

(1967) 08 GUJ CK 0010

In the Gujarat High Court

Case No : Criminal Revision Application No. 449 of 1965

State of Gujarat

APPELLANT

Vs

Jamadar Mansingrao Bhagvat Rao

RESPONDENT

Date of Decision : 10-08-1967

Acts Referred:

Bombay Police Act, 1951 — Section 161(1)
Criminal Procedure Code, 1898 (CrPC) — Section 435, 439
Penal Code, 1860 (IPC) — Section 161, 165, 165A
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1969) CriLJ 557 : (1969) GLR 537 : (1968) 2 LLJ 55

Hon'ble Judges : J.M. Sheth, J

Bench : Single Bench

Judgement

1. This is a revision application, filed by the State under Ss. 435 and 439 of the Criminal Procedure Code against the order, passed by the learned

Special Judge, Ahmedabad (Rural), at Narol, Sri R. C. Ierani, in a Special Case No. 2 of 1964, dismissing the prosecution of the accused-

opponent for the offences, punishable under Ss. 161, 165 and 165A of the Indian Penal Code and S. 5(2) read with S. 5(1)(d) of the Prevention

of Corruption Act, 1947. That prosecution was dismissed on the ground that the prosecution has been launched beyond a period of six months,

prescribed in S. 161(1) of the Bombay Police Act, 1951.

2. The facts leading rise to this revision petition are briefly stated as under.

3. On 21 July, 1963, the opponent was working as a police head constable in the Police Department of the Government of Gujarat and was

attached to the police station at Dehgam. As such, he was a public servant. The offences, punishable under Ss. 419 and 420 of the Indian Penal

Code, were alleged to have been committed by one person. That offence was registered at the police station, Dehgam, as Criminal Register No.

98 of 1963. The present opponent was investigating the said offences. One Karsandas Jividas of the village Motipura, Taluka Dehgam, District

Ahmedabad (Rural), was suspected to have committed these offences. That Karsandas is a brother-in-law of the complainant, Sri Kalidas

Khodidas Patel, belonging to village Ratanpur, Taluka Kalol, District Mehsana. It is the prosecution case that the present opponent, in his capacity

as such public servant, made a demand of illegal gratification of an amount of Rs. 300 from the complainant as a motive or reward for forbearing to

do an official act, that is, for not pressing the case or for showing favour in the case which he was investigating against the said Karsandas. On 21

July, 1963, at Dehgam, by corrupt and illegal means or by otherwise abusing his position as a public servant, the present opponent obtained and

directly accepted for himself a sum of Rs. 100, being the remaining amount of the original demand of Rs. 300 (the sum of Rs. 200 already having

been obtained by him previously), a gratification other than legal remuneration from the said complainant. A trap was laid and the opponent was

found to have received the said amount. After the necessary investigation and after undergoing all necessary formalities, an offence was registered

as Criminal Register No. 32 of 1964 and a chargesheet was prepared on 30 June, 1964, which was sent to the Court of a Special Judge,

Ahmedabad (Rural), at Narol, on 22 September, 1964.

4. When the case came up for hearing before that Court on 22 September, 1965, an application was filed on behalf of the opponent stating that

the prosecution having been instituted more than six months after the date of the act complained of, it is barred by the provisions of S. 161 of the

Bombay Police Act, 1951.

5. After hearing the advocates of the parties concerned, the learned Special Judge accepted the contentions urged on behalf of the opponent and

passed the impugned order. Being dissatisfied with that order, the State has filed the present revision petition.

6. The learned advocate, Sri B. J. Shelat, appearing on behalf of the present opponent, raised a preliminary objection that this Court has no

jurisdiction to revise the order passed by the learned Special Judge. This

objection was raised by him on the following grounds :

(1) The Judge, being a Special Judge appointed under the Criminal Law Amendment Act, 1952, which will hereinafter be referred to as the Act

of 1952, to try certain offences referred to in that Act was a *persona designata*. He contended that a Special Judge exercise powers as a *persona*

designata and not as a Court, much less a criminal Court and much less, a criminal Court inferior to the High Court. When the Judge exercises

special jurisdiction, conferred on it by other law, he does not act as a criminal Court, but he acts as a *persona designata*.

(2) A Court of Special Judge, at the most, could be said to be a special class of Court constituted under special law and eventually, the provisions

of the Criminal Procedure Code could be applied to a proceeding before a Special Judge only to the extent the Criminal Law Amendment Act of

1952 makes it applicable.

(3) A Court of Special Judge is not at any rate a Court inferior to the High Court. It is really not a Court at all. The High Court, therefore, cannot

revise the order passed by any such Special Judge in exercise of its powers under Ss. 435 and 439 of the Criminal Procedure Code.

(4) Any proceeding, held by the criminal Court in exercise of special jurisdiction conferred on it by any Act other than Criminal Procedure Code, is

not proceeding within the meaning of the proceeding referred to in S. 435 of the Criminal Procedure Code.

(5) The impugned order is an order of acquittal and hence, the State ought to have filed an acquittal appeal. The acquittal appeal, having been not

filed, this Court cannot interfere in its revisional jurisdiction.

7. Before I advert to the authorities cited by the learned advocate, Sri Shelat, in support of his aforesaid submissions, I first propose to refer to

certain relevant provisions of the Criminal Procedure Code.

8. Clause (o), Sub-section (1), of S. 4 of the Code of Criminal Procedure, 1898, which will be hereinafter referred to as the Code, defines

offence"" as under :

Offence" means any act or omission made punishable by any law for the time being in force, unless a different intention appears from the subject

or context.

9. It is, therefore, evident that an offence, punishable under and of the sections of the Indian Penal Code or any offence punishable under any

section of the Prevention of Corruption Act, 1947, will be included within the meaning of the word "offence" given in the Code.

10. Section 5, Sub-section (1), of the Code, states :

All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

11. Section 5, Sub-section (2), of the Code, states :

All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject

to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such

offences.

