

# KHANDU SONU DHOBI AND ANR.

v.

## STATE OF MAHARASHTRA

February 15, 1972

[J. M. SHELAT, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

*Penal Code 1860 (45 of 1860)—S. 403—Dishonest misappropriation for a time only is misappropriation.*

*Prevention of Corruption Act (2 of 1947)—S. 5A—Investigation conducted in breach of section—Illegality must result in miscarriage of justice.*

*Bombay Land Improvement Schemes Act, 1942—Sub-section (1) and (2) of s. 23—Bar of prosecution applies only to any thing done in good faith or "under" the Act.*

The appellants entrusted with the duties of carrying out improvement schemes under the Bombay Land Improvement Scheme Act, 1942, were charged with the offence of preparing false documents and committing criminal breach of trust in respect of certain amount. It was alleged that even though no work had been done and no amount had been disbursed they prepared documents showing the doing of the work and payment of the amount. They were convicted under s. 218 read with section 34, section 477A read with section 34 and section 409 read with section 34 of the Indian Penal Code as well as section 5(2) read with section 5(i)(d) of the Prevention of Corruption Act. The High Court affirmed the conviction. In the appeal to this Court it was contended that after the matter had been reported to the higher authorities the rectification work was done and the money was disbursed for the purpose for which it had been entrusted; that the conviction was bad because of non-compliance with section 5A of the Prevention of Corruption Act; and that the prosecution was barred by time under s. 23 of the Bombay Land Improvement Schemes Act, 1942.

Dismissing the appeal,

HELD : (i) There is no cogent ground to disagree with the trial court and the High Court that the accused had prepared false documents, had also committed criminal breach of trust and were in the discharge of their duties guilty of criminal misconduct as defined in s. 5 of the Prevention of Corruption Act.

(ii) It is no answer to a charge of criminal misappropriation that after the matter had been reported to the higher authorities the accused got the rectification work done or the money was subsequently disbursed for the purpose for which it had been entrusted. According to explanation 1 to section 403 Indian Penal Code a dishonest misappropriation for a time only is "misappropriation" within the meaning of that section. [515 D]

(iii) It is well established that cognizance of a case has, in fact, been taken by the court on a police report following investigation conducted in breach of provisions of section 5A of the Prevention of Corruption Act, the result of the trial cannot be set aside unless the illegality in the

- A** investigation can be shown to have brought about a miscarriage of justice. The reason for the above dictum is that an illegality committed during the course of investigation does not effect the competence and jurisdiction of the Court to try the accused. Where, therefore, the trial of the case has proceeded to termination, the invalidity of the preceding investigation would not vitiate the conviction of the accused as a result of the trial unless the illegality in the investigation has caused prejudice to the accused. Since there has been no miscarriage of justice in the present case because of the alleged non-compliance with section 5A the conviction of the appellants cannot be set aside on that score. [515 H]
- B**

*H. N. Rishbud and Inder Singh v. The State of Delhi*, [1955] 1 S.C.R. 1150, referred to.

- C** (iv) Sub-section (i) of the Bombay Land Improvement Schemes Act 1942 has plainly no application as it relates to anything done in the good faith. It cannot also be said that the acts of the appellants in preparing false documents and committing criminal breach of trust as also the act of criminal misconduct were done "under" the Bombay Land Improvement Schemes Act within the meaning of sub-section (2). The sub-section has no application where something is done not under the Act even though it has been done by a public servant who has been entrusted with the duties of carrying improvement schemes under this Act. The impugned acts of the appellants was not in discharge of their duties under the Act but in obvious breach and flagrant disregard of their duties. [516 G-517 D]
- D**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 105 of 1969.

- E** Appeal by special leave from the judgment and order dated March 27, 1969 of the Bombay High Court in Criminal Appeals Nos. 53 and 45 of 1968.

*V. S. Kotwal, A. G. Ratnaparkhi and Rajiv Shah*, for the appellant.

*R. M. Mehta and B. D. Sharma*, for the respondent.

