished by the fact that some admitted and proved items of payment were interspersed in the entire account books. The learned Judge also accepted the prosecution story as regards the possession of pecuniary resources and property by the appellant's wife and his son on his behalf and adding these to what was in the appellant's own possession he found that the total pecuniary resources and property in his possession or in the possession of his wife and son were disproportionate to his known sources of income, and that such possession had not been satisfactorily accounted for. He concluded that the presumption under s. 5(3) of the Prevention of Corruption Act was attracted. On all the findings he found the appellant guilty of the charge for criminal misconduct in the discharge of his duties and convicted and sentenced him as stated above.

The two learned Judges of the Punjab High Court who head the appeal differed on the question

whether pecuniary resources and property acquired before March 11, 1947, when the Prevention of Corruption Act came into force, could be taken into consideration for the purpose of s. 5(3) of the Act. In the opinion of Mr. Justice Harbans Singh these could not be taken into consideration. Taking into consideration the assets acquired by the appellant after January 1948 the learned Judges held that these came to just above Rs. 20,000/- and could not be held to be disproportionate to his known sources of income. The other learned Judge, Mr. Justice Capoor, was of opinion that pecuniary resources and property acquired prior to March 11, 1947 had also to be taken into consideration in applying s. 5(3) of the Prevention of Corruption Act if they were in the possession of the accused or anybody on his behalf, on the date when the complaint was lodged. He agreed with the Special Judge that certain assets possessed by Daya Kaur and Bhupinder Singh were possessed by them on behalf of the appellant and that those possessed by him, or by his wife and son on his behalf were much in excess of his known sources of income, even without making any allowance for his house-hold expenses. Mr. Justice Capoor further held that even if the pecuniary resources or property acquired during the period April 1, 1947 to June 1, 1950 as suggested on his behalf of the appellant were considered such assets held by the appellant or any other person on his behalf were more than double of the known sources of his income without making any allowance whatever for the appellants' house-hold expenses. In the opinion of the learned Judge a presumption under sub-section 3 of s. 5 of the Act therefore arose that this appellant had committed the offence, as the appellant had not been able to prove to the contrary. Both the learned Judges agreed that the witnesses who gave direct evidence about the payment of illegal gratification could not be relied upon without independent corroboration and that the entries in the books of account did by themselves amount to such corroboration, but that the fact of admitted and proved items being interspersed in the entire account furnished the required corroboration. In the result, as has been already stated, the learned Judges affirmed the conviction and sentence.

In support of the appeal Mr. I. M. Lall has attacked the finding that the books of account were kept regularly in the course of business and has contended that the entries therein were not relevant under s. 34 of the Indian Evidence Act. He further contended that even if they be relevant evidence the Special Judge as also the High Court while rightly thinking that they by themselves did not amount to independent corroboration, were in error when they though that the fact of certain admitted entries being interspersed through the books of account furnished the necessary independent corroboration. Mr. Lall has also argued that the Special Judge as well as Mr. Justice Capoor in the High Court were wrong in drawing a presumption under s. 5(3) of the Prevention of Corruption Act.

We shall first consider the question whether on the evidence on the record a presumption under s. 5(3) of the Prevention of Corruption Act arose. It is useful to remember that the first sub-section of s. 5 of the Prevention of Corruption Act mentions in the four clauses a, b, c and d, the acts on the commission of which a public servant is said to have committed an office of criminal misconduct in the discharge of his duties. The second sub-section prescribes the penalty for that offence. The third sub-section is in these words :-

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

This sub-section thus provides an additional mode of proving an offence punishable under sub-s. 2

for which any accused person is being tried. This additional mode is by proving the extent of the pecuniary resources or property in the possession of the accused or any other person on his behalf and thereafter showing that this is disproportionate to his known sources of income and that the accused person cannot satisfactorily account for such possession. If these facts are provided the section makes it obligatory on the Court to presume that the accused person is guilty of criminal misconduct in the discharge of his official duty, unless the contrary, i.e., that he was not so guilty is proved by the accused. The section goes on to say that the conviction for an offence of criminal misconduct shall not be invalid by reason only that it is based solely on such presumption.

