Coal Company v. *Boloram Mahata* (1) was relied upon. Coutts Trotter, C. J., was also of the opinion that the covenant was not too vague to be enforced. But this again was a case not of interfering with the determination of a valuer but of specific performance of a contract of renewal and it was held that by taking evidence even a vague and indefinite covenant relating to renewal could be made definite.

In my opinion, therefore, the Court cannot go into the question of correctness or otherwise of the determination of the lease and the appeal should therefore be dismissed with costs.

BY COURT.—In view of the opinion of the majority, the appeals are allowed, setting aside the judgment and decree of the High Court dated September 30, 1952. No order as to costs of the hearing in this Court.

Appeals allowed.

THE STATE OF MADHYA PRADESH

v.

MUBARAK ALI

1959

February 3.

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. SUBBA RAO, JJ.)

Criminal Law—Public servant receiving bribe—Investigation by officer below rank of Deputy Superintendent of Police—Permission to investigate granted by Magistrate—Order not disclosing material before Magistrate nor disclosing reasons for order—Permission, if invalid—Investigation, scope of—Prevention of Corruption Act, 1947 (2 of 1947), s. 5A—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 4(1).

Section 5A of the Prevention of Corruption Act, 1947, provided: "No police officer below the rank.....of a deputy Superintendent shall investigate any offence punishable under s. 161, s. 165 or s. 165A of the Indian Penal Code or under s. 5(2) of the Act without the order of.....a magistrate of the first class.....".

(1) (1880) L.R. 7 I.A. 107.

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On January 11, 1955, B, the manager of a company, gave information to the Sub-Inspector of Police, Special Police Establishment, that the respondent, an Assistant Station Master, was demanding a bribe for sending the goods belonging to the company by rail. The Sub-Inspector, after assisting B to trap the respondent, came on the scene, questioned the latter, searched his person and recovered the marked notes and other articles from him. The Sub-Inspector filed an application before the District Magistrate, stating that he had been deputed to investigate the case and the permission might be given to him to do so under s. 5A of the Act. On the application the Magistrate passed the order "permission given." Neither the application nor the order made thereon disclosed that any material was placed before the Magistrate on the basis of which he gave permission. A charge-sheet was filed before the Special Judge. The respondent filed objections questioning, inter alia, the validity of the Magistrate giving permission to the Sub-Inspector to make the investigation. The Special Judge disallowed the objection. On revision, the High Court set aside the order of the Special Judge with a direction that "in order to rectify the defects and cure the illegality" he should order the Deputy Superintendent of Police to carry on the investigation himsef while the case remained pending on his file. The State preferred an appeal against the order of the High Court by special leave:—

Held, that the statutory safeguards under s. 5A of the Prevention of Corruption Act must strictly be complied with for they were conceived in public interest and were provided as a guarantee against frivolous and vexatious prosecutions. A Magistrate cannot surrender his discretion to a police officer, but must exercise it having regard to the relevant material made available to him at the stage of granting permission. He must also be satisfied that there is sufficient reason owing to the exigencies of the administrative convenience to entrust a subordinate officer with the investigation.

Where an officer other than the designated officer seeks to make an investigation, he should get order of a Magistrate empowering him to do so before he proceeds to investigate, and it is desirable that the order giving the permission should ordinarily on the face of it disclose the reasons for giving permission.

Where objection is taken by the accused that the order giving permission was invalid, the prosecution, at the earliest opportunity, must adduce evidence to support the contention that the Magistrate gave the permission only after having satisfied himself on the advisability of doing so on the material placed before him.

H. N. Rishbud & Inder Singh v. *State of Delhi*, [1955] 1 S.C.R. 1150 and *Viswabhusan Naik* v. *The State of Orissa*, [1955] 1 S.C.R. 92, relied on.

