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national economy. In fairness to the Tribunals we ought to add that if the tribunals had not taken an erroneous view about the effect of the scheme sanctioned by the Bihar Government they would not have granted the demand made by the respondent for housing accommodation. Since we hold that on the merits the award cannot be sustained we do not think it is necessary to consider whether the expenditure involved in the construction of quarters would be admissible under the relevant provisions of the Electricity Act.

The result is the appeal succeeds and the award under appeal is set aside. In the circumstances of this case we think it would be fair that the parties should bear their own costs.

Appeal allowed.

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April 23.

DIN DAYAL SHARMA

v.

THE STATE OF UTTAR PRADESH

(JAFER IMAM and J. L. KAPUR, JJ.)

Criminal Trial—Bribery and criminal misconduct—Accused committed to Court of Session—Law amended making such cases triable by Special Judge—Sessions Judge, if has jurisdiction to continue trial—Investigation by officer below Deputy Superintendent of Police—Whether trial vitiated—Prevention of Corruption Act, 1947 (II of 1947), s. 5-A—Criminal Law (Amendment) Act, 1952 (46 of 1952), s. 10.

The appellant was committed to the Court of Session for trial of offences under s. 5(2) Prevention of Corruption Act, 1947 and s. 161 Indian Penal Code. Shortly thereafter, the Criminal Law (Amendment) Act, 1952 came into force. An Assistant Sessions Judge tried the appellant and convicted him of the offences charged. The appellant contended that the trial was vitiated as the investigation had been made by a police officer below the rank of Deputy Superintendent of Police and that the Assistant Sessions Judge had no jurisdiction to try the case as it was triable by a Special Judge.

Held that, the Assistant Sessions Judge had jurisdiction to

try the case. Section 10 of the Criminal Law (Amendment) Act, 1952 transferred only cases pending before Magistrates to Special Judges but did not transfer cases which had been committed to Court of Session before the Act came into force.

Asgarali Nazarali Singaporewalla v. *The State*, [1957] S.C.R. 678, relied on.

Held further that, the conviction was not vitiated by the investigation having been made by an officer below the rank of a Deputy Superintendent of Police. If the matter had been urged before the Courts at an early stage it would have had to take steps to get the illegality cured by ordering fresh investigations. But the appellant could not be permitted to raise the questions whether the objection regarding investigation had been taken at the earliest stage as the question had not been raised in the Courts below.

H. N. Rishbud v. *The State of Delhi*, [1955] 1 S.C.R. 1150, relied on.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 95 of 1957.

Appeal by special leave from the judgment and order dated December 16, 1955, of the Allahabad High Court in Criminal Revision No. 1403 of 1953, arising out of the Judgment and order dated August 6, 1953, of the Court of the Additional Sessions Judge at Meerut in Criminal Appeal No. 225 of 1953.

H. J. Umrigar and *K. L. Mehta*, for the appellant.

G. C. Mathur, *C. P. Lal* and *G. N. Dikshit*, for the respondent.

1959. April 23. The Judgment of the Court was delivered by

IMAM, J.—The appellant was convicted under s. 5(2) of the Prevention of Corruption Act and under s. 161 of the Indian Penal Code and sentenced to one year's rigorous imprisonment on each count. The sentences were made to run concurrently. *Imam J.*

On the facts found by the courts below the appellant accepted Rs. 20/- as illegal gratification from one Malekchand who had applied for allotment of a house. The appellant was employed at that time as a clerk in the office of the District Relief and Rehabilitation Office, Meerut. The aforesaid sum of money was accepted by the appellant as bribe with a view to getting a house allotted to Malekchand. There can be

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no question that, on the facts found, the appellant was guilty both under s. 5(2) of the Prevention of Corruption Act and under s. 161 of the Indian Penal Code.