This is a deliberate departure from the ordinary principle of criminal jurisprudence, under which the burden of proving the guilt of the accused in criminal proceedings lies all the way on the prosecution. Under the provision of this sub-section the burden on the prosecution to prove the guilt of the accused must be held to be discharged if certain facts as mentioned therein are proved; and then the burden shifts to the accused and the accused has to prove that in spite of the assets being disproportionate to his known source of income, he is not guilty of the offence. There can be no doubt that the language of such a special provision must be strictly construed. If the words are capable of two constructions, one of which is more favourable to the accused than the other, the Court will be justified in accepting the one which is more favourable to the accused. There can be no justification however for adding any words to make the provision of law less stringent than the legislature has made it.

Mr. Lall contends that when the section speaks of the accused being in possession of pecuniary resources or property disproportionate to his known to his known source of income only pecuniary resources or property acquired after the date of the Act is meant. To think otherwise, says the learned Counsel, would be to give the Act retrospective operation and for this there is no justification. We agree with the learned Counsel that the Act has no retrospective operation. We are unable to agree however that to take into consideration the pecuniary resources or property in the possession of the accused or any other person on his behalf which are acquired before the date of the Act is in any way giving the Act a retrospective operation.

A statute cannot be aid to retrospective "because a part of the requisites for its action is drawn from a time antecedent to its passing". (Maxwell on Interpretation of Statutes, 11th Edition, p. 211; See also State of Maharashtra v. Vishnu Ramchandra ([1961] 2 S.C.R. 26.). Notice must be taken in this connection of a suggestion made by the learned Counsel that in effect sub-section 3 of section 5 creates a new offence in the discharge of official duty, different from what is defined in the four clauses of s. 5(1). It is said that the act of being in possession of pecuniary resources or property disproportionate to known sources of income, if it cannot be satisfactorily accounted for, is said by this sub-section to constitute the offence of criminal misconduct in addition to those other acts mentioned in cls. a, b, c and d of s. 5(1) which constitute the offence of criminal mis-conduct. On the basis of this contention the further argument is built that if the pecuniary resources or property acquired before the date of the Act is taken into consideration under sub-section 3 what is in fact being done is that a person is being convicted for the acquisition of pecuniary resources or property, though it was not in violation of a law in force at the time of the commission of such act of acquisition. If this argument were correct a conviction of a person under the presumption raised under the s. 5(3) in respect of pecuniary resources or property acquired before the Prevention of Corruption Act would be a breach of fundamental rights under Art. 20(1) of the Constitution and so it would be proper for the Court to construe s. 5(3) in a way so as not to include possession of pecuniary resources or property acquired before the Act for the purpose of that sub-section. The basis of the argument that s. 5(3) creates a new kind of offence of criminal misconduct by a public

servant in the discharge of his official duty is however unsound. The sub-section does nothing of the kind. It merely prescribes a rule of evidence for the purpose of proving the offence of criminal misconduct as defined in s. 5(1) for which an accused person is already under trial. It was so held by this Court in C. D. S. Swamy v. The State ([1960] 1 S.C.R. 461.) and again in Surajpal Singh v. State of U. P. It is only when a trial has commenced for criminal misconduct by doing one or more of the acts mentioned in cls. a, b, c and d of s. 5(1) that sub-s. 3 can come into operation. When there is such a trial, which necessarily must be in respect of acts committed after the Prevention of Corruption Act came into force, sub-section 3 places in the hands of the prosecution a new mode of proving an offence with which an accused has already been charged.

Looking at the words of the section and giving them their plain and natural meaning we find it impossible to say that pecuniary resources and property acquired before the date on which the Prevention of Corruption Act came into force should not be taken into account even if in possession of the accused or any other person on his behalf. To accept the contention that such pecuniary resources or property should not be taken into consideration one has to read into the section the additional words "if acquired after the date of this Act" after the word "property". For this there is no justification.