12. A plain reading of this section of the Code indicates that all offences under the Indian Penal Code are to be investigated, inquired into, tried

and otherwise dealt with, according to the provisions contained in the Code. Similarly, all the offences under any other law, e.g., Prevention of

Corruption Act, 1947, have to be investigated, inquired into, tried and otherwise dealt with, according to the same provisions, subject to any other

enactment for the time being in force, regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

In the instant case, therefore, except certain provisions made by the Act of 1952, which differ from certain provisions of the Code, to which I will

make a reference at a proper stage, provisions of the Code will apply, unless they are inconsistent with the provisions of the Act of 1952. Section

6 of the Code deals with a topic of classes of criminal Courts. It runs as under :

Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of

criminal Courts in the State of Bombay :

(1) Courts of Sessions, and

(2) Courts of Magistrates.

13. This section is quite comprehensive to include within the meaning of criminal Courts, Courts other than Courts of Sessions and Courts of

Magistrates. If they are Courts constituted under any law other than the Criminal Procedure Code for the time being in force, they could also be

included within the meaning of criminal Courts, referred to in S. 6 of the Code.

14. Section 9 of the Code, to which a reference was made by the learned advocate, Sri Shelat deals with constitution of Court of Sessions for

every Sessions Division. Section 17 of the Code deals with a topic regarding subordination of Judicial Magistrates and Benches to Sessions Judge.

15. Section 17B of the Code, which is very material for our purposes, runs as under :

Courts of Sessions and Courts of Magistrates (including Courts of Presidency Magistrates) shall be criminal Courts inferior to High Court, and

Courts of Magistrates, outside Greater Bombay, shall be criminal Courts inferior to Courts of Sessions.

16. From this provision, which has been introduced in the Criminal Procedure Code in its application to the State of Bombay, which is also

applicable in the State of Gujarat, it is evident that Court of Sessions is a criminal Court, inferior to the High Court. The meaning of the word "High

Court" has been given in Clause (i) of S. 4(1) of the Code. It runs as under :

High Court," in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta and, in relation to any other local area, means the

highest Court of criminal appeal for that area (other than the Supreme Court) or, where no such Court is established under any law for the time

being in force ...

17. In this State of Gujarat, this Court is the highest Court of criminal appeal (other than Supreme Court).

18. Chapter 31 of the Code deals with a topic regarding appeals. Part 7 of the Code deals with a topic regarding appeal, reference and revision.

In that part, this Chap. 31 falls. Section 404 of the Code runs as under :

No appeal shall lie from any judgment or order of a criminal Court except as provided for by this Code or by any other law for the time being in

force.

19. The words used there, are criminal Court. In view of these provisions of the Code, an appeal can lie from a judgment or order of a criminal

Court, only if there is a provision or order of a criminal Court, only if there is a provision or order of a criminal Court, only if there is a provision

made in regard to it in this Code or if the provision is made by any other law for the time being in force.

20. Section 417 of the Code, to which a reference was made by the learned advocate, Sri Shelat, deals with a topic of appeal in case of acquittal.

The material part of it runs as under :

Subject to the provisions of Sub-section (5), the State Government may, in case, direct the Public Prosecutor to present an appeal to the High

Court from an original or appellate order of acquittal passed by any Court other than a High Court.

21. In view of the use of the words "any Court" in this section, it was contended that wherever the legislature intended to give a right to appeals

from an order passed by any Court or the High Court, the legislature had used those general words.

22. The material part of S. 435 of the Code, for our purposes, runs as under :

The High Court ... may call for and examine the record of any proceeding before any inferior criminal Court situate within the local limits of its or

his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court ...

23. In view of these provisions of the Code, an argument was advanced by the learned advocate, Sri Shelat, that the High Court can exercise its

revisional jurisdiction only if the proceeding was before any inferior criminal Court, situate within the local limits of its or his jurisdiction. It was

also further contended by him that it must be a proceeding under the Code. This latter part of his argument can be easily brushed aside, as there

are no words used in S. 435 that the High Court can revise an order, passed by the inferior Court in any proceeding instituted under the Code.

The words used are "any proceeding." It is not stated therein that it should be a proceeding instituted under the Code. The material part of S. 439

of the Code, for our purposes, runs as under :

In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes

to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by Sections ...

24. In that section also, the words used are "any proceeding" and not "any

proceeding"" instituted under the Code.

25. I will now refer to the relevant provisions of the Criminal Law Amendment Act, 1952, which will be referred as the Act of 1952. Section 6 of

the Act of 1952 empowers the State Government to appoint Special Judge to try the offences, punishable under Ss. 161, 162, 163, 164, 165 and

165A and S. 5 of the Prevention of Corruption Act, 1947. It, therefore, means that the State Government is empowered to appoint Special

Judges to try a particular class of offences, referred to therein, which cover certain offences, punishable under certain sections of the Indian Penal

Code and also certain offences, punishable under the Prevention of Corruption Act, 1947.

26. Sub-section (2) of that S. 6 prescribes the qualifications of a person to be appointed as a Special Judge. Section 7, Sub-section (1), states that

:

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, or any other law, the offences specified in Sub-section (1) of S. 6

shall be triable by Special Judges only.

27. These offences, therefore, become triable exclusively by Special Judges.

28. Section 7, Sub-section (2), deals with a topic regarding the jurisdiction of Special Judges.

29. Sub-section (3) of S. 7 empowers the Special Judges to try any offence other than an offence specified in S. 6 with which the accused may,

under the Code of Criminal Procedure, 1898, be charged at the same trial. Section 8 deals with procedure and powers of Special Judges.

30. Sub-section (1) of S. 8 states that a Special Judge may take cognizance of offences without the accused being committed to him for trial, and

in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by

Magistrates. It is significant to note that the qualifications for appointment as a Special Judge are that he is or has been a Sessions Judge or an

Additional Sessions Judge or an Assistant Sessions Judge, under the Code of Criminal Procedure. In absence of any such provisions under S. 8 of

the Act, 1952, all these offences, both punishable under sections of the Indian Penal Code and the Prevention of Corruption Act, 1947, would

have to be tried and otherwise dealt with according to the provisions of the Code

in view of the provisions of S. 5 of the Criminal Procedure

Code, to which I have already made a reference earlier. Persons appointed as Special Judges, require qualifications of a Sessions Judge,

Additional Sessions Judge or Assistant Sessions Judge. A Sessions Judge cannot take cognizance of offences without the accused being

committed to him for trial in view of the provisions of the Code. Furthermore, a Sessions Judge has to follow the procedure prescribed for a

Sessions trial. That is the reason why a provision has been made in Sub-section (1) of S. 8, stating that a Special Judge can take cognizance of

offences without the accused being committed to him for trial. It is a departure from the normal rule. It is further directed therein that in trying the

accused persons, he shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates.

