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holidays which are granted by the appellant to the respondents should be reduced from those sanctioned under the Negotiable Instruments Act to 16 every year.

The result is, both the appeals are allowed. Appeal No. 625 of 1962 succeeds and the change proposed to be made by the appellant according to the notice of change served by it on the respondents is allowed to be made, subject to the decision of the Tribunal on the question remitted to it. Appeal No.626 of 1962 is also substantially allowed and the number of paid holidays in a year is raised from 10 to 16. In the circumstances of this case, there would be no order as to costs.

Appeals allowed.

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December, 4.

R. S. PANDIT

v.

STATE OF BIHAR

(S. J. IMAM, K. SUBBA RAO, N: RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Criminal Trial—Sanction for prosecution—Validity of—Defective charge—Particulars of persons from whom bribes taken not mentioned—Point not mentioned in courts below, not also mentioned in special leave petition or statement of case—Not allowed to be raised—Prevention of Corruption Act, 1947 (Act II), ss. 5, 6—Constitution of India, Art. 136.

The appellant was convicted under sub-section (1) read with sub-section (3) of s. 5 of the Prevention of Corruption Act, 1947, and sentenced to rigorous imprisonment for three years. The High Court confirmed the conviction and sentences

passed on him. He came to this court by special leave. It was contended that the sanction given by the Government for his prosecution was illegal on the ground that the sanctioning authority had not before it all the relevant facts constituting the offence for which sanction was asked for before giving it, the sanction was given for prosecuting the appellant under sub-section (2) read with sub-section (3) but he was convicted for a different offence under sub-section (1) of s. 5 read with sub-section (3) and the sanction was given under sub-section (3) of s. 5 which lays down only a rule of evidence on a wrong assumption that the said sub-section created an offence. It was also contended that the charge was defective as it did not disclose the amounts appellant had taken as bribes and also persons from whom he had taken them. On account of this, the appellant was not given an opportunity to prove his innocence.

Held, that there was no merit in the contention of the appellant that sanction was invalid. The orders issued by the government show that the sanction for prosecution was given after considering all the relevant facts necessary to satisfy the mind of the sanctioning authority. The first information report and the letter of the Superintendent of Police gave all the necessary facts to satisfy the mind of the sanctioning authority that the appellant was habitually receiving gratification other than legal gratification and by corrupt and illegal means or by otherwise abusing his position as public servant, he had obtained for himself pecuniary advantage within the meaning of s. 5 (1) (d) of the Act. The contention of the appellant that sanction was given under s. 5 (2) and not under s. 5 (1) is based upon a misapprehension of the scope of the said sub-sections. Although the sanction refers to sub-section (2), in effect it must be deemed to relate to sub-section (1) read with the sub-section (2), because the expression "criminal misconduct" in sub-section (2) takes in the definition of criminal misconduct. The third contention is also based on a misreading of the sanction. The sanction was given under sub-section (2) read with sub-section (3) of s. 5 of the Act. The phraseology used indicates the consciousness on the part of the sanctioning authority that sub-section (3) is not a separate offence but is only a supporting provision to the substantive offence, under sub-section (1) and (2). Sub-section (3) does not create a separate offence. It only lays down a rule of evidence. It marks a departure from the well-established principle of criminal jurisprudence that onus is always on the prosecution to bring home the guilt to the accused. When sanction is given nduer sub-section (2) read with sub-section (3), it only means

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that on the facts disclosed, a case has been made out for drawing a presumption of guilt against the appellant. Section 6 of the Act does not require the sanction to be given in a particular form. Though the sanction orders *ex facie* do not disclose the facts, the documents which are exhibited in the case give all the necessary relevant facts constituting the offence of criminal misconduct.

It is true that the charge should have contained better particulars so as to enable the appellant to prove his case, but the appellant never complained that the charge did not contain the necessary particulars. The record disclosed that the appellant understood the case against him and adduced all the evidence which he wanted to place before the court. The appellate court could have set aside the conviction if the defect in the charge had occasioned a failure of justice but the appellant did not raise any objection either before the Special Judge or in the High Court on the score that the charge was defective and he was misled in his defence on the ground that no particulars of the persons from whom the bribes were taken were mentioned. No such objection was taken in the statement of the case. The objection was merely an after-thought and could not be allowed to be raised at the time of argument.

