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P. SIRAJUDDIN ETC.

v.

STATE OF MADRAS ETC.

March 9, 1970

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[J. M. SHELAT AND G. K. MITTER, JJ.]

Code of Criminal Procedure (Act 5 of 1898), Chapter XI—Investigation by Vigilance Department—Duty to follow procedure in Code—Prevention of Corruption Act (2 of 1947), s. 5(1)(b)—Scope of.

C

On March 1, 1964, the Chief Minister of the State received a petition containing allegations of corruption against the appellant (a Superintending Engineer) and the Chief Minister asked the Director of Vigilance and Anti-Corruption to make enquiries. On March 10, 1964, the Director submitted a note containing serious aspersions on the appellant and the Chief Minister ordered further investigation. The Director of Vigilance registered an inquiry on 15th April, 1964, and a Deputy Superintendent of Police of the Vigilance Department was asked to make the inquiry. The Deputy Superintendent of Police made a thorough and searching

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inquiry. He examined a large number of persons including 18 public servants and even enquired into and took down statements of persons who were supposed to have provided the appellant with articles of food worth trifling sums of money, a long time before. He recorded self incriminating statements of a number of persons and secured their signatures thereto. With respect to two officers, who were the subordinates of the appellant, he even gave certificates of immunity from any action that might be taken against them for the part played by them in aiding the appellant. On June

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27, 1964, he lodged a first information report, with respect to offences under ss. 161 and 165 I.P.C., and s. 5(1)(a) and (d) of the Prevention of Corruption Act, 1947. He investigated into the offences thereafter, and filed the charge sheet before the Special Judge.

The appellant made an application for discharge under s. 251-A, Cr.P.C., on the grounds of discrimination between him and other officers

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who were given pardon and, gross irregularities in the investigation. The Special Judge held, that though there was no basis for charging the appellant under s. 165, I.P.C., or under s. 5(2), read with s. 5(1)(b), of the Prevention of Corruption Act, a charge could be framed against him under s. 5(2) read with s. 5(1)(d). The appellant thereafter moved the High Court,

The High Court held : (1) that the investigation started on 15th April

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1964 when the Director of Vigilance registered an inquiry (2) that the taking of signed and self-incriminating statements from various witnesses was in violation of ss. 161 to 164 Cr.P.C.; (3) that the Special Judge erred in directing the framing of the charge without excluding those statements from consideration; and (4) that the Special Judge should take up the matter once again after excluding from consideration those statements.

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In appeal to this Court,

HELD : (1) Though technically investigation did not commence on 15th April 1964 but started only after the formal first information report was lodged on June 27, 1964, there were serious irregularities during the

inquiry and investigation which caused prejudice to the appellant. The directions given by the High Court were, however, sufficient in the circumstances of the case. [945 D] A

The Directorate of Vigilance and Anti-Corruption became a police station for the purposes of the Criminal Procedure Code only by a notification dated 25th May 1964. Therefore, the inquiry before that date was not an investigation under Ch. XIV of the Code, but there was no warrant for the Vigilance Department, which was in the charge of a senior police officer, to disregard the provisions of ss. 162 and 163 of the Code. Under s.161(3) of the Code a police officer is empowered to reduce into writing any statement made to him in the course of investigation and s. 162(1) lays down that such a statement is not to be signed by the maker thereof. Section 163(1) lays an embargo on the investigating authority using any inducement, threat or promise to the maker. The reason for these provisions is to secure a fair investigation into the facts and circumstances of the case and to see that an over zealous police officer may not misuse his position by getting a statement signed by the maker in order to pin him down to it. Also, immunity from prosecution and the grant of a pardon were not in the discretion of police authorities. [940 A-H; 941 A-B, D, F] B C

In the present case, the officers who were given immunity must have made the self-incriminating statements because an oral assurance of immunity was given before they made the statements, that is, the statements were given as a result of an inducement. There can be no excuse for the Vigilance Department for proceeding in the manner adopted merely because the first information report had not been lodged. As soon as it became clear to them on March 10, 1964, that the appellant appeared to be guilty of serious misconduct, it was their duty to lodge such a report and proceed further in the investigation according to Ch. XIV of the Code. Their omission to do so cannot but prejudice the appellant and the State ought not to be allowed to take shelter behind the plea that although the steps taken in the enquiry before the first information was lodged were grossly irregular and unfair, the appellant could not complain, because, there was no infraction of the rules after lodging the first information report. [942 D-G; 943 C-H] D E