It is also a departure from the normal rule. Sub-section (2) of S. 8 of the Act of 1952 runs as under :

A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to,

an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge

relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof; and any pardon so

tendered shall for the purposes of Ss. 339 and 339A of the Code of Criminal Procedure, 1898, be deemed to have been tendered under S. 338

of that Code.

31. Sub-section (3) of it which is very material for our purposes, runs as under :

Save as provided in Sub-section (1) or (2), the provisions of the Code of Criminal Procedure, 1898, shall, so far as they are not inconsistent with

this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the Special Judge shall be

deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the persons conducting a prosecution before a

Special Judge shall be deemed to be a public prosecutor.

32. A plain reading of all these three sub-sections of S. 8 of the Act of 1952, clearly indicates that to a proceeding before a Special Judge, all the

provisions of the Code, except those referred to in Sub-secs. (1) and (2) of S. 8

of the Act of 1952, will apply, unless those provisions are inconsistent with this Act. An argument advanced by the learned advocate, Sri Shelat, for the opponent that only the provisions of the Code, referred to in Sub-secs. (1) and (2) can apply to such a proceeding and other provisions cannot apply, is not a well-founded argument. All other provisions of the Code, unless they are inconsistent with any provisions in the Act, will apply to a proceeding before a Special Judge. Furthermore, by this Sub-section (3) of S. 8 of the Act, a deeming fiction has been introduced and by introduction of that fiction by this statute, a Court of Special Judge is to be deemed to be a Court of Sessions, trying cases without a jury or without the aid of assessors for the purposes of the Code of Criminal Procedure. This Sub-section (3) of S. 8 of the Act of 1952 is a complete answer to the argument advanced by the learned advocate, Sri Shelat, that a Special Judge is not a Court and that he is a persona designata. This Sub-section (3) of S. 8 clearly states that the Court of Special Judge is to be deemed to be a Court of Sessions, trying cases without a jury or without the aid of assessors for the purposes of the said provisions of the Criminal Procedure Code. As there was a conflict of opinion between several High Courts as regards the application of S. 350 of the Code of Criminal Procedure, 1898, as a Court of Special Judge was a Court of Sessions and was not a Court of Magistrate whether the provisions of S. 350 could have application as they referred to the powers of a Magistrate, Sub-section 3A was added to S. 8, stating as under :

In particular, and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of S. 350 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to the proceedings before a Special Judge and for the purposes of the said provisions a Special Judge shall be deemed to be a Magistrate.

33. In view of the provisions of Sub-section (3), a Court of Special Judge is deemed to be a Court of Sessions. By this amendment for the purposes of S. 350 of the Code of Criminal Procedure, a Special Judge was to be deemed to be a Magistrate.

34. Section 9 of the Act of 1952 is very material for our purposes, as it deals with a topic of appeal and revision. It runs as under :

The High Court may exercise, so far as they be applicable, all powers conferred

by Chaps. XXXI and XXXII of the Code of Criminal

Procedure, 1898, on a High Court as if the Court of the Special Judge were a Court of Session trying cases without a jury within the local limits of

the jurisdiction of the High Court.

35. This section makes it abundantly clear that the High Court has been conferred all the powers conferred by Chaps. XXXI and XXXII of the

Code as if the Court of the Special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High

Court. As seen earlier, Chap. XXXI deals with appeals and Chap. XXXII deals with a topic regarding reference and revision. The provisions

referred to in those chapters are to govern the powers of High Court in relation to appeals and revision, as if a Court of Special Judge was a Court

of Session trying cases without a jury within the local limits of the jurisdiction of the High Court. It is true that there are qualifying words, "so far as

they be applicable." These two chapters deal with powers of the appellate Courts and revisional Courts which include not only High Court but also

Sessions Courts and also District Magistrates, etc. If those provisions apply to the Sessions Court, they would also apply to the Special Judge in

view of the deeming fiction introduced by S. 9 of the Act of 1952. As all of those provisions do not apply to the Court of Sessions and thereby will

not apply also to the Court of Special Judge, these words, "so far as they be applicable," have been introduced in this S. 9 of the Act of 1952.

36. With these observations, in relation to the provisions of the relevant sections of the Code and the Act of 1952, I will examine the correctness

or otherwise of the arguments advanced by the learned advocate, Sri Shelat, on behalf of the opponent.

37. Sub-section (3) of S. 8 of the Act of 1952 leaves no doubt that all the provisions of the Criminal Procedure Code, except as otherwise

provided in Sub-secs. (1) and (2) of S. 8, apply to a proceeding before a Court of Special Judge. That specific provision made in the said law

itself indicates that all the other provisions do have application to a proceeding before a Court of Special Judge. A deeming fiction introduced in

Ss. 8 and 9 that the Court of Special Judge will be a Court of Sessions trying cases without the jury or the aid of assessors clearly indicates that a

Special Judge trying such offences, acts as a Court and acts as a Court of

Session and he is not acting as a persona designata. As he is not acting as a persona designata, a question that an order of a Judge, acting as a persona designata, cannot be revised by the High Court in exercise of its powers under Ss. 435 and 439 of the Code, does not survive for consideration. There is no doubt that for the trial of a particular class of offences, a Court of Special Judge is constituted under the Act of 1952. Persons having prescribed qualifications can be appointed by the State Government as Special Judges and those Judges have been conferred special jurisdiction under this Act of 1952 to try that particular class of offences. It is also true that the Court of a Special Judge is a Special Court, constituted under the said law, and the provisions of the Criminal Procedure Code can apply to a proceeding instituted before that Court only if there are no provisions to the contrary in that special law, in view of the provisions of S. 5 of the Code. A Court of a Special Judge is deemed to be a Court of Sessions for trying cases without the jury of the aid of the assessors. That position has been made quite clear in S. 8 as well as in S. 9 of the Act of 1952. In view of the provisions of S. 17B of the Code of Criminal Procedure, a Court of Session is a criminal Court inferior to the High Court. A Court of a Special Judge, by the introduction of a deeming fiction, is treated as a Court of Sessions. It is, therefore, evident that a Court of a Special Judge is a criminal Court inferior to the High Court. Furthermore, High Court, as seen earlier, is the highest Court of criminal appeals; appeals against the order of Sessions Court as well as the Court of Special Judge lie to the High Court. If that test of appealability is taken into account for considering the question whether the Court of Special Judge is inferior to the High Court, the Court of Special Judge will also be a Court inferior to the High Court. The reason is obvious. Section 9 of the Act of 1952 provides that appeal shall lie from the order of the Special Judge to the High Court, as the provisions of Chap XXXI of the Code, so far as they are applicable, are to apply to such a proceeding before a Court of a Special Judge.

