

(1967) 08 GUJ CK 0002
In the Gujarat High Court

The State of Gujarat

APPELLANT

Vs

Jamadar Mansingrao Bhagvatrao

RESPONDENT

Date of Decision : 10-08-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 251, 251A, 39, 417 , 435
Penal Code, 1860 (IPC) — Section 161, 165

Citation : (1969) 10 GLR 537

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

Bench : Single Bench

Judgement

J.M. Sheth, J.—This is a Revision Application, filed by the State under Sections 435 and 439 of the Criminal Procedure Code against the order, passed by the learned Special Judge, Ahmedabad Rural at Narol, Mr. R.C. Israni in a Special Case No. 2 of 1964, dismissing the prosecution of the accused-opponent for the offences, punishable under Sections 161, 165 and 165-A of the Indian Penal Code and Section 5(2) read with Section 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 Section 161(1) of the Bombay Police Act, 1951.

2. The facts leading rise to this Revision Petition are briefly stated as under:

On 21st July, 1963, the opponent was working as a Police Head Constable in a 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 Sections 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 at 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, Mr. 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 paid Karsandas. On 21st 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 the necessary formalities, an offence was registered as C.R. No. 32 of 1964 and a charge-sheet was prepared on 30-6-1964, which was sent to the Court of a Special Judge, Ahmedabad (Rural) at Narol on 22-9-1964.

3. When the case came up for hearing before that Court on 22-9-1965, an application was filed on behalf of the opponent stating that the prosecution having been instituted more than 6 months after the date of the act, complained of, it is barred by the provisions of Section 161 of the Bombay Police Act, 1951. 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.

4. The learned Advocate, Mr. 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 exercises 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 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 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 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 Sections 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 a proceeding within the meaning of the proceeding referred to in Section 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.

5. Before I advert to the authorities cited by the learned Advocate, Mr. Shelat in support of his aforesaid submissions, I first propose to refer to certain relevant provisions of the Criminal Procedure Code.

Clause (o), Sub-section (1) of Section 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.

It is, therefore, evident that an offence, punishable under any section of the Indian Penal Code or any offence punishable under any section of Prevention of Corruption Act, 1947, will be included within the meaning of the word "Offence" given in the Code.

Section 5, Sub-section (2) 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.

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.

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, eg. 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.

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 Section 6 of the Code.

Section 9 of the Code, to which a reference was made by the learned Advocate, Mr. 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.

Section 17(B) 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.

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 High Court. The meaning of the word "High Court" has been given in Clause (i) of Section 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....

In this State of Gujarat, this Court is the highest Court of Criminal Appeal (other than Supreme Court).

Chapter 31 of the Code deals with a topic regarding Appeals. Part 7 of the Code deals with a topic regarding Appeal. Reference and Reference and Revision. In that Part, this Chapter 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.

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

Section 417 of the Code, to which a reference was made by the learned Advocate, Mr. 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.

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

The material part of Section 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....

In view of these provisions of the Code, an argument was advanced by the learned Advocate, Mr. 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 Section 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 Section 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....

In that section also, the words used are "any proceeding" and not "any proceeding" instituted under the Code.

6. I will now refer to the relevant provisions of the Criminal Law Amendment Act, 1952, which will be referred to 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 Sections 161, 162, 163, 164, 165-A and Section 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.

Sub-section (2) of that Section 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 in any other law, the offences specified in Sub-section (1) "of Section 6 shall be triable by Special Judges only.

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

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

Sub-section (3) of Section 7 empowers the Special Judges to try any offence other than an offence specified in Section 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.

Sub-section (1) of Section 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 Session Judge or an Assistant Session Judge, under the Code of Criminal Procedure. In absence of any such provision u/s 8 of the Act, 1952, all these offences, both punishable under sections of the Indian Penal Code and 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 Section 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 an Assistant Sessions Judge. A Sessions Judge cannot take cognizance of offence without the accused being committed to him for trial in view of the provisions of the Code. Further more, 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 Section 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 Section 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 Sections 339-A of the Code of Criminal Procedure, 1898, be deemed to have been tendered u/s 338 of that Code.