It may also be mentioned that if pecuniary resources or property acquired before the date of commencement of the act were to be left out to account in applying sub-s. 3 of s. 5 it would be proper and reasonable to limit the receipt of income against which the proportion is to be considered also to the period after the Act. On the face of it this would lead to a curious and anomalous position by no means satisfactory or helpful to the accused himself. For, the income received during the years previous to the commencement of the Act may have helped in the acquisition of property after the commencement of the Act. From whatever point we look at the matter it seems to us clear that the pecuniary resources and property in the possession of the accused person or any other person on his behalf have to be taken into consideration for the purpose of sub-section 3 of section 5, whether these were acquired before or after the Act came into force.

Mention has next to be made of the learned Counsel's submission that the section is meaningless. According to the learned Counsel, every pecuniary resources or property can be disproportionate to the known sources of income. This argument is wholly misconceived. While it is quite true that pecuniary resources and property are themselves sources of income that does not present any difficulty in understanding a position that at a particular point of time the total pecuniary resources or property can be regarded as assets, and an attempt being made to see whether the known sources of income including, it may be, these very items of property in the past could yield such income as to explain reasonably the emergence of these assets at this point of time.

Lastly it was contended by Mr. Lall that no presumption under s. 5(3) can arise if the prosecution has adduced other evidence in support of its case. According to the learned Counsel, s. 5(3) is at the most an alterative mode of establishing the guilt of the accused which can be availed of only if the usual method of proving his guilt by direct and circumstantial evidence is not used. For this astonishing proposition we can find no support either in principle or authority.

Mr. Lall sought assistance for his arguments from a decision of the Supreme Court of the United States of America in D. Del Vecchio v. Bowers (296 U.S. 280 : 80 L.ed. 229.). What fell to be considered in that case was whether a presumption created by s. 20(d) of the Longshoremen's and Harbor Workers' Compensation Act that the death of an employee was not suicidal arose where evidence had been adduced by both sides on the question whether the death was suicidal or not. The

Court of Appeal had held that as the evidence on the issue of accident or suicide was in its judgment evenly balanced the presumption under s. 20 must tip the scales in favour of accident. This decision was reversed by the learned Judges of the Supreme Court. Section 20 which provided for the presumption ran thus :-

> "In any proceedings for the enforcement of a claim for compensation ...... it shall be presumed, in the absence of substantial evidence to contrary - that the injury was not occasioned by the wilful intention of the injured employee to injure or kill himself or anther."

On the very words of the section the presumption against suicide would arise only if substantial evidence had not been adduced to support the theory of suicide. It was in view of these words that the learned Judges observed :-

> "The statement in the act that the evidence to overcome the effect of the presumption must be substantial adds nothing to the well understood principle that a finding must be supported by evidence. Once the employer has carried his burden by offering testimony sufficient to justify a finding of suicide, the presumption falls out of the case. It never had and cannot acquire the tribute of evidence in the claimant's favour. Its only office is to control the result where there is an entire lack of competent evidence. If the employer alone adduces evidence which tends to support the theory of suicide, the case must be decided upon that evidence. Where the claimant offers substantial evidence in opposition, as was the case here, the issue must be resolved upon the whole body of proof pro and con."

The whole decision turns upon the words in the absence of substantial evidence". These or similar words are conspicuous by their absence in sub-s. 3 of s. 5 of the Prevention of Corruption Act, and consequently, Del Vecchio's Case (226 U.S. 280.) is of no assistance.