(2) If it be a fact that it was the appellant, who as the head of the department, was actively responsible for directing the commission of offences by his subordinates in a particular manner, he cannot be allowed to take the plea that the subordinates should also be joined as co-accused with him. [944 D] F

(3) Under s. 5(1)(b), a public servant would be guilty of the offence of criminal misconduct if he habitually accepts any valuable thing for inadequate consideration not only from outsiders who are likely to be concerned in any proceeding or business, transacted or about to be transacted by the public officer but also from any subordinate or any other person who is connected with the official functions of the public servant. Therefore, in this case, a charge could also be framed under s. 5(1)(b), if there was material. [945 A-C] G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals 233 to 235 of 1966, and 9 to 11 of 1967. H

Appeals from the judgment and order dated April 13, 1966 of the Madras High Court in Writ Petitions Nos. 390 of 1965 etc.

A *M. C. Chagla, Amjad Nainar* and *R. Gopalakrishnan,* for the appellant (in Cr. As. Nos. 233 to 235 of 1966) and respondent No. 1 (in Cr. As. Nos. 9 to 11 of 1967).

S. Govind Swaminathan, Advocate-General for the State of Tamil Nadu, *A. V. Rangam, K. S. Ramaswami Thevar, N. S. Sivan,* for the respondents (in Cr. As. Nos. 233 to 235 of 1966) and the appellants (in Cr. As. Nos. 9 to 11 of 1967).

The Judgment of the Court was delivered by

Mitter, J. These six appeals arise out of certificates granted by the High Court of Madras arising out of two Writ Petitions and a petition under ss. 435 and 439 of the Code of Criminal Procedure filed in that court by P. Sirajuddin, the appellant in the first set of appeals. It is not necessary to give an outline of these petitions as the salient features thereof appear sufficiently from the judgment of the High Court and the substance thereof is dealt with hereafter.

The facts are as follows. The appellant was the Chief Engineer, Highways and Rural Works, Madras having risen from the status of a District Board Engineer in which capacity he joined service in the year 1935. He attained the age of 55 years on March 14, 1964 on which date he was asked to hand over charge of his office to one Shiv Shankar Mudaliar, Superintending Engineer, Madras. He expected to be retained in service up to the age of 58, a privelege said to be normally accorded to persons physically and otherwise fit for public service. It appears that on March 1, 1964 a copy of a petition concerning him and dated February 28, 1964 addressed to the Minister, Public Works by one Rangaswami Nadar was received by the Chief Minister of the State. It is said that apart therefrom allegations about want of rectitude of the appellant had already reached the Government. The Chief Minister asked the Director of Vigilance and Anti-Corruption to make confidential enquiries. On March 10, 1964 Government received a note from the said officer which cast serious aspersions on the appellant's reputation and mentioned quite a few instances of his lack of probity. The endorsement of the Chief Minister on the note read :

> Secretary, P.W.D. I had this (petition already mentioned) from the Director of Vigilance. This may be immediately looked into. I have asked the Director to pursue the investigation further."

Thereupon the Chief Secretary orally ordered a full-fledged enquiry in the matter and the Deputy Superintendent of Police, Vigilance and Anti-Corruption one G. K. Ranganathan, was asked to make a personal enquiry and report under the supervision of