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

Save as provided in Sub-section (1) or Sub-section (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 Sessions 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.

A plain reading of all these three Sub-sections of Section 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-sections 1 and 2 of Section 8 of the Act of 1952, will apply, unless those provisions are inconsistent with this Act. An argument advanced by the learned Advocate, Mr. Shelat for the opponent that only the provisions of the Code, referred to in Sub-section (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 Section 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 jury or without the aid of assessors for the purposes of the Code of Criminal Procedure. This Sub-section (3) of Section 8 of the Act of 1952 is a complete answer to the argument advanced by the learned Advocate, Mr. Shelat that a Special Judge is not a Court and that he is a persona designata. This Sub-section (3) of Section 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 Section 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 Section 350 could have application as they referred to the powers of a Magistrate, Sub-section 3-A was added to Section 8, stating as under:

In particular, and without prejudice to the generality of the provisions contained in Sub-section (3), the provisions of Section 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.

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 Section 350 of the Code of Criminal Procedure, a Special Judge was to be deemed, to be a Magistrate.

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 the powers conferred by Chapters 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.

This section makes it abundantly clear that the High Court has been conferred all the powers conferred by Chapters 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, Chapter XXXI deals with Appeals and Chapter 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 & 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 Section 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 Section 9 of the Act of 1952.

7. 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, Mr. Shelat on behalf of the opponent.

8. Sub-section 3 of Section 8 of the Act of 1952 leaves no doubt that all the provisions of Criminal Procedure Code, except as otherwise provided in Sub-sections (1) and (2) of Section 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 Sections 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 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

Sections 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 Section 5 of the Code. A Court of a Special Judge is deemed to be a Court of Sessions for trying cases without the jury or the aid of the assessors. That position has been made quite clear in Section 8 as well as in Section 9 of the Act of 1952. In view of the provisions of Section 17(B) 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 it 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 Chapter XXXI of the Code, so far as they are applicable, are to apply to such a proceeding before a Court of a Special Judge.

9. In the case of *Krishnaji Vithal v. Emperor*, a Division Bench of the Bombay High Court A.I.R 1949 Bom 29, 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 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.

The learned Advocate, Mr. 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 17(B) 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 Section 17(B) the 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, Mr. 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.

10. His fourth submission was that any proceeding, held by any Criminal Court in exercise of its special jurisdiction, conferred by the other Act is not a proceeding within the meaning of Section 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 Sections 435 and 439 of the Code are "any proceedings before an inferior Criminal Court". The proceedings in the Court of a Special Judge are proceeding in the inferior Criminal Court. It is not stated in any of those Sections 435 and 439 of the Court 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 Sections 435 and 439 of the Code.

11. I will now refer to the authorities cited, by the learned Advocate, Mr. Shelat.

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 Section 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.

Mulla J. in his judgment, in para 19, at page 498, observes as under:

The very opening sentence of Sub-section (I) of Section 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 Chapter XXI of the Criminal Procedure Code.

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 u/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

In para 22, it has been observed as under:

Sub-section (3) of Section 8 of the Act of 1952 makes the position still more clear. It states that excepting the provisions of Sub-sections (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 the Sessions [Judge shall apply to the Court of the Special Judge.

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-sections (1) and (2) of Section 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.

At page 499, after reviewing several authorities and the meaning given in the dictionaries of the words "deemed to be", the following observations have been 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 Court 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 Session irrespective of the fact whether he was in assence a Sessions Judge or not.

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

Lastly, I will deal with Section 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 Section 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 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 u/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.

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 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 designate. As seen earlier, Sub-section (3) of Section 8 of the Act of 1952 clearly indicates that other provisions of the Code of Criminal Procedure except the provisions referred to in Sub-sections (1) and (2) of Section 8 of the Act of 1952 apply to such a proceeding before a Court of Special Judge. This decision, therefore, in my opinion, does not advance the case of the present opponent any further.