Mr. Lall then drew our attention to an observation of Lord Denning in Bratty v. Attorney General for Northern Ireland ([1961] 3 All. E.R. p. 523 at 535.) where speaking about the presumption that every man has sufficient mental capacity to be responsible for his crimes, the Lord Justice observed that the presumption takes the place of evidence. Similarly, argues Mr. Lall, the presumption under s. 5(3) of the Prevention Corruption Act also merely "takes the place" of evidence. So, he says, it can arise only if no evidence has been adduced. We are not prepared to agree however that when the Lord Justice used the words "a presumption takes the place of evidence" he meant that if some evidence had been offered by the prosecution the prosecution could not benefit by the presumption. We see no warrant for the proposition that where the law provides that in certain circumstances a presumption shall be made against the accused the prosecution is barred from adducing evidence in support of its case if it wants to rely on the presumption.

Turning now to the question whether the facts and circumstances provided in this case raise a presumption under s. 5(3), we have to examine first whether certain pecuniary resources or property in possession of Daya Kaur and those in possession of Bhupinder Singh were possessed by them on behalf of the appellant as alleged by the prosecution. On December 7, 1952, Bhupinder Singh has been provided to have been in possession of : (1) Rs. 28,998/7/3/- in the Punjab National Bank; (2) Rs. 20,000/- in fixed deposit with the Bank of Patiala at Doraha; (3) Rs. 5,577/- in the Imperial Bank of India at Moga; (4) Rs. 237/8/3/- in the Savings Bank Account in the Bank of Patiala at Doraha; and (5) Half share in a plot of land in Ludhiana of the value Rs. 11,000/-.

Bhupinder Singh has given evidence (as the 11th witness for the defence) and has tried to support his father's case that none of the properties were held by him on behalf of his father. Bhupinder Singh has been in military service since 1949 and was at the time when he gave evidence a Captain in the Indian Army. If the bank deposits mentioned above had been made by him after he joined military service there might have been strong reason for thinking that they were his own money. That however is not the position. Out of the sum of Rs. 28,998/- with the Punjab National Bank a part is admittedly interest; the remainder, viz., about Rs. 26,000/- was deposited by Bhupinder Singh in his account long before 1949 when he joined military service. His explanation as to how he got this money is that Rs. 20,200/- was received by him from Udhe Singh in December 1945 and Rs. 6,000/- was given to him by his grand-father Chanda Singh. Udhe Singh has given evidence in support of the first part of the story and has said that he paid Rs. 20,200/- to Bhupinder Singh in payment of what he owned to Bhupinder Singh's grandfather Chanda Singh and to his father Sajjan Singh. When asked why he made the payments to Bhupinder Singh, son of Sajjan Singh instead of to Chanda Singh or to Chanda Singh's son Surjan Singh, Udhe Singh replied that he did so "because my account was with Sardar Sajjan Singh."

Udhe Singh it has to be remembered is a close relation of Sajjan Singh, Sajjan Singh's father Chanda Singh being Udhe Singh's mother's brother.

On a careful consideration of the evidence of these two witnesses, Bhupinder Singh and Udhe Singh and also the registered letter which was produced to show that a pucca receipt was demanded for an alleged payment of Rs. 20,000/- we have come to the conclusion that the Special Judge has rightly disbelieved the story that this sum of Rs. 20,000/- was paid by Udhe Singh to Bhupinder Singh. It has to be noticed that even if this story of payment was believed that would not improve the appellant's case. For, according to the Udhe Singh this payment was made by him to Bhupinder Singh on behalf of his father. In any case, therefore, this amount of Rs. 20,200/- was Sajjan Singh's money. As regards the other amount of Rs. 6000/- which formed part of the deposits in the Punjab National Bank and a further sum of Rs. 20,000/- in fixed deposit with the Bank of Patiala the defence case as sought to be proved by Bhupinder Singh was that these were received by him from his grand-father Chanda Singh. The learned Special Judge disbelieved the story and on a consideration of the reasons given by him we are of opinion that this conclusion is correct.