- F** The Judgment of the Court was delivered by

- G** *Khanna, J.* This is an appeal by special leave by Khandu Sonu Dhobi and Bhikanrao Rambhau Khairnar against the judgment of the Bombay High Court affirming on appeal the conviction of the appellants under section 218 read with section 34, section 477A read with section 34 and section 409 read with section 34 of Indian Penal Code as well as under section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act. Sentence of rigorous imprisonment for a period of one year and a fine of Rs. 200 or in default further rigorous imprisonment for a period of two months has been awarded on each count to the appellants. The substantive sentences have been ordered to run concurrently.
- H**

Dhobi appellant No. 1 was an agricultural assistant and was working under Khairnar appellant No. 2 who was agricultural

supervisor in the soil conservation section of the Government of Maharashtra. Dhobi was incharge of the work relating to a Bundh in block No. 13 of village Asane in Taluka Mandurbar. The above block comprises agricultural lands bearing survey Nos. 8, 17, 18, 19 and 32 measuring 90 acres. The Bundhs were being constructed since the year 1962. Rectification work in respect of those Bundhs at a cost of Rs. 369.07 had to be got done by Dhobi appellant under the supervision of Khairnar appellant. The Government sanctioned an amount of Rs. 4779 in connection with the construction of the Bundhs. An advance amount of Rs. 5000 was received by Khairnar accused on March 2, 1966 in that connection. Work of the value of Rs. 4400 was done but that relating to rectification work was not done. According to the rules of the soil conservation section, the Government spent the money in the first instance and after the report of the completion of work was received, the expenses were recovered from the landowners for whose benefit the work was done. On March 11, 1966 Khairnar made entries in measurement book Ex. 27 showing that he had checked 28 payments and certified the same. Khairnar accused also stated in the entry that he had passed the measurements and paid Rs. 369.07. Paysheets Ex. 64 were prepared by Dhobi accused and he obtained the thumb impressions and signatures of the labourers on the paysheets. Khairnar made his initials below the thumb impressions in the paysheets. On the last page of the paysheets, Khairnar signed a certificate according to which he had paid Rs. 369.07 to PW 10 Jagan Trimbak who used to do the labour work. Final bill Ex. 28 was also prepared on that day by the accused and the signature of Jagan Trimbak was obtained on the same. The bill was got signed from PW 7 Ziparu Tukaram and another person as attesting witnesses. The bill was signed thereafter by Khairnar. Debit entry Ex. 32 of Rs. 369.07 was made by Khairnar accused in the cash book. He also prepared work abstract Ex. 29 on April 16, 1966 and sent it to the sub-divisional soil conservation officer Nandurbar showing an expenditure of Rs. 369.07.

The case of the prosecution was that the measurement book Ex. 27, paysheets Ex. 64, final bill Ex. 28 and cash book entry Ex. 32 were false documents and were fabricated by the accused without doing any rectification work on the Bundh. The accused thus committed criminal breach of trust in respect of the amount of Rs. 369.07 in furtherance of their common intention to misappropriate government property. According further to the prosecution case, the landowners in block No. 13 came to know of the above acts of the accused and they complained about it to Sarpanch Tanku Bhagwan (PW 12). Tanku sent a telegram on April 12, 1966 to the superintending agricultural officer, Bombay division, Nasik in this connection. A copy of the telegram was