Held, further, that an investigation starts after the police officer receives information in regard to an offence, and that as under s. 5 of the Act attempt to obtain from any person any gratification is in itself an offence, any steps taken by the Sub-Inspector after the information was given to him amounted to investigation.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 141 of 1958.

Appeal by special leave from the judgment and order dated November 28, 1957, of the Madhya Pradesh High Court in Criminal Revision No. 78 of 1957, arising out of the judgment and order dated August 21, 1957, of the Court of Special Judge at Gwalior in File No. 2/57 Special Case.

G. C. Mathur and *R. H. Dhebar,* for the appellant.

The respondent did not appear.

1959. February 3. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO, J.—This is an appeal by special leave against the Judgment of the High Court of Madhya Pradesh at Jabalpur directing the Special Judge, Indore, to order the Deputy Superintendent of Police to carry on the investigation afresh. The facts are simple.

One Shri Mohinder Nath Bhalla was the manager of Daisy Sewing Machine Co. Ltd., Bhopal. On January 11, 1955, between 12 and 1 p. m., he contacted the Sub-Inspector of Police, Special Police Establishment, Gwalior, and gave him the following information: The company had opened their stall in the Gwalior Mela and he (Shri Bhalla) had to book empty wooden cases of machine and machine parts from Golakmandir railway station, which was near the Gwalior Mela, to New Delhi. When he went to the station to enquire for booking the said cases, the Station Master demanded annas ten for each case as illegal gratification, but he did not agree to it. Subsequently, the Assistant Station Master agreed to accept annas eight for each case and asked him to bring the wooden cases between 2 and 4 p. m. on the same day, i.e., January 11, 1955. On this allegation he requested the police to take action " to stop the said sort of

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corruption". The police officer went along with the informant to his stall at Gwalior Mela and saw the twenty wooden cases—twelve big and eight small—ready for booking. The said Shri Bhalla gave the police officer a typed complaint signed by him and duly attested by two witnesses. With the assistance of the police officer, a trap was laid. The numbers of the rupee notes intended to be given as bribe to the Assistant Station Master were entered in a memorandum which was attested by witnesses. The said rupee notes were given to Shri Bhalla in the presence of the witnesses. Shri Bhalla was instructed to pay the amount to the Assistant Station Master when demanded by him in such a manner that the witnesses could overhear the conversation and also see the Assistant Station Master taking the bribe. He was also told that on his giving a signal, the police would come on the scene. The plan was carried out in detail as agreed. The Assistant Station Master, after some bargaining, took the bribe, and after the act of bribery was completed, Shri Bhalla gave the prearranged signal. The Sub-Inspector then went to the Station Office and disclosed his identity to the Assistant Station Master in the presence of witnesses and asked him to produce the money taken by him as bribe. The Assistant Station Master, when questioned by the Sub-Inspector, gave him his name and also produced the notes which he had kept in his pocket. The police officer took those notes and counted them. The numbers on those notes tallied with those noted in the memorandum. He then searched the person of the Assistant Station Master and secured the articles found on him. He also searched the person of Shri Bhalla and took from his shirt two currency notes, which he did not give to the Assistant Station Master, as the bargain was struck at a smaller amount, and secured the same. The numbers of those notes also tallied with the corresponding numbers noted in the memorandum. Thereafter, a memorandum of the articles recovered was prepared in the presence of the witnesses and was duly attested by them. The forwarding note, together with the record copy of the