When it is remembered that Bhupinder Singh was at the relevant dates a student with no independent income or property of his own the reasonable conclusion from the rejection of his story about these amount is, as held by the Special Judge, that these were possessed by him on behalf of his father, Sajjan Singh. We are also convicted that the Special Judge was right in his conclusion that Rs. 5,577/- in the Imperial bank of India at Moga, Rs. 237/8/3 in the Saving bank Account in the Bank of Patiala at Doraha and the half share in a plot of land in Ludhiana of the value of Rs. 11,000/- standing in the name of Bhupinder Singh were held by Bhupinder Singh on behalf of his father, Sajjan Singh. It has to be mentioned that Mr. Justice Capoor in the High Court agreed with these conclusions while the other learned Judge (Mr. Justice Harbans Singh) did not examine this question at all being wrongly of the opinion that the properties acquired prior to March 11, 1947 should not be taken into consideration.

Thus even if we leave out of account the amount of Rs. 26,500/- standing in the name of the appellant's wife Daya Kaur which according to the prosecution was held by her on behalf of her husband, Sajjan Singh, it must be held to be clearly established that the pecuniary resources or property in possession of Sajjan Singh and his son, Bhupinder singh, on his behalf amounted to more than Rs. 1,20,000/-. The question then is : Was this disproportionate to the appellant's known

sources of income ? As was held by this Court in Swamy's case ([1960] 1 S.C.R. 461.) "the expression ' known sources of income' must have reference to sources known to the prosecution on a thorough investigation of the case" an that it could not be contended that 'known sources of income' meant sources known to the accused. In the present case the principal source of income known to the prosecution was what the appellant received as his salary. The total amount received by the appellant throughout the period of his service has been shown to be slightly less than Rs. 80,000/-. The appellant claimed to have received considerable amounts as travelling allowance as Overseer and S.D.O. and also as horse and conveyance allowance. For the period of has service prior to May 1947, the records which would have shown what the accused drew as travelling allowance were not available. The Special Judge found that from May 1947 upto January 1953 the appellant got Rs. 6,504/6/- as travelling allowances. On that basis he also held that for the period of service as S.D.O. prior to May 1947 he may have got about Rs. 5,000/- 5,000/- at the most. For the period of his service as Overseer, the learned Special Judge held that, travelling allowance, including the horse allowance. No reasonable objection can be taken to the conclusion recorded by the Special Judge as regards the travelling allowance drawn by the appellant for the period of his service as S.D.O. It was urged however that Rs. 100/- a year as travelling allowance is too low an estimate for his services as Overseer. As the relevant papers are not available it would be proper to make a liberal estimate under this head favourable to the appellant. Even at the most liberal estimate it appears to us that the total receipts as travelling allowance as Overseer could not have exceeded Rs. 5,000/-.

One cannot also forget that much of what is received as travelling allowances has to be spent by the officer concerned in travelling expenses itself. For many officers it is not unlikely that travelling allowance would fall short of these expenses and they would have to meet the deficit from their own pocket. The total receipt that accrued to the appellant as the savings out of travelling allowance inclusive of horse allowance and conveyance allowance, could not reasonably be held to have exceeded Rs. 10,000/- at the most. Adding these to what he received as salary and also as Nangal Compensatory allowance the total income received during the years would be about Rs. 93,000/-. It also appears that income by way of interest was earned by the appellant on his provident fund and also the bank deposits standing in his own name or in the name of his son, Bhupinder Singh. The income under this head appears to be about Rs. 10,000/-.

The total receipts by the appellant from his known sources of income thus appears to be about Rs. 1,03,000/-. If nothing out of this had to be spent for maintaining himself and his family during all these years from 1922 to 1952 there might have been ground for saying that the assets in the appellant's possession, through himself or through his son (Rs. 1,20,000/-) were not disproportionate to his known sources of income. One cannot however live on nothing; and however frugally the appellant may have lived it appears to us clear that at least Rs. 100/- per month must have been his average expenses throughout these years-taking the years of high prices and low prices together. These expenses therefore cut a big slice of over Rs. 36,000/- from what he received. The assets of Rs. 1,20,00/- have therefore to be compared with a net income of Rs. 67,000/-. They are clearly disproportionate - indeed highly disproportionate.