R. N. Krishnaswamy. The Director of Vigilance registered an enquiry numbering 8/HD/64 on 15th April, 1964. That the enquiry was taken up with great keenness appears from a note of Ranganathan to the effect he would require the assistance of two Inspectors to assist him. There can be no doubt that the enquiry launched by the Vigilance and Anti--Corruption Department was a very thorough and searching one. A very large number of persons were examined by the Vigilance and Anti-Corruption officers including 18 public servants who spoke to matters touching the allegations against the appellant. Statements in writing signed by the makers were taken from no less than nine public servants regarding the above and two of them, namely, S. Sivasubrahmanyam and S. Chidambaram were given certificates assuring them immunity from prosecution for the part played by them in rendering aid to the appellant in the commission of his malpractices. These two persons occupied the position of an Assistant Engineer and a Junior Engineer and were subordinates of the appellant. On June 27, 1964 a first information report was lodged in the Directorate of Vigilance and Anti-Corruption, Madras and the case recorded as 3/AC/64. The offences to be investigated into were under sections 161 and 165 of the Indian Penal Code and s. 5(1)(a) and (d) of the Prevention of Corruption Act. The complaint was made by Ranganathan, Deputy Superintendent of Police, Vigilance and Anti-Corruption Department to the Additional Superintendent of Police in the same department. It is pertinent to note that the Directorate of Vigilance and Anti-Corruption which had been set up under a Government order dated 8th April 1964 was declared to be a 'police station' under clause (s) of sub-section (1) of section 4 of the Code of Criminal Procedure by a notification dated May 25, 1964 and by another notification of the same date the Governor of Madras conferred upon the Director and the Superintendents of Police of the said Directorate all the ordinary powers of a Magistrate of the First Class under section 5-A of the Prevention of Corruption Act within the limits of the whole of the State of Madras except the Presidency Town. The complaint by Ranganathan to the Additional Superintendent of Police, Vigilance and Anti-Corruption, gave details of various malpractices with which the appellant was charged. He was *inter alia* said to have obtained various articles of furniture with the help of Sivasubrahmanyam and Chidambaram mentioned above by paying only a small fraction of the cost and asking them to adjust the balance by manipulations of the muster rolls claims. He was also said to have got his residence whitewashed in a similar manner. It was also alleged against him that he had constructed a bungalow by diverting building materials allotted for the construction of the Cauveri bridge at Tiruchirapalli. The complaint wound up with a paragraph to the effect that a criminal case would be registered against him as a regular investigation alone would facilitate the collection

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A of additional evidence by way of recovery of valuable things which he had obtained from his subordinates by various illegal means and in addition more incriminating evidence was likely to be forthcoming during the investigation. Sanction to prosecute the appellant was obtained on September 27, 1964 and a charge sheet was filed against the appellant in the court of the Special Judge, B Madras on October 5, 1964 numbered as C.C. No. 10 of 1964. No less than 47 witnesses had been examined during the investigation following the first information report and at least nine of them had been previously examined at what was termed as a "preliminary or detailed enquiry".

C No less than 19 malpractices were alleged against him in different paragraphs of the charge sheet and the appellant was charged with having obtained for himself or for members of his family various valuable things from his subordinates by corrupt and illegal means and by abusing his position as a public servant. The charges were for offences already mentioned.

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In the enquiry the appellant was supplied with copies of records on which the prosecution proposed to rely including the statements recorded by the investigating officer which according to the appellant showed *prima facie* that a number of public servants who had given the statements were themselves responsible for com- E mission of various offences including falsification of accounts and forgery of public records.

Before the Special Judge the appellant moved an application for discharge under s. 251-A of the Code of Criminal Procedure on the ground that the charges against him were groundless. In that application he also complained : (a) that the instances alleged F against him related mostly to his personal matters unconnected with his official functions; (b) that none of the items referred to in the charge had been handed over to or delivered to him for the purpose of securing an advantage in order to attract s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act, and (c) that on the admitted statements of the public servants they were liable to G be charged with various offences and he had been greatly prejudiced by discriminatory treatment.

While holding that there was no basis of charging the appellant under s. 165 I.P.C. or under s. 5(2) read with s. 5(1)(b) of the Prevention of Corruption Act, the Judge held that a charge could H be framed against him under s. 5(2) read with s. 5(1)(d) of the Act. He observed that the "investigating officers evidently felt that if they arraigned the subordinate officers along with the appellant the case may fail for lack of evidence."