R/R prepared in respect of the booking of the twenty wooden cases to New Delhi, was taken possession of and another memorandum was prepared in regard to them. An inventory of the twenty wooden cases lying on the platform near the weighing machine as booked by the Assistant Station Master was also prepared and the same was attested by the witnesses. The Sub-Inspector, having regard to the aforesaid facts, came to the conclusion that the facts disclosed offences punishable under ss. 120-B and 161 of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act, 1947 (2 of 1947), had been committed by the Assistant Station Master, Shri Mubarak Ali, and the pointsman, Shri Mool Chand, of Golakamandir railway station. On the same day he sent a report of the aforesaid facts to the Special Police Establishment Office, Madhya Bharat. The office registered it on January 14, 1955, in its register. Seven days thereafter, on January 21, 1955, the Sub-Inspector filed an application before the Additional District Magistrate (Judicial), Gwalior, asking for permission to investigate the offence under the aforesaid sections. The record does not disclose what further steps were taken by the Sub-Inspector after he obtained the said permission from the Additional District Magistrate. On October 1, 1955, a charge-sheet was filed before the Special Judge, Anti-Corruption, Indore. It appears from the record that soon after the case was taken up for trial, the respondent filed objections questioning, *inter alia*, the validity of the order of the Additional District Magistrate giving permission to the Sub-Inspector to make the investigation. But the scope of the objections is not clear as they have not been placed before us. It appears that the Special Judge intended to take evidence on the question of delegation of power of investigation, but the prosecution applied for adjournment on the ground that an appeal had been filed in the High Court against a similar order directing the prosecution to give evidence on the said question and the same was pending there. The learned Special Judge, though inclined not to give the adjournment, made an order giving an adjournment

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of three weeks on December 3, 1955, on the ground that " the Special Police Establishment Office might not have any grievance on that account ". We do not know what transpired between December 3, 1955, and the date of disposal of the objections by the Special Judge, i. e., August 21, 1957. On August 21, 1957, the learned Special Judge made an order discharging Shri Mool Chand, the pointsman, and charging Shri Mubarak Ali, the Assistant Station Master, under s. 161 of the Indian Penal Code. By the said order the learned Judge, presumably an officer different from the one who gave the adjournment in 1955, disallowed the objection of the accused on the ground that on the date when the Magistrate gave the sanction, there were many papers in connection with a case against the accused, on observing which the Magistrate could have satisfied himself whether there was a *prima facie* case or not against the accused and that there was no reason to believe that at the time of giving the sanction, the Magistrate did not peruse the papers. The accused preferred a Revision against the said order to the High Court of Madhya Pradesh. The High Court came to the conclusion that the Sub-Inspector applied for permission ten days after investigation had started and that the Magistrate did not satisfy himself that there were good and sufficient reasons for authorising the officer of a lower rank to conduct the investigation but had given the permission as a mere matter of routine. In the result, the High Court set aside the order of the Special Judge with a direction that " in order to rectify the defects and cure the illegality " he should order the Deputy Superintendent of Police to carry on the investigation himself while the case remains pending on his file ". The State preferred the present appeal against the said order of the High Court.

Learned Counsel, appearing for the State, raised before us two points: (i) the High Court was not justified in holding that the Magistrate gave the permission as a mere matter of routine without satisfying himself as to the advisability of giving such permission; (ii) the High Court was wrong in holding

that the investigation started ten days prior to the obtaining of permission of the Magistrate by the Sub-Inspector.

To appreciate the first contention, it is necessary to set out some of the relevant provisions of The Prevention of Corruption Act, 1947 (2 of 1947), hereinafter referred to as the Act.

Section 3 (as it stood before the Prevention of Corruption (Amendment) Act, 1955 (50 of 1955):

" An offence punishable under section 161 or section 165 or section 165A of the Indian Penal Code (Act 45 of 1860) shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898 (Act 5 of 1898), notwithstanding anything to the contrary contained therein ".

Section 4. " (1) Where in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code (Act 45 of 1860), it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate ".