38. In the case of *Krishnaji Vithal v. Emperor* [A.I.R. 1949 Bom. 29], a Division Bench of the Bombay High Court has laid down the following ratio :

"Inferior" does not carry with it any stigma or any suggestion that the Court is

under the administrative orders of the superior Court. Inferior criminal Court only means judicially inferior to the High Court.

A Court is inferior to another Court when an appeal lies from the former to the latter.

The High Court in Sessions, exercising original criminal jurisdiction, is inferior to the High Court on its appellate side, as appeal lies from the former

to the latter. Hence, an application in revision lies from an order made by a Judge presiding over the Sessions in the High Court.

39. The learned advocate, Sri Shelat, tried to distinguish that case on the ground that it related to a question that a single Judge of the High Court

who exercises original criminal jurisdiction was inferior to the High Court Division Bench, exercising appellate jurisdiction. In my opinion, the

present case will be stronger than that case, as in the instant case, the Court of Special Judge is deemed to be a Court of Session. Section 17B of

the Code of Criminal Procedure, in its application in this State of Gujarat, has, in clear terms, laid down that all Courts of Sessions will be criminal

Courts inferior to the High Court. The Court of a Special Judge, by the introduction of a deeming fiction, is deemed to be a Court of Session. In

view of the aforesaid provisions of S. 17B of the Code, a Court of a Special Judge will be a criminal Court, inferior to the High Court, as is the

case with the Court of Sessions. It is, therefore, evident that an argument advanced by the learned advocate, Sri Shelat, that a Court of a Special

Judge is not a criminal Court inferior to the High Court and is not a Court at all, is not a well-founded argument.

40. His fourth submission was that any proceedings, held by any criminal Court in exercise of its special jurisdiction, conferred by the other Act is

not a proceeding within the meaning of S. 435 of the Criminal Procedure Code. This argument of his is not a well-founded argument. As discussed

earlier, the words used in the relevant Ss. 435 and 439 of the Code are "any proceedings before an inferior criminal Court." The proceedings in the

Court of a Special Judge are proceedings in the inferior criminal Court. It is not stated in any of those Ss. 435 and 439 of the Code that those

proceedings must be the proceedings under the Code of Criminal Procedure, 1898. In view of the aforesaid clear provisions of the Criminal

Procedure Code, 1898, and the relevant provisions of the Act, 1952, there is no

doubt left that such orders, passed by the Court of a Special

Judge in exercise of powers conferred under the Act of 1952, could be revised by the High Court in exercise of its powers under Ss. 435 and 439

of the Code.

41. I will now refer to the authorities cited by the learned advocate, Sri Shelat.

42. In the case of *Melhotra v. State* [A.I.R. 1958 All. 429], a Division Bench of the Allahabad High Court has observed as under :

The Criminal Law Amendment Act (1952) has created Special Judges who differ from the Sessions Judges only in this respect that they follow a

different mode of trial, but all the other provisions of the Criminal Procedure Code apply to both alike. They cannot be classed as Magistrates and

S. 350, Criminal Procedure Code, is not applicable to them. Section 9, Criminal Law Amendment Act, instead of being a surplusage, again

indicates the intention of the legislature to confer the status of a Sessions Judge upon Special Judges.

43. Mulla, J., in his judgment, in Para. 19, at p. 498, observes as under :

The very opening sentence of Sub-section (1) of S. 8 of the Act of 1952 gives an indication of the intention of the legislature. It is only to the

Court of Session that an accused is committed and there was no point in giving a direction that the Special Judge may take cognizance of a case

without any commitment proceedings, if he was a Magistrate, for cases are not committed to the Courts of Magistrates. This specific direction was

incorporated in the statute to stress the fact that a departure from the normal rule of procedure was being made and though the Special Judge was

not a Magistrate but an officer, deemed to be a Sessions Judge, yet for the limited purposes of trial he should follow the procedure laid down in

Chap. XXI of the Criminal Procedure Code.

44. In Para. 21, the pertinent observations made by him are as under :

By making it clear that the pardon tendered by the Special Judge shall be deemed to have been given under S. 338, the legislature has again given

an express indication that the Special Judge is not to be classed as a Magistrate, but as a Sessions Judge ...

45. In Para. 22, it has been observed as under :

Sub-section (3) of S. 8 of the Act of 1952 makes the position still more clear. It

states that excepting the provisions of Sub-secs. (1) and (2) the other provisions of the Code of Criminal Procedure which are not inconsistent with this Act will apply to the proceedings before the Special Judge and his Court shall be deemed to be a Court of Session. In other words, excepting the mode of trial prescribed in Sub-section (1), all the other provisions of the Criminal Procedure Code which apply to the Court of Sessions Judge shall apply to the Court of the Special Judge.

46. These observations made by Mulla, J., lend support to my conclusion that all the provisions of the Criminal Procedure Code except those referred to in Sub-secs. (1) and (2) of S. 8 of the Criminal Law Amendment Act, 1952, which apply to the Court of Sessions Judge, shall apply to the Court of the Special Judge.

47. At p. 499, after reviewing several authorities and the meaning given in the dictionaries of the words ""deemed to be,"" the following observations have made :

It, therefore, cannot be doubted that when the legislature directed that the Court of the Special Judge shall be deemed to be a Court of Sessions, the Courts of law had no option but to follow the direction of the statute and to regard the Court of the Special Judge as a Court of Sessions irrespective of the fact whether he was in essence a Sessions Judge or not.