Against that order dated January 16, 1965 the Public Prosecutor preferred Cr. R.C. 294 of 1965 and the appellant preferred Cr.M.P. 934 of 1965 under s. 561-A of the Code, for quashing the proceedings and discharging him as the charge was groundless. The appellant filed two writ petitions before the High Court, namely, one for a writ of *mandamus* directing the forbearing from prosecution of C.C. No. 10 of 1964 and a second for a writ of *certiorari* to quash the order of the Special Judge mentioned above. There was a petition under ss. 435/439 of the Criminal Procedure Code for revision of the order of the Special Judge and one under s. 561-A of the Code for quashing his said order.

The High Court dealt with all the Writ Petitions and the different allied matters together. Broadly speaking, it was urged before the High Court :

1. There had been such a violent departure from the provisions of the Code in the matter of investigation and cognizance of offences as to amount to denial of justice and to call for interference by the issue of prerogative writs.

2. The investigation and prosecution were wholly *mala fide* and had been set afoot by his immediate junior officer, one Sivasankar Mudaliar, Superintending Engineer, Madras who was related to the Chief Minister of the State.

3. The appellant's case was being discriminated from those of others who though equally guilty according to the prosecution case were not only not being proceeded against but were promised absolution from all evil consequences of their misdeeds because of their aid to the prosecution.

In his petition for the issue of a writ of *mandamus* by the High Court the appellant stated that it was only by perusing copies of the statements furnished to him under s. 173(4) Cr. P.C. that he found that 18 public servants had stated having given him valuables without any or adequate consideration and that it was at his instance that they had committed offences of criminal conspiracy under s. 120-B I.P.C. and criminal breach of trust of Government moneys under s. 409 I.P.C. besides falsification of accounts etc. His positive case was that the Director of Vigilance and Anti-Corruption had obtained signed statements which were confessional and self-incriminatory from persons who were going to be called as witnesses by giving them assurances of immunity. These assurances were not only directed towards immunising them from prosecutions but also any departmental action likely to affect adversely the makers of the statements. The case of discrimination was based mainly on the above averments that the Directorate had singled him out leaving others who were equally guilty. According

A to the appellant this also showed *mala fides* and malice directed towards him.

Another main argument which was canvassed before the High Court related to the applicability of ss. 162 and 163 of the Criminal Procedure Code and the effect of the violation thereof, B if any. For the appellant, it was argued that the taking of signed statements from persons who were eventually going to be examined in the criminal proceedings by giving them assurances of immunity and thereafter relying on their subsequent unsigned statements those under s. 161(3) of the Code for the purpose of s. 173 amounted to a fraud on the procedure established by law. It was C contended that as the statements recorded under s. 161 were the material on which the Special Judge had to consider whether the charge was groundless under s. 251-A of the Code, the illegality "corroding the foundation vitiated the enquiry and necessitated the discharge of the appellant."

The High Court examined the case made out in the affidavits D of the appellant and the counter affidavits on behalf of the State. It expressed great dissatisfaction at the variance in the attitude of the State in the different affidavits in that whereas in the first counter affidavit there was no contradiction of the appellant's averment that assurances of immunity had been given to all the 18 persons examined before the lodging of the first information report, the plea put forward in a subsequent affidavit was that such assurance E had been given only to two persons, namely, the two subordinates of the appellant and only after signed statements had been given by them. The Court was however not satisfied that a direction was called for for the prosecution of the subordinate officers also. Further the High Court was not impressed with the plea of hostile discrimination against the appellant observing that although the F "policy of not securing judicial pardon to accomplices by bringing them as approvers but retaining them at the sole discretion of the prosecution might be open to question" "that cannot by itself invalidate the arraignment of the persons actually put up for trial" specially where the person charged was in a position to wield influence and power over those asked by him to aid him in commission of misconduct.

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Although not of the view that the record before it established a case of *mala fide* or hostile discrimination against the appellant which called for the quashing of the proceedings, the High Court took the view that the investigation of the case under Chapter XIV of the Code should be held to have commenced when Ranganathan, H the Deputy Superintendent of Police, started the enquiry on 15th April 1964 on the reasoning that though "an enquiry may start with shadowy beginnings and vague rumours, once a police officer forms a definite opinion that there are grounds for investigating a

crime, an investigation under the Code has started". According to the High Court—

(a) "substantial information and evidence had been gathered before the so-called first information report was registered".