The Act was passed, as the preamble indicates, to make more effective provisions for the prevention of bribery and corruption among public servants. It introduced a definition of the offence of criminal misconduct in discharging an official duty and new rules of presumption against accused in the case of the said offence. But in the year 1952, by Act 59 of 1952, presumably on the basis of the experience gained, s. 5A was inserted in the Act to protect the public servants against harassment and victimization. If it was in the interest of the public that corruption should be eradicated, it was equally in the interest of the public that honest public servants should be able to

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discharge their duties free from false, frivolous and malicious accusations. To achieve this object, ss. 5A and 6 introduced the following two safeguards: (1) no police officer below the rank—(a) in the presidency towns of Madras and Calcutta, of an assistant commissioner of police, (b) in the presidency town of Bombay, of a superintendent of police and (c) elsewhere, of a deputy superintendent of police, shall investigate any offence punishable under s. 161, s. 165 or s. 165A of the Indian Penal Code or under sub-s. (2) of s. 5 of the Act, without the order of a presidency magistrate or a magistrate of the first class, as the case may be, or make any arrest therefor without a warrant—see s. 5A; (2) no court shall take cognizance of an offence punishable under s. 161 or s. 164 or s. 165 of the Indian Penal Code or under s. 5(2) of the Act, alleged to have been committed by a public servant, except with the previous sanction, of the appropriate Government—see s. 6. These statutory safeguards must be strictly complied with, for they were conceived in public interests and were provided as a guarantee against frivolous and vexatious prosecutions. While in the case of an officer of assured status and rank, the legislature was prepared to believe them implicitly, it prescribed an additional guarantee in the case of police officers below that rank, namely, the previous order of a presidency magistrate or a magistrate of the first class, as the case may be. The magistrate's status gives assurance to the *bona fides* of the investigation. In such circumstances, it is self-evident that a magistrate cannot surrender his discretion to a police officer, but must exercise it having regard to the relevant material made available to him at that stage. He must also be satisfied that there is sufficient reason, owing to the exigencies of administrative convenience, to entrust a subordinate officer with the investigation. This Court in *H. N. Rishbud and Inder Singh* v. *The State of Delhi* (1) emphasised the necessity to adhere strictly to the provisions of s. 5A of the Act. Jagannadhadas, J., who delivered the judgment of the Court, observed at p. 1159:

(1) [1955] 1 S.C.R. 1150.

"When, therefore, the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the offences of corruption comprised in the Act, by making them cognisable, it may be presumed that it was considered necessary to provide a substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated high rank. Having regard therefore to the peremptory language of sub-section (4) of section 5 of the Act as well as to the policy apparently underlying it, it is reasonably clear that the said provision must be taken to be mandatory".

After adverting to the argument advanced on behalf of the State, the learned Judge closed the discussion thus at p. 1162:

"We are, therefore, clear in our opinion that section 5(4) and proviso to section 3 of the Act and the corresponding section 5-A of Act LIX of 1952 are mandatory and not directory and that the investigation conducted in violation thereof bears the stamp of illegality".

This Court again considered the scope of s. 6 of the Act in *Biswabhusan Naik* v. *The State of Orissa* (1). One of the questions raised there was that the sanction given by the Government was invalid. In rejecting that contention Bose, J., observed at p. 95:

"The judgment of the Judicial Committee relates to clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, but the principles apply here. It is no more necessary for the sanction under the Prevention of Corruption Act to be in any particular form, or in writing, or for it to set out the facts in respect of which it is given than it was under clause 23 of the Order which their Lordships were considering. The desirability of such a course is obvious because when the facts are not set out in the sanction proof has to be given *aliunde* that sanction was given in respect of the facts constituting the offence charged, but an

(1) [1955] 1 S.C.R. 92.

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omission to do so is not fatal so long as the facts can be, and are, proved in some other way".

While the former decision emphasises the importance of the protection given by the Act to public servants against harassment, the latter decision points out the desirability of giving all the necessary facts in an order giving sanction—the same applies to an order of a Magistrate—and also the necessity of proof *aliunde* of the said facts in case the facts are not disclosed in the sanction. Applying the said two principles, we must hold that in a case where an officer other than the designated officer, seeks to make an investigation, he should get the order of a Magistrate empowering him to do so before he proceeds to investigate and it is desirable that the order giving the permission should ordinarily, on the face of it, disclose the reasons for giving the permission. For one reason or other, if the said salutary practice is not adopted in a particular case, it is the duty of the prosecution to establish, if that fact is denied, that the Magistrate in fact has taken into consideration the relevant circumstances before granting the permission to a subordinate police officer to investigate the case.