48. In Para. 27, the following observations have been made, which are material for our purposes :

Lastly, I will deal with S. 9 of the Act of 1952. The Madras view was that if the Special Judges were to be regarded as Sessions judges, this

section becomes a surplusage. Perhaps the provisions of S. 408(b), Criminal Procedure Code, escaped the attention of the learned Judges when

they expressed this view. Under Sub-section (3) the direction given was that the Court of the Special Judge shall be deemed to be a Court of

Session. The term ""Court of Session"" includes the Courts of the Sessions Judge, the Additional Sessions Judge and also the Assistant Sessions

Judge for the same procedure is followed in trials before all these Courts. Normally, the Sessions Judge hears the appeals filed against the

decisions of the Assistant Sessions Judge, unless the sentence inflicted is four years or more. In order to clarify the position that an appeal from the

decision of the Special Judge shall in no case lie before the Sessions Judge, it

was necessary to add this section. Without this section a doubt might have arisen that in those cases where the Special Judge awarded a sentence of less than four years, the appeal lay before the Sessions Judge under S. 408(b) of the Code of Criminal Procedure. This section, therefore, instead of being a surplusage, again indicates the intention of the legislature to confer the status of a Sessions Judge upon these Special Judges.

49. In the same decision, Bhargava, J., has observed as under :

In considering the applicability of the provisions of the Code of Criminal Procedure to a Special Judge, it has to be kept in view that he is neither a Magistrate nor a Court of Session. His is a special class of Court constituted under that special law and, consequently, the Code of Criminal Procedure is to be applied in his case only to the extent that the Criminal Law Amendment Act, 1952, itself makes it applicable.

These observations made by Bhargava, J., also indicate that the Court of a Special Judge is a special class of Court constituted under that special

law. He does not say that a Special Judge is a *persona designata*. As seen earlier, Sub-section (3) of S. 8 of the Act of 1952 clearly indicates that

other provisions of the Code of Criminal Procedure except the provisions referred to in Sub-secs. (1) and (2) of S. 8 of the Act of 1952 apply to

such a proceedings before a Court of Special Judge. This decision, therefore, in my opinion, does not advance the case of the present opponent

any further.

50. In the case of *Mt. Mithan and Another Vs. Municipal Board of Orai and State of U.P.*, , relied upon by the learned advocate, Sri Shelat, in

Para. 5 at pp. 353 and 354, the following observations have been made by Desai, J. :

The provisions in S. 435 of the Code are to be read and interpreted in the light of the other provisions of the Code when they refer to "the record

of any proceeding" as contemplated by the Code. The Code provides for only certain specific proceedings in criminal Courts and the record of

any proceeding must obviously mean the record of any of those proceedings. The Code does not purport to deal with any jurisdiction or power

conferred upon criminal Courts under other Acts; it does permit their being conferred with special jurisdiction by the other Acts but does not

regulate the procedure to be followed when exercising the special jurisdiction and

does not provide for any appeal, review or revision from orders passed in exercise of it.

51. With great respect to the learned Judge, this position does not appear to be absolutely the correct position. Section 5 of the Criminal

Procedure Code is one of the relevant sections to be referred to in this context. An appeal can also be provided by any other law as referred to in

the relevant provisions in Chap. XXXI of the Code. If the legislature, intended to restrict the provisions of Ss. 435 and 439 of the Criminal

Procedure Code to proceedings under the Code only, the legislature, in my opinion, would not have used the general words "any proceedings." It

will not be proper to import other words, namely, "under the Code," in Ss. 435 and 439 of the Code of Criminal Procedure and give restricted

meaning to the proceedings to be revised under Ss. 435 and 439 of the Code. In the instant case, the Special Judges have been given jurisdiction

to try a certain class of offences. It is a case of trial for certain offences. It has been observed on the same p. 354 in the aforesaid decision as under

:

The other Acts conferring special jurisdiction may provide for the procedure to be followed in exercising it and for appeals, revision and review,

etc., of the orders passed, but the Code has absolutely nothing to do with them. Therefore, any proceedings held by any criminal Court in exercise

of the special jurisdiction conferred by other Acts is not a proceedings within the meaning of S. 435 of the Code.

It should be made clear that by the special jurisdiction we mean special jurisdiction to hold an inquiry or to pass an order; as regards the trials for

offence created by Acts other than the Indian Penal Code; the Code has made a provision [we have referred to S. 5(2)]. Once a trial for an

offence takes place in accordance with the provisions of the Code, the provisions in the Code relating to appeal, revision etc., will apply to the final

orders passed in the trial.

52. In the instant case, we are concerned with the trial for offences. The aforesaid observations; therefore, also will indicate that an order passed in

such a proceedings can be revised by the High Court in exercise of its power under Ss. 435 and 439 of the Code. The legislature, by enacting S. 9

of the Act of 1952, has made the position abundantly clear that such an order

passed by the Court of a Special Judge can be revised by the High

Court in exercise of its powers under Ss. 435 and 439 of the Code. It has also been observed in the aforesaid decision that :

A criminal Court can also be invested with jurisdiction to pass executive orders. It is created by the Code which expressly permits it to be

invested with special or extra jurisdiction. When it exercises the jurisdiction conferred by the Code, it acts as a criminal Court; it is created just for

the purpose of exercising jurisdiction conferred by it. But when it exercises extra or special jurisdiction conferred by other law, it does not act as a

criminal Court but acts as a *persona designata*.

It is a mere accident that the authority on which the special jurisdiction is conferred is a criminal Court. Though a criminal Court can be conferred

extra jurisdiction, it is not created in order to exercise it. According to this view the criterion is not whether the extra jurisdiction is to be exercised

judicially or as a judicial body; even if the extra jurisdiction is of a judicial nature the authority is a *persona designata* and not acting as a criminal

Court within the meaning of the Code.

53. In the instant case, these offences, referred to in S. 6 of the Act of 1952, could have been tried by criminal Courts. The legislature intended

that this particular class of offences should be tried by the persons having prescribed qualifications and appointed such persons as Special Judges.