(b) the police officer who had conducted the enquiry prior to 27th June 1964 was a person competent to enter upon investigation;

(c) admittedly there had been an earlier probe by the Vigilance Department prior to 10th March 1964 on the basis whereof he was not re-employed;

(d) there was definite information to the Government contained in the report dated 13th March 1964 relating to corrupt activities of the appellant; and

(e) the "delay on the part of the investigating officer in registering the first information report may be an irregularity, but certainly the statements recorded subsequent to the receipt of definite information of the commission of an offence in gathering evidence of the offence would nonetheless be statements recorded during investigation and hit by s. 162 of the Criminal Procedure Code."

With regard to the disregard of the provisions of ss. 162 and 163 of the Code, the High Court observed that the result of taking his signature to a statement would be to tie a witness down to the statement or at least to give him the impression that he would not be free to make a different statement at the trial but the statement of a witness at the trial would not become inadmissible by reason of his having signed a statement before going into the witness box. Reference was made to several decisions bearing on s. 162 of the Code and in particular to *Zahiruddin* v. *King Emperor*(1) that the evidence of a witness who had previously signed a statement in writing did not become inadmissible or vitiate the whole proceeding although the value of the evidence would be seriously impaired thereby.

The court seems to have been of the view that it was the duty of the Magistrate or the presiding Judge on discovering that a witness had while giving evidence, made material use of a statement given by him to the police to disregard the evidence of that witness as inadmissible. The High Court's definite conclusion was that there had been a deliberate violation of the provisions of the Code

(1) 74 I.A. 65, 74.

A and a departure from a recognised and lawful procedure for investigation.

With regard to the propriety of taking self-incriminatory statements even when there had been no assurance of immunity from prosecution, the High Court observed that as the learned Advocate-General for the State had stated that the record of manipulations in the muster rolls by the subordinate officers of the appellant B had to be disregarded as not proper material for consideration as the "Special Judge had not considered these vitiating features in regard to the documents placed before him while ordering the framing of charges against the appellant" it was unnecessary to examine the question at length.

C The High Court found partly in favour of the appellant and held that the order of the Special Judge directing the framing of a charge on consideration of the statements before him under s. 173(4) of the Code without reference to the illegalities in the investigation should be quashed. The High Court further directed the Special Judge to take up the matter once again and consider D the case excluding from consideration all statements recorded under ss. 161(3) and 164 which were found vitiated in the light of the observations made by it. A direction was also given to exclude portions of the statements which were self-incriminatory and confessional in character of the maker even if the same did not otherwise violate the provisions of ss. 162 and 163 of the Code.

E In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were brought to the notice of the Chief Minister it was his duty to direct an en- F quiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of a person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the rela- G tionship between the said person and the Chief Minister, if any, was so distant that it could not possibly have influenced him and we are of the same view. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by H a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable

harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge sheet is for some one in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charged sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is *prima facie* evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.

The Code of Criminal Procedure is an enactment designed *inter alia* to ensure a fair investigation of the allegations against a person charged with criminal misconduct. Chapter XIV of the Code gives special powers to the police to investigate into cases whether cognizable or non-cognizable in the manner provided therein. Section 160 empowers a police officer making an investigation to require the attendance before himself of any person who appears to be acquainted with the circumstances of the case. Section 161(1) gives him the right to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Although bound to answer question put to him sub-s. (2) of the section exempts a person from answering any question which would have a tendency to expose him to a penal charge or to a penalty for forfeiture. Under sub-s.(3) the police officer is empowered to reduce into writing any statement made to him in the course of such examination. Section 162(1) expressly lays down that such a statement made in the course of an investigation if reduced into writing is not to be signed by the maker thereof and no part of such statement except as expressly provided is to be used