In the present case, though objection was taken by the accused at the earliest stage in 1955 on the ground that the order giving permission was invalid no attempt was made by the prosecution, though years have elapsed between the date of the petition and that of the order of the Sessions Judge, to adduce any evidence to support the contention that the Magistrate gave the permission to the Sub-Inspector only after satisfying himself on the advisability of doing so on the material placed before him. The only material that was placed before the Sessions Judge was the application filed by the Sub-Inspector before the Magistrate seeking the said permission and the order made by him thereon. In that application the Sub-Inspector stated that he had been deputed to investigate the case and therefore permission might be given to him to do so under s. 5-A of the Act. On that application, the Magistrate passed the order "permission given". Neither the application

nor the order made thereon discloses that any material was placed before the Magistrate on the basis of which he gave the permission. *Ex facie* it appears to us, just like it appeared to the High Court, that the Magistrate did not realise the significance of his order giving permission, but only mechanically issued the order on the basis of the application which did not disclose any reason, presumably because he thought that what was required was only a formal compliance with the provisions of the section. A request was made before the High Court that an opportunity should be given to the prosecution to enable them to produce the necessary evidence to support the order of the Magistrate. But the learned Judge of the High Court rightly did not accede to that belated request. We, therefore, without any hesitation, agree with the High Court that the provisions of s. 5A of the Act have not been strictly complied with in this case.

In this view no other question arises for consideration. But as the learned Counsel appearing for the State contended that the observations of the learned Judge of the High Court that permission of the Magistrate was obtained ten days after the investigation was started was wrong, it would be as well that we considered the argument briefly. Section 4(1) of the Code of Criminal Procedure defines "investigation" as to include all the proceedings under that Code for the collection of evidence conducted by the police officer or other persons other than a Magistrate who is authorised by the Magistrate in this behalf. Chapter XIV of the Code prescribes the procedure for investigation. Investigation starts after the police officer receives information in regard to an offence. Under the Code "investigation consists generally of the following steps: (i) proceeding to the spot; (ii) ascertainment of the facts and circumstances of the case; (iii) discovery and arrest of the suspected offender; (iv) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if

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the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial; and (v) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under s. 173."—See *H. N. Rishbud and Inder Singh* v. *The State of Delhi* (1). From the narration of facts given supra, it would be seen that in the present case Shri Bhalla gave information to the Sub-Inspector on January 11, 1955, as regards the attempt by the Station Master as well as the Assistant Station Master to take bribe from him. Under s. 5 of the Act, attempt to obtain from any person for himself or for any other person any gratification is in itself an offence and therefore the information certainly related to an offence. Thereafter, the Sub-Inspector, after assisting Shri Bhalla to trap the accused, came on the scene, questioned the accused, searched his person and recovered the marked notes and other articles from him; he searched the person of the informant and recovered the other notes marked but not given to the accused; he took possession of the twenty wooden boxes intended to be booked and the forwarding note together with the record copy of the R/R; he got prepared relevant memoranda for the aforesaid recoveries and got them duly attested by witnesses; and thereafter on the basis of his investigation he sent a report to the Special Police Establishment Office, Indore. We do not know on the material placed before us what further things he did in the matter of investigation between the 14th and 21st when he obtained the permission of the District Magistrate. In the circumstances, we must hold, agreeing with the High Court that the investigation in this case was started by the Sub-Inspector on the 11th, i.e., ten days prior to his obtaining permission of the Magistrate.

The appeal fails and is dismissed.

Appeal dismissed.

(1) [1955] 1 S.C.R. 1150.