The Court of a Special Judge was, further by an express provision, deemed to be Court of Sessions, trying cases without the aid of a jury or

without the aid of assessors. Furthermore, that Court, for the purposes of appeals and revisions, was to be considered as a Court of Sessions

Judge and the provisions of Chaps. XXXI and XXXII of the Code were to apply to such a proceeding before a Court of Special Judge, if they

apply to the Court of Sessions Judge. At p. 356, in the aforesaid decision, certain observations made by Mookerjee, J., in the case of *Abdoola*

Haroon and Co. Vs. Corporation of Calcutta, have been referred to, and the following observations have been made :

Mookerjee, J., conceded that the mere fact that an order is passed by a criminal Court does not make it revisable by the High Court and that if he

exercise jurisdiction as *persona designata*, he does not act as a criminal Court within the meaning of S. 435 of the Code. The only question

according to him was whether the order was a judicial or an executive order. If the authority had to exercise a judicial discretion, he thought that the order was a judicial order ...

When the legislature used the words "a proceeding before any inferior criminal Court," the problem is to interpret those words, and it is hardly rendered easier by importing other words, such as judicial discretion, judicial capacity, etc. It is not easier to explain what is a judicial order or a judicial proceeding than to explain what is a proceeding before an inferior criminal Court; on the other hand besides explaining these phrases one has also to establish that a proceeding before an inferior criminal Court means nothing more and nothing less than judicial proceeding before any criminal Court in exercise of any jurisdiction.

54. If we now refer to the definition of "judicial proceeding" given in Clause (m) of Sub-section (1) of S. 4 of the Code of Criminal Procedure, "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. It is, therefore, evident that the proceeding like the present proceeding will be a judicial proceeding, as an evidence is required to be taken on oath legally in such a proceeding. It has been observed in the aforesaid decision further as under :

Section 247(2) of the Municipalities Act creates an offence; this is made clear by S. 314 read with Sch. 8 and S. 315. The offence would be tried in accordance with the provisions of the Code; a proceeding in the trial would, therefore, be a proceeding before an inferior criminal Court and would be revisable.

55. In the instant case also, the proceeding is a proceeding in the trial. It would be, therefore, fore, a proceeding in the criminal Court and would be revisable. In the aforesaid decision, what was held was that the Magistrate who passes an order under S. 247(1) of the Municipalities Act, does not do so as an inferior criminal Court within the meaning of S. 435 of the Criminal Procedure Code. An order under S. 247 of the Municipalities Act would be revisable as per the provisions made therein, as it related to a trial for an offence.

56. In the case of *Sheobux Ram v. Emperor* 2 Cri. L.J. 534 at 536] it has been observed as under :

As Section Judge, Sri Vincent had power under S. 435 of the Code of Criminal

Procedure to call for the record in order to satisfy himself as to the correctness, legality or propriety of the proceedings before the Magistrate, it having been alleged that the order of the Assistant Settlement Officer was invalid as there was nothing to show that the petitioner could be treated as in law an abettor and that the order was bad. As Special Judge, however, he had no power under that section to call for the record as the section only empowers, among other criminal Courts a Sessions Judge to call for record from an inferior criminal Court, and so far as the Special Judge was concerned, the Deputy Magistrate was not an inferior Court.

57. I am in respectful agreement with these observations. A Special Judge, though deemed to be a Court of Sessions so far as such proceedings are concerned, will not have power to call for record in his capacity as a Special Judge, pending before any Magistrate, for revising an order, passed in such a proceeding by a Magistrate, the reason being that he is not empowered under the relevant provisions of the Criminal Procedure Code to revise such an order and the Magistrate cannot be said to be an inferior criminal Court to a Court of a Special Judge. In his capacity as a Session Judge, he will be able to call for such record and revise the order passed by any such Magistrate.

58. In the case of AIR 1946 169 (Privy Council) , relied upon by the learned advocate, Sri Shelat, the relevant observations made therein at p.

172 are as under :

The restoration of the jurisdiction of special Magistrates by the decision of this Board is irrelevant, since by that time the Ordinance of 1943 had

been repealed by the Ordinance of 1948, and, apart from this, Clause 26 of the former Ordinance took away all powers of revisions by the High

Court and no Court can claim inherent jurisdiction to exercise powers expressly taken away by legislation. In their lordships' view, if the High

Court possessed any power of revision in the present case, such power must be found in the Ordinance of 1943.

59. It will be significant to note that S. 26 of the Ordinance of 1942 was in the following terms :

Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever

authority made or done, there shall, save as provided in this Ordinance, be no appeal from any order or sentence of a Court constituted under this

Ordinance, and save as aforesaid, no Court shall have authority to revise such order or sentence, or to transfer any such case from any such Court,

or to make any order under S. 491 of the Code or have any jurisdiction of any kind in respect of any proceeding of any such Court.

60. It was in view of these express processions in the Ordinance itself taking away the jurisdiction of the High Court about revising the order of

such Courts of Magistrates, the aforesaid observations have been made. In the instant case, no such jurisdiction has been taken away. On the

contrary, by making a specific provision, it has been made clear that the High Court will have revisional jurisdiction, as if this proceeding was a

proceeding before the Court of a Sessions Judge.

61. None of the decisions relied upon by the learned advocate, Sri Shelat, can, therefore, be pressed into service to support his argument that this

Court has no jurisdiction to revise the order passed by the Court of Special Judge.

62. One argument, advanced by the learned advocate, Sri Shelat, was that this order was an order of acquittal passed by the learned Special

Judge. The order was, therefore, appealable in view of the provisions of S. 417 of the Criminal Procedure Code, read with S. 9 of the Act of

1952. In view of the provisions contained in Sub-section (5) of S. 439 of the Criminal Procedure Code, a revision petition cannot be entertained

as an appeal lay and no appeal was brought. That Sub-section (5) of S. 439 of the Code runs as under :

Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party

who could have appealed.

63. There is no doubt that if an order in question amounts to an order of acquittal, it being a State prosecution, State could have filed an appeal in

view of the provisions of S. 417 of the Code and no such appeal has been filed by the State and eventually the provisions of Sub-section (5) of S.

439 could be pressed into service and it could be urged with force that no revision could be entertained, as this revision has also been filed by the

State. The correctness or otherwise of this submission, made by the learned advocate, Sri Shelat, depends upon the real nature of the impugned

order. As we have seen, a Special Judge has to adopt the procedure prescribed for the trial of warrant cases for trying the offences in question.