- A thereafter sent by the superintending agricultural officer to divisional soil conservation officer D.S.D. Ghate (PW 1) for necessary action as well as for enquiry and report. Chate PW went to village Asane on May 2, 1966 and inspected block No. 13. He found that entries had been made about the payment of Rs. 369.07 in the measurement book and cash book even though no rectification work had been done. Chate submitted his report on May 6, 1966 for proceeding departmentally against the accused. On receipt of the above report, the superintending agricultural officer directed P. R. Inamdar (PW 11), deputy director of agricultural engineering, to go to Asane village and submit his report after personally verifying the facts. Inamdar went with Ghate to block No. 13 in Asane village on May 11, 1966. Both Inamdar and Ghate found that no rectification work had been done. They did not find even a single pit in the lands in that block although, according to measurement book, 83 pits had been recently dug. Inamdar and Ghate also met the Sarpanch and other landowners of Asane village. Report dated May 18, 1966 was thereafter submitted by Inamdar affirming those facts.
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- Sarpanch Tanku sent complaint Ex. 84, in the meanwhile, on April 30, 1966 to the director of anti-corruption branch Maharashtra State stating that the accused had prepared false bill for Rs. 369.07 without doing any work and that they had misappropriated that amount. It was also stated that attempts were being made to shield the accused. The director of anti-corruption sent a copy of that application to Sub Inspector K. G. Patil (PW 13) who was then attached to Dhulia office of the anti-corruption branch. Sub Inspector Patil made local enquiry and took into possession the measurement book, paysheets and cash book. The director of anti-corruption branch directed Patil to register a case and investigate into the matter. Patil went to Nasik and recorded statement Ex. 79 of Inamdar PW on November 7, 1966. The statement was then sent to Nandurbar Taluka police station. A case was registered on the basis of that statement at the police station on November 8, 1966. On November 12, 1966 sub Inspector Patil applied for permission under section 5A of the Prevention of Corruption Act of judicial magistrate 1st class to investigate the offence. The permission was granted by the judicial magistrate 1st class Nandurbar on the same day. Patil thereafter recorded statements of a number of persons. Patil was subsequently transferred and the case was investigated by his successors Mahamuni and Kulkarni who also obtained the requisite permission. Sanction Ex. 97 for the prosecution of the two accused was granted under section 6 of the Prevention of Corruption Act by the superintending agricultural officer Bombay division, Nasik on May 18, 1967.
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The two accused in their statements admitted that the work of the value of Rs. 369.07 was not done till March 11, 1966 although it was so stated in the various documents by them. The accused also admitted that no amounts were paid to any of the labourers mentioned in the paysheets although signatures and thumb impressions of the labourers had been obtained on the paysheets on March 11, 1966. According to the accused, they had prepared the various documents in accordance with the instructions of Ghate PW who was insisting in March 1966, and even earlier, that a completion report relating to block No. 13 be sent as the entire amount spent on that block since 1962 could not be recovered for want of a completion report. Khairnar accused added that rectification work had been done between May 13, 1966 and May 16, 1966 and the amount of Rs. 369.07 was thereafter disbursed on May 16, 1966.

The learned special judge held that the amount of Rs. 369.07 had not been paid by the two accused to the labourers. No work, it was found, had been done and the different documents prepared by the accused in this connection were false even on their own admissions. The explanation furnished by the accused that they prepared false documents at the instance of Ghate and got work done thereafter was not accepted. Objection was raised on behalf of the accused that the investigation of the case was illegal and that prosecution was barred by time under the provisions of section 23 of the Land Improvement Schemes Act, 1942. These objections were repelled. The accused were accordingly convicted and sentenced as above.

On appeal the High Court affirmed the findings of the learned special judge.

We have heard Mr. Kotwal on behalf of the appellants and are of the opinion that there is no merit in the appeal. It has not been disputed before us that the accused made various entries and prepared documents on March 11, 1966 about their having got the rectification work done as well as about the payment of Rs. 369.07 on that account. It has also not been disputed before us that the amount of Rs. 369.07 was not paid to any one by the accused in March or April 1966. According to Ghate (PW 1) and Inamdar (PW 11), no work relating to the rectification of the Bundh was found to have been done till May 11, 1966 when they visited the site in question. Inamdar's evidence also shows that according to the measurement book prepared by the accused, 83 pits had been recently dug although the witness could not find a single pit on the spot. In view of the above, we find no cogent ground to disagree with the trial court and the High Court that the accused had prepared false documents and had also committed criminal breach of trust in respect

- A of the amount of Rs. 369.07. We also agree with the trial court and the High Court that the accused were in the discharge of their duties guilty of criminal misconduct as defined in section 5 of the Prevention of Corruption Act.

- B Mr. Kotwal has argued that the accused completed the rectification work after May 11, 1966. There is, however, no direct evidence as may show that the rectification work was completed after May 11, 1966. Even if it may be assumed that the accused completed the rectification work in May 1966, that fact, in our opinion, would not absolve the accused of their criminal liability. The charge against the accused relates to preparation of false documents because even though no work had been done till March 11, 1966 and no amount had been disbursed, they prepared documents showing the doing of that work and the payment of that amount. It is no answer to that charge that after the matter had been reported to the higher authorities, the accused in the month of May 1966 got the rectification work done. It is also no answer to a charge of criminal misappropriation that the money was subsequently, after the matter had been reported to the high authorities, disbursed for the purpose for which it had been entrusted. According to explanation 1 to section 403 Indian Penal Code, a dishonest misappropriation for a time only is "misappropriation" within the meaning of that section.