Gokulchand Dwarkadas Morarka v. *The King*, (1948) L. R. 75 I. A. 30, *Biswabhushan Naik* v. *State of Orissa*, A.I.R. 1953 S. C. 359, *Madan Mohan Singh* v. *State of Uttar Pradesh*, A. I. R. 1954 S. C. 637 and *Jaswant Singh* v. *State of Punjab*, A. I. R. 1958 S. C. 124, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 46 of 1961.

Appeal by special leave from the judgment and order dated September 20, 1960 of the Patna High Court in Criminal Appeal No. 32 of 1958.

N. C. Chatterjee, R. K. Garg, D. P. Singh, S. C. Agarwal and *M. K. Ramamurthi*, for the appellant.

S. P. Varma, for the respondent.

1962 December 4. The Judgment of the Court was delivered by

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SUBBA RAO, J.—This Appeal by Special Leave is preferred against the Judgment of the High Court of Judicature at Patna confirming the conviction of the appellant under s. 5 of the Prevention of Corruption Act by the Special Judge, Bhagalpur.

The facts may be briefly stated. The appellant joined Government service in 1942 as a teacher in the Reformatory School, Hazaribagh, on a pay of Rs. 125/-. In 1945 he became a lecturer in Mechanics in Sabour Agricultural College, in which he served till November 30, 1949 in the scale of Rs. 125 to 250/- till August 1947 and from September 1947 to November 1949 in the scale of Rs. 200 to 450/-. In December 1949 he became Mechanical Assistant Engineer at Sabour and continued to hold that office till August 31, 1952. During that period he was drawing salary with five advance increments in the scale of Rs. 220 to Rs.750/-. Then he was reverted to the post of lecturer in mechanics in the Agricultural College in the scale of Rs. 200 to Rs. 450/-. It would be seen that his salary was only ranging between Rs. 125/- and Rs. 300/-. He had two wives and had three children by them. Admittedly his family was not in affluent circumstances, and his wives did not bring him any fortune. During the year 1951-52 his Bank account and other evidence showed that he came into possession of a sum of Rs. 66,832/7/3.

The case of the prosecution is that during the years 1950 and 1952 the Government introduced a scheme called 'Grow More Food Scheme' subsidized by it. Under that scheme pumping sets were purchased by the Government and supplied to agriculturists on payment of 50 per cent of the cost incurred by the Government. The appellant had a hand in

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the purchase of sets and in the distribution of the same to various agriculturists. In that connection he had the opportunity to make money on both ends i.e. when they were purchased and when they were distributed. The appellant took an illegal gratification during the implementation of the said scheme. On March 25, 1957 and April 11, 1957 the Supdt. of Police obtained the sanction of the Government of Bihar, Development Department, for prosecuting the appellant under s. 5(2), read with clause (3) of s. 5 of the Prevention of Corruption Act, 1947 (Act II of 1947), hereinafter called the Act. On obtaining the sanction the appellant was put on trial before the Special Judge, Bhagalpur, for an offence punishable under s. 2 read with sub-ss. (1) and (3) of s. 5 of the Act. The Special Judge, on a consideration of the evidence, found in the light of the presumption laid down in s. 5(3) of the Act that the accused was taking "illegal gain out of his economic position" in the scheme during the year 1951-52. On that finding the learned Judge convicted the appellant under Sub-s. (1) read with Sub-s.(3), of s. 5 of the Act, and sentenced him to undergo rigorous imprisonment for three years, and to pay a fine of Rs. 500/-. On appeal the High Court accepted the finding of the Special Judge and confirmed the conviction and the sentence passed on him. Hence the appeal.

Learned Counsel for the appellant contended that the sanction given by the Government was illegal for three reasons :—

1. The sanctioning authority had not before it all the relevant facts constituting the offence for which sanction was asked for before giving the sanction.