Section 251 of the Code states that in the trial of warrant cases by Magistrates, the Magistrate shall in any case instituted on a police report, follow

the procedure specified in S. 251A, The present case was a case instituted on a police report. It is, therefore, evident that the procedure prescribed in S. 251A has got to be followed.

64. Section 251A (1) states as under :

When, in any case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such

Magistrate shall satisfy himself that the documents referred to in S. 173 have been furnished to the accused, and if he finds that the accused has not

been furnished with such documents or any of them, he shall cause them to be so furnished.

65. Sub-section (2) of S. 251A indicates as to when the Magistrate can discharge the accused.

66. Sub-section (3) of it states as to when the Magistrate can frame a charge. If he is of opinion that there is ground for presuming that the accused

has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately

punished by him, he shall frame in writing a charge against the accused. It is only after the charge is framed, read and explained to the accused, he

is to be asked whether he is guilty or claims to be tried. It is, therefore, evident that the trial in the real sense does not begin till the charge is framed.

At any rate, stage of acquittal does not come till the charge is framed and the evidence to be led by the prosecution is recorded, etc.

67. Sub-section (11) of S. 251A of the Code states :

If, in any case, under this section in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of

acquittal.

68. In the instant case, the stage of framing a charge has not come. Charge has not been framed. It is, therefore, evident that the stage of recording

the order of acquittal has not still come.

69. Section 161(1) of the Bombay Police Act, with which we are concerned in this case, runs as under :

In any case of alleged offence by the Commissioner, a Magistrate, police officer or other person, or of a wrong alleged to have been done by

such Commissioner, Magistrate, police officer or other person, by any act done under colour or in excess of any such duty or authority as

aforesaid or wherein, it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or

suit shall not be entertained, or shall be dismissed, if instituted more than six months after the date of the act complained of.

70. As in the instant case, the prosecution was already entertained by the Court of the Special Judge and it having been instituted more than six

months after the date of the act complained of, the prosecution has got to be dismissed, if that section has application. That order cannot be, by

any stretch of imagination, said to be an order of acquittal, as contemplated under the provisions of the Code. I, therefore, hold that this impugned

order, being not an order of acquittal it was not applicable under the provisions of S. 417 of the Code. It being not an appealable order, the

provisions of Sub-section (5) of S. 439 of the Code cannot be pressed into service. All the submissions made by the learned advocate, Sri Shelat,

in support of his argument that this Court has no jurisdiction to revise the impugned order in exercise of its power under Ss. 435 and 439 of the

Code of Criminal Procedure, are not, in my opinion, well-founded submissions. The result is that the preliminary objection raised by him is not

tenable. I, therefore, reject his contention and hold that this preliminary objection is not tenable.

71. The learned Assistant Government Pleader, Sri Vidhyarthi, urged that the order, passed by the learned Special Judge that the present

prosecution was barred in view of the provisions of S. 161(1) of the Bombay Police Act, 1951, is clearly erroneous in law. He urged that there

should be a reasonable connexion between the Act complained of and the sphere of duty, for attracting the provisions of S. 161(1) of the Bombay

Police Act, 1951. The act complained of, in the instant case, was of making a demand of a bribe and taking of a bribe. It cannot be said that it had

any reasonable connexion with the duty, of the present opponent, the police officer, who was investigating the offences, punishable under Ss. 419

and 420 of the Indian Penal Code. His position as a public servant and his duty as an investigating officer, only provided an opportunity to make

such a demand and to accept such bribe for weakening the case which he was investigating against that person. The learned Special Judge has

come to the conclusion that the present case was covered under the provisions of S. 161 of the Bombay Police Act, relying upon certain decisions

of the Maharashtra High Court, which were given by Paranjpe, J., and a decision of the Supreme Court, in the case of Virupaxappa Veerappa

Kadampur Vs. The State of Mysore, . If we now refer to the aforesaid decisions of the Supreme Court, it clearly appears that the learned Special

Judge has not properly understood the ratio laid down by the Supreme Court in that case. The relevant observations made therein at p. 852 are as

under :

It appears to us that the words "under colour of duty" have been used in S. 161(1) to include acts done under the cloak of duty, even though not

by virtue of the duty. When he (the police officer) prepares a false panchnama or a false report, he is clearly using the existence of his legal duty as

a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil of his falsehood." The acts thus done in dereliction of his duty

must be held to have been done ""under colour of the duty.

72. A decision in the case of Parbat Gopal Walekar v. Dinker S. Shidde [63 Bom. L.R. 189] was referred to in Para. 13 of the judgment and the

following observations have been made :

In that case the act complained of was an act of a police constable in driving rashly and negligently when driving a police jeep which was carrying

a sub-inspector of police, who was proceeding for an inquiry, was held not to be done "under colour or in excess of the duty imposed upon him as

a constable-driver".

73. After referring to the observations made by the learned Judge of the Bombay High Court in that decision, the following pertinent observations

have been by the Supreme Court :

On the facts of that particular case the decision may well be justified on the grounds that injuring a person by rash and negligent driving had no

relation to the duty of the constable to drive the motor vehicle. We think it right however to point out that the view that if the alleged act "is found

to have been done in gross violation of the duty" then it ceased to be an act done under colour, is not correct. As we have pointed out above, it is

only when the act is in violation of the duty that the question of the act being done under colour of the duty arises. The fact that the act has been

done under gross violation of the duty can no reason to think that the act has not been done under colour of the duty".

74. It is thus evident that even if an act is done by a flagrant breach of the duty, it will be covered by the phrase "under colour of the duty,

provided it had a relation with the duty of the officer concerned. It is thus evident that in that Supreme Court decision also, the test laid down is a

reasonable connexion between the duty of a police officer and the act complained of.

75. In the case of State of Maharashtra Vs. Narharrao, , a decision in Criminal Appeal No. 153 of 1963, dated 11 November 1963, relied upon

by the learned Special Judge, which was a decision given by Paranjpe, J, has been reversed by the Supreme court. His lordship Ramaswami, J.,

speaking for the Supreme Court, has made the following pertinent observations :

In order to have the benefit of six months" period mentioned in S. 161(1) of the Bombay Police Act, it must appear to the Court that

(i) the offence was committed by the accused officer under colour of any duty imposed or under any authority conferred by any provision of the

Act or any other law for the time being in force, and

(ii) the act was done in excess of any such duty or authority.

