A

STATE OF MAHARASHTRA

v.

KALIAR KOIL SUBRAHMANIAM RAMASWAMY

August 8, 1977

B [N. L. UNTWALIA AND P. N. SHINGHAL, JJ.]

Constitution of India—Article 20(1)*—Whether a person can be convicted for an act which was not an offence when committed.*

Prevention of Corruption Act 1947*—Section* 5(1)(e)*—Whether, it is necessary to prove that the property was acquired after the offence was committed.*

C The respondent/accused was an Inspector in Regional Transport Office, Kolhapur. Under a search warrant his house was searched and a lot of property was recovered from his possession. While the matter was still under investigation, the Prevention of Corruption Act, 1947 was amended by inserting clause (e) in sub-section (1) of s. 5, The special Judge, Kolhapur, on 3rd April 1969, held the accused guilty of offences u/cl. (a), (b), (d) and (e) of sub. s. (1) of s. 5 of Prevention of Corruption Act 1947 and under s. 161 and 165 of IPC and sentenced him to rigorous imprisonment for 3 years and a fine of Rs. 20,000/-.

D The accused filed an appeal against his conviction and the High Court held that there was not even one witness who supported the prosecution case under s. 5(1)(a), (b), (d) of Prevention of Corruption Act, 1947. The High Court also held that as there was nothing on the record to show that the accused was in possession or came into possession of any pecuniary resources or property disproportionate to his known sources of income, after the enactment of clause (e) of sub-section (1) of s. 5 of the Act by the amending Act of 1964, his conviction under that clause was "illegal inasmuch as the said clause (e) could not be interpreted as to apply to the possession of the property and resources E by the appellant before it was enacted." The accused was accordingly acquitted by High Court.

The Supreme Court granted special leave limited to the question whether the acquittal of the accused for the offence under s. 5(1)(e) of the Act was justified ?

Dismissing the appeal.

F HELD : (1) Clause (e) of sub-section (1) of s. 5 came into existence on December 18, 1964 by the Amending Act of 1964. It added yet another clause to the four clauses which constituted the offence of criminal misconduct under sub-section (1) of s. 5. The result of the insertion was that mere possession of pecuniary resources or property disproportionate to be known sources of income of a public servant, for which he could not satisfactorily account, became an offence by itself. Such a possession was not, however, an offence by itself until December 18, 1964 although there was a third sub-section of s. 5 before that date which created a rebuttable presumption to prove offences under G clause (a) to (d) of s. 5(1). [276 F,G, 277A-B]

(2) The Legislature, it appears, thereafter, thought it proper to do away with the rule of evidence provided by sub-sec. (3) of s. 5 and inserted a new clause (e) in sub-section (1) of s. 5 as one more category of the offence of criminal misconduct. But it cannot be gainsaid that the new offence under the newly inserted clause (e) became an offence on and from December 18, 1964 by virtue of s. 6 of Amending Act 40 of 1964. In this view of the matter, the High Court rightly held that "in the absence of any evidence on H record to show that the appellant acquired or was found to be in possession of pecuniary resources etc. after the coming into force of the Amending Act", he was entitled to the protection of clause (1) of Article 20 of the Constitution. [277D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 6 of 1972. A

Appeal by Special Leave from the Judgment and Order dated 8-10-1971 of the Bombay High Court in Crl. A.No. 1575 of 1969.

M. N. Phadke and *M. N. Shroff* for the Appellant.

V. S. Desai, S. B. Wad and (*Mrs.*) *Jayashree Wad* for the Respondent. B

The Judgment of the Court was delivered by

SHINGHAL J.,—Respondent Kaliar Koil Subramaniam Ramaswamy, who will hereinafter be referred to as the accused, was working as Inspector in the Regional Transport Office, Kolhapur. His house was searched by Inspector R. K. Shukla (P. W. 164) under a search warrant issued by a magistrate of the First Class under section 96 of the Code of Criminal Procedure on May 17, 1964, and a lot of property was recovered from his possession. That led to an investigation into the transactions which were found to have been made by him and the members of his family. While the matter was still under investigation, the Prevention of Corruption Act, 1947, hereinafter referred to as the Act, was amended by Amending Act No. 40 of 1964, and the following was inserted as clause (e) in sub-section (1) of section 5.— C D

> "(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known source of income." E

Sub-section (3) of that section was substituted by a new sub-section which does not, however, directly bear on the case before us.

There was a prolonged investigation in the case against the accused and a charge-sheet was presented in the court of the Special Judge, Kolhapur, on April 3, 1969, alleging that the accused was guilty of offences under clauses (a),(b),(d) and (e) of sub-section (1) of section 5 of the Act read with sub-section (2) of that section, and sections 161 and 165 of the Penal Code. The Special Judge framed a charge against the accused for the commission of those offences, to which the accused pleaded not guilty. F G

The Special Judge convicted the accused under section 5(2) of the Act as he held that he had committed offences under clauses (a), (b),(d) and (e) of sub-section (1) of section 5 of the Act and sections 161 and 165 of the Penal Code, and sentenced him to rigorous imprisonment for 3 years and a fine of Rs. 20,000/-. The accused filed an appeal against his conviction and the High Court found that there was "not even one witness who supported the prosecution case under section 5(1)(a), (b) and (d) of the Prevention of Corruption Act, 1947." It also held that as there was nothing H