2. The sanction was given for prosecuting the appellant under sub-s. (2) read with sub-s.3

of s. 5 of the Act, whereas he was convicted for a different offence under sub-s. (1) of s. 5 read with sub-s. (3).

3. The sanction was given under sub-s. (3) of s. 5 which lays down only a rule of evidence on a wrong assumption that the said sub-section creates an offence.

As the argument turned upon the scope of the sanction and the manner in which it was given it will be necessary to read it in extenso :

"Government of Bihar Development Department......Patna, April 11, 1957.

No. 1186D. Whereas the Governor of Bihar has considered the facts stated in the F. I. R. and the letter No. 1195/CR, dated March 26, 1957 of the Superintendent of Police, Bhagalpur, addressed to the Secretary to Government of Bihar, Development Department (copies enclosed) through the Commissioner, Bhagalpur Division.

And whereas the Governor of Bihar has reasons to believe, on a consideration of the facts mentioned in the aforesaid documents that Shri Ram Sagar Pandit Lecturer (now under suspension) Sabour Agricultural College, Bhagalpur has committed offences under clause (2) read with clause (3) of section 5 of the Prevention of Corruption Act 1947 (II of 1947).

Now, therefore, the Governor of Bihar in pursuance of the provision laid down in section 5 of the said Act, 1947 is pleased to accord sanction to the prosecution of the aforesaid Shri Ram Sagar Pandit under the said section,

A copy each of the letter of the Supdt. of Police Bhagalpur and the F.I.R. of the case is attached herewith.

By order of the Governor of Bihar

Sd/- H. N. Thakur

Joint Secretary to Government."

It appears that on May 7, 1957, the Supdt. of Police sent another letter to the Secretary of the Government of Bihar under s. 197 of the Criminal Procedure Code as well. On receipt of that letter sanction was granted on June 25, 1957, in the following terms :—

"No. 2250-D.

"Whereas the Governor of Bihar has considered the facts stated in the F.I.R. and the letter No. 1195 Cr. Dated March 25, 1957, of the Supdt. of Police, Bhagalpur addressed to the Secretary to the Government of Bihar Development Dept. (copy enclosed) through the Commissioner Bhagalpur Division and whereas the Governor of Bihar has reasons to believe on the consideration of the facts mentioned in the aforesaid documents, that Shri Ramsagar Pandit, Lecturer (now under suspension) Sabour Agricultural College, Bhagalpur has committed offences under clause (2) read with clause (3) of section 5 of the Prevention of Corruption Act 1947 (Act II of 1947).

Now, therefore, in partial modification of the sanction accorded in Govt. Order No. 1136 D dated April 11, 1957, the Governor of Bihar, in pursuance of the provisions laid down in s. (6) of the said Act and under s. 197 of Criminal Procedure Code, is pleased to accord

sanction to the prosecution of the aforesaid Shri Ram Sagar Pandit under the said sanction. A copy each of the letter of the Supdt. of Police, Bhagalpur, and the First Information Report of the case is attached herewith.

By order of the Governor of Bihar
(Sd) H.N. Thakur, 25.6.57
Joint Secretary to Government,
Govt. of Bihar, Development Deptt."

The said sanctions show that the sanctioning authority has considered the facts stated in the First Information Report and the letter No. 1195 Criminal, dated 25.3.1957 written by the Supdt. of Police. The First Information Report was lodged by the Sub-Inspector of Police. It was written by the said Sub Inspector of the Officer Incharge, Kotwali Police Station. That letter in detail gives the financial position of the appellant, his meagre resources, large Bank balances and his possession of other funds. It also narrates how during the years 1950 and 1952 huge quantities of pumping sets worth Rs. 58 or 59 lakhs were purchased by the Agricultural Department of the State of Bihar, how the accused was in charge of the scheme of purchase and distribution of the same to various agriculturists and how he was in a position to take illegal gratification. It further states that the accused was reported to have committed some acts of commission and omission by showing favours to different firms. It concludes with an averment that the accused committed the offence of criminal misconduct as defined in s. 5 (2) of the Prevention of Corruption Act, 1947, and was liable to be punished under sub-s. (2) read with sub-s. (3) of s. 5 of the Act. The letter written by the Superintendent of Police to the Secretary to the Govt. of Bihar, Development Department gives again in datail the said facts. It also gives the appellant's inadequate economic resources and the disproportionately large