- E Mr. Kotwal has also submitted that the accused expressed willingness to complete the work after the matter had been reported to the higher authorities. This submission, even if accepted, would not exonerate the accused because the willingness after the matter had been reported to the higher authorities could not efface or undo the offence earlier committed by the accused.

- F Argument has then been advanced on behalf of the appellants that Sub Inspector Patil did not make investigation in the case in accordance with law. It is urged that permission to make investigation was granted to Sub Inspector Patil on November 12, 1966 and, as such, he was not authorised to make before that date the enquiry which led to the registration of the case as that enquiry partook of the character of investigation. Nothing has been brought to our notice as to how an enquiry before the registration of a case can be held to be investigation. The matter, however, need not be dilated upon and it is not necessary to express any final opinion in the matter because we find that there is no material on the record as may show that the accused were prejudiced because of the alleged non-compliance with the provisions of section 5A of the Prevention of Corruption Act. It is well established that where cognizance of a case has, in fact, been taken by the court on a police report following investigation

conducted in breach of provisions of section 5A of the Prevention of Corruption Act, the result of the trial cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. The underlying reason for the above dictum is that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court to try the accused. Where, therefore, the trial of the case has proceeded to termination, the invalidity of the proceeding investigation would not vitiate the conviction of the accused as a result of the trial unless the illegality in the investigation has caused prejudice to the accused (see *H. N. Rishbud and Inder Singh v. The State of Delhi*<sup>(1)</sup>). Since there has been no miscarriage of justice in the present case because of the alleged non-compliance with section 5A, the conviction of the accused-appellants cannot be set aside on that score. For the same reason, we are unable to accede to the contention of Mr. Kotwal that the conviction of the accused should be set aside because permission under section 5A of the Prevention of Corruption Act to SI Patil for investigation of the offence was granted in a casual manner and without the existence of sufficient reasons.

Lastly, it has been argued by Mr. Kotwal that the prosecution of the accused was barred by time under section 23 of the Bombay Land Improvement Schemes Act, 1942. The section reads as under :

“(1) No suit, prosecution or other legal proceeding shall be instituted against any public servant or person duly authorised under this Act in respect of anything in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit or prosecution shall be instituted against any public servant or person duly authorised under this Act in respect of anything done or intended to be done, under this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.”

Sub-section (1) of the section has plainly no application as it relates to anything done in good faith. According to Bombay General Clauses Act, a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not. The appellants admittedly were not acting honestly when they prepared the false documents in question and showed disbursement of Rs. 369.07 on March 11, 1966. Mr. Kotwal, however, relies on sub-section (2) of section 23 and

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

- A submits that the prosecution could be instituted against the appellants only within six months from March 11, 1966. As the charge sheet was submitted long after the expiry of six months, the case against the accused-appellants, according to the counsel, was barred by time. This contention, in our opinion, is devoid of force. Sub-section (2) refers to suit or prosecution against a
- B public servant or person duly authorised under the Act in respect of anything done or intended to be done under the Bombay Land Improvement Schemes Act. It cannot be said that the acts of the accused-appellants in preparing false documents and in committing criminal breach of trust in respect of the amount of Rs. 369.07 as also their act of criminal misconduct were done under the
- C Bombay Land Improvement Schemes Act. Sub-section (2) of section 23 deals with anything done or intended to be done under the above mentioned Act by a public servant or a person duly authorised under the Act. It has no application where something is done not under the Act even though it has been done by a public servant who has been entrusted with duties of carrying out improvement schemes under the above mentioned Act. The
- D impugned acts of the appellants in the present case were not in discharge of their duties under the above mentioned Act but in obvious breach and flagrant disregard of their duties. Not only they did no rectification work for the Bundh which was a part of the improvement scheme, they also misappropriated the amount which had been entrusted to them for the purpose of rectification.
- E Prayer has also been made for the reduction of the sentence, but we see no cogent ground to interfere with the same. The appeal consequently fails and is dismissed.

K.B.N.

*Appeal dismissed.*