The test to determine as to whether a particular act complained of was done under colour of the office or in excess of the duty is to see that

reasonable connexion between the act complained of and the powers and duties of the office exists. The act cannot be said to have been done

under colour of office merely because the point of time at which it is done coincides with the point of time the accused officer is invested with the

powers or duty of his office.

The acceptance of bribe by the police officer with the object of weakening the prosecution against certain accused cannot be said to have been

done by him under the colour of his office or done in excess of his duty or authority within the meaning of S. 161(1) of the Bombay Police Act and

the limitation of six months" duration is not amenable to such police officer.

76. This decision is a complete answer to the arguments advanced on behalf of the present opponent by the learned advocate, Sri Shelat, and fully

lends support to the arguments advanced by the learned Assistant Government Pleader. The learned advocate, Sri Shelat, tried to distinguish that

case on the ground that in that case which the Supreme court had to deal with, the offence that was being investigated by the accused police

officer, was an offence punishable under the Bombay Police Act, while in this instant case, the offences that were being investigated by the present

opponent were the offences punishable under the Indian Penal Code. As said by me earlier, the definition of offence given in the Code, includes the

offence punishable under the Indian Penal Code as well as the offence punishable under any other Act. Whether the offence that was being

investigated was an offence punishable under the Indian Penal Code as well as the offence punishable under any other Act. Whether the offence

that was being investigated was an offence punishable under the Indian Penal Code or an offence under the Bombay Police Act or any other Act,

is not relevant to the question whether the provisions of S. 161 of the Bombay Police Act, 1951, can be pressed into service or not. If the test laid

down in the aforesaid decision of the Supreme Court is satisfied, namely, that there is a reasonable connexion between the act complained of and

the powers and duties of office, such a prosecution has got to be launched within the period prescribed by S. 161(1) of the Act. In the instant

case, that test is not satisfied. It could not be said by any stretch of imagination that there is a reasonable connexion between the act of demanding

and accepting of bribe, which is an act complained of and the powers and duties of the present police officer, investigating the offence under Ss.

419 and 420 of the Indian Penal Code. As stated earlier, that investigation only gave an opportunity to demand and accept such bribe.

77. A Division Bench of our High Court, in the case of Bhanuprasad Hariprasad Dave v. State of Gujarat [5 Guj. L.R. 958] even before the

aforesaid decision of the supreme Court, had to deal with this question. At p. 976, a decision of the Maharashtra High Court, in the case of State

of Maharashtra Vs. Narharrao, referred to above by me, was referred to, and the following observations were made :

The result that was to be achieved in the Supreme Court case was also to lessen the gravity of the offence and the object of the police officer, in

the instant case, was also a similar one, giving either complete relief to the accused or at least a partial relief. The facts of this case, therefore,

would certainly bring it within the ratio of the decision of the Supreme Court in *Virupaxappa v. State of Mysore*"".

78. The following observations have been made by a Division Bench of our High Court :

With respect, there is, in our view, a fallacy in this reasoning. Section 161(1) of the Bombay Police Act is concerned with an act and not with an

object or motive underlying it. The object or motive may be the reason or motivating force behind a just or an unjust act but it must be the act itself

which has to be connected with the duty and it is that act that has to be considered and not the motive behind it.

79. It has been further observed therein by Sarela, J., as under :

However, the point does not need to be pursued for the earlier decisions of Paranjpe, J., holding that acceptance of bribe by a police officer

would be under colour of the duty, have not been approved by a Division Bench decision of the Bombay High Court in *Gorakh Tulji Mahale v.*

State of Maharashtra [1965 II L.L.J. 205] ... The Division Bench disapproved the decision in *Narhar Rao Madhavrao Patil v. State*. Justice Sri

Chandrachud who spoke for the Bench examined the language of the section and having considered various rulings on the point set out what that

Court considered to be the correct position of law as under :

"In order that an act could be said to be done under colour of office or colour of duty, it would at least be necessary that there should be some

relationship between the act complained of and the duties appertaining to the office. The existence of such a nexus is indispensable for proof that

the act is done under colour of office though in a conceivable class of cases, even such a nexus may not be adequate, in the light of other facts, for

proving that the act was done under colour of office"

"Acceptance of bribe cannot, in our opinion, be described as an act done under colour of office or under colour of duty because it is wholly

unconnected with the rights and duties attaching to the office. It is an act which is entirely extraneous to the nature of duties which the office

imposes on the incumbents. The only connexion, if at all, between the office and the acceptance of bribe by the officer is that the office affords an

opportunity to the officer to demand and accept the bribe. That, however, is not a relevant consideration, because what law requires is not that the

act must be done by virtue of office but that it must be done under colour of office."

"A public servant who accepts an illegal gratification cannot, either in justification or in explanation, point to the rights and duties of his office if he is

challenged in the act of taking the bribe, that is to say, he cannot ever use the office ""as a veil to his falsehood,"" though of course he exploits his

office to extort the bribe."

80. These observations made by Chandrachud, J., have been accepted by a Division Bench of our High Court as laying down the correct position

of law in this regard. I am also in respectful agreement with these observations made by Chandrachud, J. As stated earlier, the Supreme Court has

also laid down the same test. The act complained of is quite extraneous to the duties of the present opponent. Such a prosecution, therefore, is not

required to be launched within the period prescribed by S. 161(1) of the Bombay Police Act, 1951. The learned Special Judge has clearly

committed an error in holding that the present prosecution is barred by the provisions of the Bombay Police Act, 1951, and eventually dismissing

the prosecution. That order, therefore, requires to be quashed. it being not sustainable in law.

81. The revision petition is allowed. The order passed by the learned Special Judge, dismissing the prosecution launched against the present

opponent, is set aside and the Special Judge, Ahmedabad (Rural), at Norol, is directed to proceed with this prosecution which has been registered

as a Special Case No. 2 of 1964 further according to law. The present opponent is directed to appear before the learned Special Judge,

Ahmedabad (Rural), at Norol, on 15 September, 1967.

82. Rule is made absolute.