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amounts found in his possession. It also states that after the enquiry had started he withdrew the entire money from the Banks and disposed of the car, which he had purchased earlier. The letter further discloses that huge amounts of commission were debited in the account books of various firms against the agents who received orders for the supply of the pumping sets to Agricultural Department, Bihar. It particularises that one Baidyanath Saran, Proprietor of Messrs. Seekers and Co., Patna, stated that he had paid a sum of Rs. 400 to the accused as illegal gratification in respect of the supply of the pumping sets as demanded by him. The explanation offered by the accused for coming into possession of such large amounts is also given which appears, on the face of it, to be unacceptable. The letter on the said facts purports to draw the conclusion (a) that the accused was receiving money by corrupt and illegal means by abusing his position as a public servant; (b) that he was in possession of pecuniary resources, disproportionate to his known resources of income which he was unable to explain and (c) that the accused had committed an offence, punishable under sub-section (2) read with sub-section (3) of s. 5 of the Act. The Supdt. of Police, for the aforesaid reasons requested the Government to give sanction under s. 6 of the Prevention of Corruption Act and s. 197 of the Cr. P. Code for the prosecution of the appellant under s. 5 (2) and (3) of the Act in a proper criminal Court of law. The First Information Report and the letter give all the necessary facts to satisfy the mind of the sanctioning authority that the appellant was habitually receiving gratification other than legal gratification within the meaning of s. 5 (1) (a) of the Act, and that he by his corrupt and illegal means or otherwise was abusing his position as public servant to obtain for himself pecuniary advantage within the meaning of s. 5 (1) (d) of the Act. The orders issued by the Government show that it gave the sanction under sub-s. (2), read with sub-s (3) of s. 5

of the Act, after considering the facts disclosed in the said two documents.

It is therefore clear that the learned counsel is not right in his contention that all the relevant facts necessary to satisfy the mind of the sanctioning authority were not placed before it.

The second contention, namely that the sanction was given under s. 5 (2) but not under s. 5 (1) is based upon a misapprehension of the scope of the said sub-sections. Sub-section (1) describes the ingredients of the offence of criminal misconduct. Sub-section (2) is the penal section, that is the section which imposes punishment for such a criminal misconduct. The sanction refers to sub-s. (2) which is the provision that makes criminal misconduct punishable. The sanction ex-hypothesi must have reference only to criminal misconduct as defined in sub-s. (1). The sanction, therefore, though in terms it refers to ss. (2), in effect must be deemed to relate to sub-s. (1) read with sub-s (2), for the expression criminal misconduct in sub-s.(2) takes in the definition of criminal misconduct. The second contention therefore has no merits

Nor are there any merits in the third contention either. It is said that the sanction was given to prosecute the appellant for committing an offence under sub-s. (3) of s. 5 of the Act. On that assumption it is contended that sub-s. (3) is only a rule of evidence and does not deal with an offence. This is again based upon a misreading of the sanction. The sanction was given under sub-s. (2) read with sub-s. (3) of s. 5 of the Act. The phraseology used indicates the consciousness on the part of the sanctioning authority that sub-s. (3) is not a separate offence but it is only a supporting provision to the substantive offence under sub-ss. 1 & 2. Sub-s. (3) does not create a separate offence. It only lays down

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a rule of evidence which marks a departure from the well-established principle of Criminal Jurisprudence that onus is always on the Prosecution to bring home the guilt to the accused. Under this provision in the circumstances mentioned therein the Court shall presume unless the contrary is proved that the accused person is guilty of Criminal misconduct in the discharge of his official duty. When the sanction is given under sub-s. (2) read with sub-s. (3) it only means that on the facts disclosed in the said two documents, a case has been made out for drawing a presumption of guilt against the appellant.