11. In the case of *Mt. Mithan and Another Vs. Municipal Board of Orai and State of U.P.*, , relied upon by the learned Advocate, Mr. Shelat, in para 5 at pages 353 and 354, the following observations have been made by Desai J.:

The provisions in Section 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 there being conferred with special jurisdiction by 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.

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 Chapter

XXXI of the Code. If the Legislature intended to restrict the provisions of Sections 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 proceeding". It will not be proper to import other words, namely; "under the Code", in Section 435 and Section 439 of the Code of Criminal Procedure and give restricted meaning to the proceedings to be revisable under Sections 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 page 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 proceeding held by any criminal Court in exercise of the special jurisdiction conferred by other Acts is not a proceeding within the meaning of Section 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 offences created by Acts other than the Indian Penal Code, the Code had made a provision (we have referred to Section 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.

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 proceeding, can be revised by the High Court in exercise of its power under Sections 435 and 439 of the Code. The Legislature, by in enacting Section 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 u/s 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 exercise the jurisdiction conferred by the Code, it acts at 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."

In the instant case, these offences referred to in Section 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 the 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 Chapters 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 page 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 Section 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.

If we now refer to the definition of "judicial proceeding" given in Clause (m) of Sub-section (1) of Section 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 Section 314 read with Section 8 and Section 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.

In the instant case also, the proceeding is a proceeding in the trial. It would be, therefore, 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 u/s 247(1) of the Municipalities Act, does not do so as an inferior Criminal Court within the meaning of Section 435 of the Criminal Procedure Code. An order u/s 247 of the Municipalities Act would be revisable as per the provisions made therein, as it related to a trial for an offence.

12. In the case of *Sheobux Ram v. Emperor*, 2 Criminal Law Journal 534, at page 536, it has been observed as under:

As Sessions Judge, Mr. Vincent had power u/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 proceeding 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.

I am in respectful agreement with these observations. A Special Judge, though deemed to be a Court of Session 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 Sessions Judge, he will be able to call for such record and revise the order passed by any such Magistrate.

13. In the case of AIR 1946 169 (Privy Council) , relied upon by the learned Advocate Mr. Shelat, the relevant observations made therein at page 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 1942 had been repealed by the Ordinance of 1943, 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.

It will be significant to note that Section 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 u/s 491 of the Code or have any jurisdiction of any kind in respect of any proceedings of any such Court.

It was in view of these express provisions 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.

14. None of the decisions relied upon by the learned Advocate, Mr. 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.

15. One argument, advanced by the learned Advocate Mr. 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 Section 417 of the Criminal Procedure Code, read with Section 9 of the Act of 1952. In view of the provisions contained in Sub-section (5) of Section 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 Section 439 of the Code runs as under:

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

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 Section 417 of the Code and no such appeal has been filed by the State and eventually the provisions of Sub-section (5) of Section 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, Mr. 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 Section 251 A. The present case was a case instituted on a Police report. It is, therefore, evident that the procedure prescribed in Section 251A has got to be followed.

Section 251 A(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 document referred to in Section 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.

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

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.

Sub-section (11) of Section 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.

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.

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.

16. 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 appealable under the provisions of Section 417 of the Code. It being not an appealable order, the provisions of Sub-section (5) of Section 439 of the Code cannot be pressed into service. All the submissions made by the learned Advocate, Mr, Shelat in support of his argument that this Court has no jurisdiction to revise the impugned order in exercise of its power under Sections

435 and 439 of the Code of Criminal Procedure, are not, in ray opinion, well-founded submissions. The result is that the preliminary object on raised by him is not tenable. I, therefore, reject his contention and hold that this preliminary objection is not tenable.

[His Lordship held that act complained of was quite extraneous to the duties of the opponent and therefore/prosecution was not required to be launched within the period prescribed by Section 161(1) of the Bombay Police Act.]