A for any purpose at any enquiry or trial in respect of any such offence under investigation at the time when the statement was made. The only exceptions to these are cases when the statement falls under s. 32 cl.(1) of the Evidence Act and to statements which are covered by s. 27 of that Act. The obvious idea behind this provision is that an over-zealous police officer may not misuse his B position by getting a statement in writing signed by the maker which would tend to pin him down to the statement but leave him free to speak out freely when called to give evidence in court. In order that statements made in the course of such investigations be recorded without any pressure or inducement by an investigating officer s. 163(1) lays down an embargo on the investigating C authorities using any inducement, threat or promise to the maker which might influence his mind and lead him to suppose that thereby he would gain any advantage or avoid any evil in reference to his conduct as disclosed in the proceedings. It is to be noted that whereas the other sections hereinbefore referred to contain guidelines for the police officers in making investigation, this section expressly provides that any person in authority even if he D is not a police officer must guide himself accordingly, in case where a crime is being investigated under this Chapter of the Code. All this is however subject to the provisions of sub-s.(2) which allows a person to make any statement against his own interest by way of confession if he does so of his own free will. Even then the law enjoins by s. 164 that such a statement or con- E fession can only be recorded by a Magistrate of the Class mentioned therein and even such a Magistrate must explain to the person making the confession before recording the same, that he is not bound to make it and if he does so it may be used as evidence against him. Further the Magistrate must make sure that the person was making the confession voluntarily and not acting under F any pressure from an outside source.

All the above provisions of the Code are aimed at securing a fair investigation into the facts and circumstances of the criminal case : however serious the crime and howsoever incriminating the circumstances may be against a person supposed to be guilty of a crime the Code of Criminal Procedure aims at securing a G conviction if it can be had by the use of utmost fairness on the part of the officers investigating into the crime before the lodging of a charge sheet. Clearly the idea is that no one should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it.

Section 169 of the Code empowers a police officer making H investigation to release an accused person from custody if there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of him to a Magistrate by taking a bond from him with or without sureties. Section 173 enjoins upon a police officer

to complete the investigation without unnecessary delay and forward to a Magistrate empowered to take cognizance of the offence a report in the form prescribed by Government setting forth *inter alia* the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case and to communicate to the State Government the action taken by him to the person, if any, by whom information relating to the commission of the offence was first given. When a report has been made under this section it is the duty of the officer in charge of the police station to furnish to the accused before the commencement of the enquiry or trial a copy of the report above mentioned and of the first information report under s. 154 and of all other documents or relevant extracts on which the prosecution proposes to rely including the statements and confessions, if any, recorded under s. 164 and the statements recorded under sub-s.(3) of s. 161 of all persons whom the prosecution proposes to examine as its witnesses.

In our view the enquiring officer pursued the investigation with such zeal and vigour that he even enquired into and took down statements of persons who were supposed to have provided the appellant with articles of food worth trifling sums of money long before the launching of the enquiry. The whole course of investigation as disclosed in the affidavits is suggestive of some predetermination of the guilt of the appellant. The enquiring officer was a high-ranking police officer and it is surprising that simply because he was technically not exercising powers under Chapter XIV of the Criminal Procedure Code in that a formal first information report had not been lodged he overlooked or deliberately overstepped the limits of investigation contained in the said Chapter. He recorded self-incriminating statements of a number of persons and not only secured their signatures thereto obviously with the idea of pinning them down to those but went to the length of providing certificates of immunity to at least two of them from the evil effects of their own misdeeds as recorded. It was said that the certificates were given after the statements had been signed. It is difficult to believe that the statements could have been made before the grant of oral assurances regarding the issue of written certificates. There can be very little doubt that the persons who were given such immunity had made the statements incriminating themselves and the appellant under inducement, threat or promise as mentioned in s. 24 of the Indian Evidence Act.

It is no doubt the duty of the State to track down and punish all delinquent officers but it is certainly not in accordance with justice and fairplay that their conviction should be sought for by such questionable means.

A The office of the Directorate of Vigilance and Anti-Corruption Department, Madras became a police station for the purpose of the Criminal Procedure Code under sub-cl. (s) of sub-s. (1) of s. 4 of the Code by a notification dated 25th May, 1964. Prior to that it was only functioning under a Memorandum No. 1356/64-2 dated 8th April 1964 when it was set up to ensure the main-
B tenance of the highest standard of integrity and probity in public servants. If the investigation had been taken up after May 25, 1964 it would have been one under Chapter XIV of the Code without any doubt.