Now we shall proceed to refer to the decisions cited at the Bar. The leading case on the subject is that of the Judicial Committee in *"Gokulchand Dwarkadas Morarka* v. *The King"*. [1] Reliance is placed upon the following passage in the judgment :—

> "In order to comply with the provisions of Cl. 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the fact should be referred to on the face of the sanction, but this is not essential since Cl. 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority."

Section 6 of the Act also does not require the sanction to be given in a particular form. The principle expressed by the Privy Council, namely that the sanction should be given in respect of the facts constituting the offence charged equally applies to the sanction under s. 6 of the Act. In the present

(1) A. I. R. 1948 P. C. 83;75 I. A. 30.

case all the facts constituting the offence of misconduct with which the appellant was charged were placed before the Government. The second principle, namely, that the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction. In the present case though the sanction ex-facie does not disclose the facts, the documents which are exhibited in the case give all the necessary relevant facts constituting the offence of criminal mis-conduct. This Court in *Biswabhusan Naik* v. *The State of Orissa* (1) rejected a contention similar to that now raised before us. There the sanction given under s. 6 of the Act referred only to sub-s. (2) of s. 5 of the Act and it did not specify which of the four offences mentioned in s. 5(1) was meant. This Court adverting to a similar contention observed "It was evident from the evidence that the facts placed before the Government could only relate to offences under s. 161 of the Indian Penal Code and clause (a) of s. 5 (1) of the Prevention of Corruption Act. They could not relate to cl. (b) or (c), when the sanction was confined to s. 5 (2) it could not, in the circumstances of the case, have related to anything but cl. (a) of sub-s. (1) of s. 5. Therefore the omission to mention cl. (a) in the sanction did not invalidate it."

The aforesaid two decisions therefore answer the first two contentions of the learned counsel.

Nor does the decision in '*Madan Mohan Singh* v. *State of Uttar Pradesh*' (2) help the appellant. It is stated therein the burden of proving that the requisite sanction has been obtained rests on the prosecution and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution

(1) A.I.R. 1954 S.C. 359. (2) A.I.R. 1954 S.C. 637 (Vol. 41).

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was to be based; and these facts may appear on the face of the sanction or may be proved by extraneous evidence." The proposition so stated is unexceptionable. In the present case not only the sanction discloses that the sanctioning authority has considered the documents placed before it, but the documents so placed give all the necessary facts constituting the offence of criminal mis-conduct.

Reference is made to the decision in the case of *Jaswant Singh v. State of Punjab.* (1) There this court held that after the sanction was granted for the prosecution in respect of one offence, cognizance could not be taken in respect of another offence in respect of which there was no sanction. In that case sanction was granted to prosecute Jaswant Singh Patwari for accepting an illegal gratification of Rs. 50/- from one Pal Singh but a charge was framed for his habitual acceptance of illegal gratification. This court held that the prosecution for the offence under s. 5 (1) (b) was valid but the offence of habitually receiving illegal gratification could not be taken cognizance of and the prosecution for that offence was void for want of sanction. This decision is relied upon in support of the contention that the letter of the Supdt. of Police only disclosed a specific act of bribery. This decision has no relevance to the question now raised before us. In the present case the sanction was given for prosecuting the appellant for criminal misconduct under s. 5 (1) (a) and 5 (1) (d) of the Act. On the basis of the said sanction a charge was framed against the appellant for his having habitually accepted gratification other than remuneration and obtained for himself pecuniary advantage by corrupt and illegal means or by otherwise abusing his position as public servant and thereby committed the offence of criminal mis-conduct, an offence punishable under sub-s. (2) read with sub-ss. (1) & (3) of s. 5 of Act II of 1947. All the facts necessary

(1) A.I.R. 1958 S.C. 124.

therefore to sustain a prosecution under sub-s. (1) (a) and (d) were placed before the sanctioning authority and after having obtained the sanction the appellant was charged in respect of the said offence. This decision therefore does not help the appellant. For the aforesaid reasons we hold that there are no merits in either of the three contentions raised to invalidate the sanction.