Mr. Lall stressed the fact that the legislature had not chosen to indicate what proportion would be considered disproportionate and he argued on that basis that the Court should take a liberal view of the excess of the assets over the receipts from the known sources of income. There is some force in this argument. But taking the most liberal view, we do not think it is possible for any reasonable man to say that assets to the extent of Rs. 1,20,000/- is anything but disproportionate to a net income of Rs. 1,03,00/- out of which at least Rs. 36,000/- must have been spent in living expenses.

The next question is : Has the appellant satisfactorily accounted of these disproportionately high assets ? The Special Judge has examined this question carefully and rejected as untrustworthy the appellant's story of certain receipts from one Kabul Singh, his son Teja Singh, and from his father, Chanda Singh. These conclusions appear to us to be based on good and sufficient reasons and we can see nothing that would justify us in interfering with these.

The protection has thus proved facts on which it becomes the duty of the Court to assume that the accused has committed the offence with which he is charged, unless the contrary is proved by him. Mr. Lall has submitted that if the other evidence on which the prosecution relied to prove its case against the appellant is examined by us, he will be able to satisfy us that that evidence is wholly insufficient to prove the guilt of the accused. It has to be remembered however that the fact - assuming it to be a fact in this case - that the prosecution has failed to prove by other evidence the guilt of the accused, does not entitled the Court to say that the accused has succeeded in proving that the did not commit the offence.

Our attention was drawn in this connection to this Court's decision in Surajpal Singh's Case([1961] 2 S.C.R. 971.) where this Court set aside the conviction of the appellant Surajpal Singh on the basis of the presumption under s. 5(3). What happened in that case what that though the accused had been charged with having committed the offence of criminal misconduct in the discharge of his duty by doing the acts mentioned in cl. (c) of sub-s. 1 of s. 5, the Special Judge and the High Court convicted him by invoking the rule of presumption laid down in sub-s. 3 of s. 5, of an offence under cl. (d) of s. 5(1). This Court held that it was not open to the Courts to do so. This case is however no authority for the proposition that the courts could not have convicted the accused for an offence under s. 5(1)(c) for which he had been charged. On the contrary it seems to be a clear authority against such a view. After pointing out that the charge against the appellant was that he has dishonestly and fraudulently misappropriated or otherwise converted for his own use property entrusted to him, this Court observed :-

> "It was not open to the learned Special Judge to have convicted the appellant of that offence by invoking that rule of presumption laid down in sub-section (3). He did not however to do so. On the contrary he acquitted the appellant on that charge. Therefore, learned Counsel has submitted that by calling in aid the rule of presumption in sub-sc. 3 the appellant could not be found guilty of any other type of criminal misconduct referred to in cls. (a), (b) or (c) of sub-s. (1) in respect of which there was no charge against the appellant.
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> "We consider that the above argument of learned Counsel for the appellant is correct and must be accepted."

The appellant's Counsel is not in a position to submit that there is evidence on the record which would satisfy the Court that the accused has "proved the contrary", that is, that he had not committed the offence with which he was charged.

We have therefore come to the conclusion that the facts proved in this case raise a presumption under s. 5(3) of the Prevention of Corruption Act and the appellant's conviction of the offence with which he was charged must be maintained on the basis of that presumption. In this view of the matter we do not propose to consider whether the High Court was right in basing its conclusion also on the other evidence adduced anther case to prove the actual payment of illegal gratification by the partners of the firms M/s. Ramdas Chhankanda Ram.

Lastly, Mr. Lall prayed that the sentence be reduced. The sentence imposed on the appellant is one year's rigorous imprisonment and a fine of Rs. 5,000/-. Under s. 5(2) the minimum sentence has to be one years' imprisonment, subject to the proviso that the Court may for special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year. We are unable to see anything that would justify us in taking action under the proviso.

In the result, the appeal is dismissed.

Appeal dismissed.

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