A on the record to show that the accused was in possession or came into possession of any pecuniary resources or property disproportionate to his known sources of income after the enactment of clause (e) of sub-section (1) of section 5 of the Act by the Amending Act of 1964, his prosecution under that clause was "illegal inasmuch as the said sub-section of section 5(1) could not be so interpreted as to apply to the possession of the property and resources by the appellant be-
B fore it was enacted." The High Court examined the transactions in jaggery and sewing machines also, and held further that it could "not see how the said acts of the appellant constitute offences either under Secs. 161 and 165 of the Indian Penal Code or under Section 5(1)-(a),(b) and (d) of the Prevention of Corruption Act, 1947." It therefore proceeded to examine the question whether the conviction of the accused for the offence under clause (e) of sub-section (1)
C of section 5 read with sub-section (2) of that section could be upheld in the face of the provisions of Article 20 of the Constitution, while doing so, it made a reference to its judgment in *Ramanand Pundlik Kamat v. State*(1) where, in almost similar circumstances, it had taken the view that the prosecution was not maintainable under that article. In that view of the matter, the High Court allowed the appeal by its judgment dated October 8, 1971, and acquitted the ac-
D cused altogether without examining the voluminous evidence which had been led by the prosecution to prove that he was in possession of pecuniary resources or property disproportionate to his known sources of income.

The State of Maharashtra felt aggrieved against the judgment of the High Court and applied for special leave. Leave was granted
E by this Court on January 6, 1972, but it was expressly limited to the question whether the acquittal of the accused for the offence under section 5(1)(e) of the Act was justified. His acquittal for the offences under clause (a),(b) and (d) of sub-section (1) of section 5 of the Act and sections 161 and 165 of the Penal Code therefore became final and is not open to challenge before us.

F We have reproduced clause (e) of sub-section (1) of section 5 of the Act which came into existence on December 18, 1964 by the Amending Act of 1964. It added yet another clause to the four clauses which constituted the offence of criminal misconduct under sub-section (1) of section 5. The result of the insertion was that mere possession of pecuniary resources or property disproportionate to the known sources of income of a public servant, for which
G he could not satisfactorily account, became an offence by itself. Such a possession was not, however, an offence by itself until December 18, 1964 although there was a third sub-section of section 5 before that date which read as follows,—

> "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 can-
H not satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be

(1) Cr. A. No. 1436 of 1968 decided on 26/27th August, 1971.

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 therefor shall not be invalid by reason only that it is based solely on such presumption."

As is obvious, that sub-section provided an additional mode of proving the offence punishable under sub-section (2) for which the accused person was on trial, but the mode of proof was necessarily correlated to clauses (a),(b)(c) and (d) of sub-section (1) of section 5 which stated the circumstances in which a public servant could be said to commit the offence of criminal misconduct in the discharge of his duty. When the matter came up for consideration by this Court in *Sajjan Singh* v. *State of Punjab* (1), it was thought proper to construe section 5(3) in such a way as not to include possession of pecuniary resources or property acquired before the Act as a new kind of offence of criminal misconduct for otherwise there would have been a breach of the fundamental right under Article 20(1) of the Constitution. It was therefore held, with reference to the earlier decisions in *C. S. D. Swamy* v. *The State*(2) and *Surajpal Singh* v. *State of U. P.*,(3) that sub-section (3) of section 5 "merely prescribed 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 is therefore well settled that sub-section (3) did not constitute an offence by itself.

It appears that the Legislature thereafter thought it proper to do away with the rule of evidence provided by sub-section (3) of section 5 and inserted the new clause (e) in sub-section (1) of section 5 as one more category of the offence of criminal misconduct. But it cannot be gainsaid that the new offence, under the newly inserted clause (e), became an offence on and from December 18, 1964 by virtue of section 6 of the Amending Act 40 of 1964. In this view of the matter, the High Court rightly held that "in the absence of any evidence on record to show that the appellant acquired or was found to be in possession of pecuniary resources or property disproportionate to his known sources of income after the coming into force of the Amending Act," he was entitled to the protection of clause (1) of Article 20 of the Constitution which provides as follows:—

"20(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

So when there was no law in force at the time when the accused was found in possession of disproportionate assets by the search which was made on May 17, 1964, under which his possession could be

(1) [1964] 4 S.C.R. 630.
(2) [1960] 1 S.C.R. 461.
(3) [1961] 2 S.C.R. 971.

A said to constitute an offence, he was entitled to the protection of clause (1) of Article 20 and it was not permissible for the trial court to convict him of an offence under clause (e) of sub-section (1) of section 5 as no such clause was in existence at the relevant time. The accused could not therefore be said to have committed an offence under clause (e) of sub-section (1) of section 5 read with sub-section (2) of that section.

B It may be that the act of possession of pecuniary resources or property disproportionate to the known sources of income of the accused led to the presumption of commission of an offence under clauses (a), (b) or (d) of sub-section (1) of section 5 of the Act, or any of those clauses, and it was permissible for the prosecution to take the benefit of sub-section (3) of section 5, as it stood before its substitution by Amending Act No. 40 of 1964 for the purpose of C establishing his guilt with reference to one or the other of those clauses, but as the accused has been acquitted of the offences under clauses (a), b) and (d) read with sub-section (2), and his acquittal for those offences, and for the offences under section 161 and 165 of the Penal Code, has become final in view of the limited leave of appeal referred to above, it is not permissible for counsel for the appellant State to contend that the protection of Article 20(1) of the Constitution D should not have been given merely because what was once a rule of evidence in the form of the earlier sub-section (3) of section 5 was amended by the Legislature and a distinct offence was provided by the insertion of clause (e). This has to be so because the fact remains that the newly added offence under clause (e) was not in existence at the time when the accused was found to be in possession, for himself or any person on his behalf, of pecuniary resources or E property disproportionate to his known sources of income.

There is thus nothing wrong with the view of the High Court that the accused was entitled to the protection of Article 20(1) of the Constitution and the appeal is dismissed.

P.H.P. *Appeal dismissed.*