The first point taken was that the investigation had taken place by a police officer below the rank of Deputy Superintendent of Police. Consequently, the investigation had taken place in contravention of the provisions of the Prevention of Corruption Act. The conviction of the appellant was therefore vitiated. This point was taken before the Additional Sessions Judge who had heard the appeal of the appellant against his conviction. The Additional Sessions Judge referred to a decision of the Calcutta High Court which supported the submission made on behalf of the appellant. He also referred to a decision of the Allahabad High Court to the contrary effect. He followed, as he was bound to follow, the decision of the Allahabad High Court. The decision of this Court in the case of *H. N. Rishbud and Inder Singh* v. *The State of Delhi* (1) does not support the submission made by Mr. Umrigar on behalf of the appellant. He, however, referred to a passage in the aforesaid cited decision at page 1164 to the effect that where a breach of a mandatory provision is brought to the knowledge of the court at a sufficiently early stage, the court, while not declining cognizance, would have to take the necessary steps to get the illegality cured and the defect rectified by ordering such investigation as the circumstances of the case may call for. It has not been shown to our satisfaction that the attention of the trial court was drawn at an early stage to any breach of the provisions of the Prevention of Corruption Act. There had been an enquiry before commitment to the Sessions. It is clear that during these proceedings before commitment no objection was raised that the investigation had taken place by a police officer below the rank of Deputy Superintendent of Police in contravention of the provisions of the Prevention of Corruption Act. The decision of this Court was given on December 14, 1954, and the High Court judgment in the present case was delivered on

December 16, 1955. No point was taken before the High Court to the effect that the investigation had been made by an officer below the rank of Deputy Superintendent of Police in contravention of the provisions of the Prevention of Corruption Act. Such an objection should have been taken if the appellant was prepared to establish before the High Court that the objection had been taken at a sufficiently early stage and that in view of the decision of this Court in the case cited the trial court ought not have proceeded with the trial unless the defect had been removed. The decision of this Court in the case cited is clear, however, that generally a conviction is not vitiated because there had not been strict compliance with the provisions of the Prevention of Curruption Act in the matter of investigation by a police officer. As to whether the objection was taken at a sufficiently early stage is a question of fact and ought to have been raised in the High Court as the decision of this Court in the case cited had been delivered something like a year before. As this point in this form was not raised before the High Court we cannot allow it to be raised at this stage.

It was next contended that the Assistant Sessions Judge who tried the case had no jurisdiction to try the case as it was triable by a Special Judge only. It is clear, however, that the case had been committed to the Court of Session before the Criminal Law (Amendment) Act, 1952, came into force. Under s. 10 of this Act all cases pending before the Court of a Magistrate were transferred to the Court of a Special Judge. Section 10 did not purport to transfer cases, pending in the Court of Session at the commencement of the Act, to the Court of the Special Judge. In the case of *Asgarali Nazarali Singaporewalla* v. *The State*(1), this Court observed "The cases which were pending before the courts of sessions did not require to be so transferred because they would be tried by the procedure obtaining in the courts of sessions and nothing further required to be done." It seems clear to us, therefore, that the Assistant Sessions Judge had jurisdiction to try the case as the same had been

pending in the court of Session when the Act came into force.

The third contention raised was that the courts below had not correctly appreciated the nature, extent and the quantum of proof required for raising the presumption under s. 4 of the Prevention of Corruption Act. The High Court's judgment does not show that that Court in any way raised any presumption under s. 4 against the appellant. The following passage from the High Court's judgment would make this clear:

"It was next contended that the evidence on the record does not satisfactorily prove that the sum of Rs. 20 was received by the applicant as illegal gratification. The finding on this point is a finding of fact. I have gone through the judgment of both the courts below and I see no satisfactory reason to disagree with the concurrent finding of both the courts on this point. There is ample evidence on behalf of the prosecution to the conclusion that the sum of Rs. 20 was paid by Malekchand to the applicant on his demand in order to secure the allotment of a house. There does not appear any satisfactory reason why Malekchand should have paid Rs. 20 to the applicant to procure wheat for him."

There is, therefore, no question of any presumption being raised against the appellant. On the contrary, his defence that he had taken the sum of Rs. 20 from Malekchand to purchase wheat for him was disbelieved and Malekchand's evidence that he had taken this money in order to secure an allotment of a house for Malekchand was accepted. There appears to be no substance in the point raised.

It was next urged that the matter of sentence may be considered. The incident took place in 1951 and the appellant has been on bail and it would not be desirable to send him back to jail. The sentence of one year's imprisonment for corruption by a public servant cannot, however, be considered as unduly severe.

The appeal is accordingly dismissed.

Appeal dismissed.