Although we are not disposed to concur with the view that the investigation under Chapter XIV of the Code started as early as
C 15th April 1964 we are of opinion that there was no warrant for the Vigilance and Anti-Corruption Department which was in the charge of one of the highest police officers of the State to disregard the provisions of ss. 162 and 163 of the Code of Criminal Procedure. The investigation was of a type more thorough and elaborate than is usually to be found: as noticed already it was
D in charge of a senior police officer who had the assistance of two police inspectors in the matter. No blame attaches to them for making enquiries of a large number of persons but the whole course of investigation is suggestive of guidance by someone who was intimately familiar with the affairs of the appellant and his department and throwing out scents which the investigating offi-
E cers were only too keen to pick up and follow. The appellant may have been guilty of all the charges levelled against him but we cannot approve of the manner in which the investigation against him was conducted and an attempt made to lay a guideline for the persons who were to be cited as prosecution witnesses in their evidence at the trial. To say the least it would be surprising to find so many persons giving confessional and self-incri-
F minatory statements unless they had been assured of immunity from the evil effects thereof whether oral or in writing.

There can be no excuse for the Directorate of Vigilance and Anti-Corruption for proceeding in the manner adopted in the preliminary enquiry before the lodging of the first information report. As soon as it became clear to them—and according to
G the High Court it was before March 13, 1964 in which we concur—that the appellant appeared to be guilty of serious misconduct, it was their duty to lodge such a report and proceed further in the investigation according to Chapter XIV of the Code. Their omission to do so cannot but prejudice the appellant and the State ought not to be allowed to take shelter behind the plea
H that although the steps taken in the preliminary enquiry were grossly irregular and unfair, the accused cannot complain because there was no infraction of the rules of the Evidence Act or the provisions of the Code.

In our view the granting of amnesty to two persons who are sure to be examined as witnesses for the prosecution was highly irregular and unfortunate. It was rightly pointed out by the High Court :

> "Neither the Criminal Procedure Code nor the Prevention of Corruption Act recognises the immunity from prosecution given under these assurances and that the grant of pardon was not in the discretion of police authorites."

We are not impressed by the argument that the appellant was singled out from a number of persons who had aided the appellant in the commission of various acts of misconduct and that they were really in the position of accomplices. It was pointed out by the High Court that the prosecution may have felt that "if the subordinate officers were joined along with the appellant as accused the whole case may fall for lack of evidence". In our view, if it be a fact that it was the appellant who was the head of the department actively responsible for directing the commission of offences by his subordinates in a particular manner, he cannot be allowed to take the plea that unless the subordinates were also joined as co-accused with him the case should not be allowed to proceed.

It was contended before us by the learned Advocate-General for the State of Madras that both the High Court and the Special Judge had gone wrong in the interpretation of s.5(1)(b) of the Prevention of Corruption Act. Having heard counsel on both sides, we find ourselves unable to sustain the view of the High Court on this point. Omitting the portions of the section which are not relevant it reads :

> "5(1) A public servant is said to commit the offence of criminal misconduct—
>
> (a) .. ..
>
> (b) if he habitually accepts or obtains ..... for himself .... any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person (whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or) having any connection with the official functions of himself, or ...

The portion of the sub-section within brackets in our view qualifies

A the expression "any person" in the same way as the portion reading "having any connection with the official function of himself". So read "any person having any connection with the official functions of himself" would include any subordinate of the person who accepts the valuable thing. The words "of himself" do not refer to the person in the expression "any person" but refers to the B pronoun "he" at the beginning of the sub-section. A subordinate of the public servant would have connection with his official functions. In our view the sub-section aims at folding within its ambit not only outsiders "who are likely to be concerned in any proceeding or business transacted or about to be transacted" by the public officer but also any subordinate or any other person C who is connected with the official functions of the public servant.

In the result all the appeals are dismissed. Although we do not endorse the view of the High Court with regard to the date of the commencement of the investigation so far as Chapter XIV of the Code of Criminal Procedure is concerned, we do hold that serious irregularities were committed in the so-called "full-fledged D enquiry" to the prejudice of the appellant. We do not however feel that there is any need to modify the directions given by the High Court to the Special Judge who will follow the directions of the High Court in addition to the modification indicated by us.

V.P.S. *Appeals dismissed.*