Lastly it is suggested that the charge is defective inasmuch as it has deprived the appellant of his opportunity to rebut the presumption raised under sub-s. (3) of s. 5 of the Act. The charge reads :—

> "I, Brahmdev Narain, Special Judge, Bhagalpur hereby charge you Ram Sagar Pandit as follows :—
>
> That during the period of the years 1951 and 1952, at Sabour P.S. Mofassil and at Bhagalpur Town, P.S. Kotwali, District Bhagalpur, you, being a public servant viz, Mechanical Assistant Engineer, Sabour Agricultural College habitually accepted gratification other than legal remuneration and obtained for yourself pecuniary advantage by corrupt and illegal means or by otherwise abusing your position as public servant with the result that during the said period you came in possession of a sum of about Rs. 62,000 which was disproportionate to your known resources of Income and which you could not satisfactorily account and you thereby committed the offence of criminal misconduct, an offence punishable under sub-section 2 read with sub-sections 1 and 3 of s. 5 of Act II of 1947 the Prevention of Corruption Act 1947 and within my cognizance and I hereby direct you be tried by this court on the said charge."

Sub-section (3) of s. 5 is :—

> "In any trial of an offence punishable under sub-s (2). the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that is based solely on such presumption."

This section does not incorporate a separate head of offence. It is only a rule of evidence: If the accused is in possession of pecuniary resources for which he cannot satisfactorily account, there will be a presumption unless the contrary is proved that the accused person is guilty of criminal misconduct. But this presumption can only apply when there is a specific charge of criminal misconduct visualised under one or the other of clauses (a) to (d) of s. 5. To illustrate, if there is a charge that an accused has taken a bribe of Rs. 10,000 from a complainant as a reward, the prosecution can rely upon the presumption by establishing that the accused was in possession of pecuniary resources or property disproportionate to his known-sources of income: But the presumption so raised in the circumstances mentioned in the sub-section can be rebutted by the accused in two ways, (1) by adducing evidence to prove that he came into possession of the said resources in a lawful manner and (2) though he has failed to explain the circumstances under which he came into possession of the said resources, by proving by other evidence that he did not take any illegal gratification. The presumption raised under sub-s. (3)

cannot obviously prevent an accused from proving his innocence in respect of the specific charge levelled against him. On this legal position it is contended that as the charge does not disclose the amounts he took as bribes and the persons from whom he had taken, the appellant was not given an opportunity to prove his innocence. But in our view this circumstance does not invalidate the charge though it may be a ground for asking for better particulars. The charge as framed clearly stated that the appellant habitually accepted gratification other than legal remuneration and obtained pecuniary advantage by corrupt and illegal means. The charge contains allegations making out an offence under s. 5 (1) of the Act. The charge no doubt should have contained better particulars so as to enable the appellant to prove his case but the accused never complained that the charge did not contain the necessary particulars. The record discloses that the accused understood the case against him and adduced all the evidence which he wanted to place before the court. Section 225 of the Criminal Procedure Code says 'that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact missled by such error or omission, and it has occasioned a failure of justice.'

That apart the appellate Court could have set aside the conviction if the defect in the charge had occasioned a failure of justice but the appellant did not raise any objection either before the Special Judge or in the High Court on the score that the charge was defective and that he was misled in his defence on the ground that no particulars of the persons from whom the bribes were taken were mentioned. Nor such an objection has been taken in the special leave petition, nor in the statement of the case. This

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objection is an afterthought and cannot be allowed to be raised at this stage of the proceedings.

The appeal fails and is dismissed.

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December, 4.

PURSHOTTAMDAS THAKURDAS

v.

COMMISSIONER OF INCOME-TAX, BOMBAY

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Income Tax—Advance payment of tax—Dividend income deducted from total income—If allowable—"Deduction of income-tax at the time of payment", Meaning of—Company paying tax on dividend—Payment of dividend to share-holder—Whether tax deducted at the time of payment—Indian Income-tax Act, 1922 (11 of 1922), ss. 16, 18, 18-A, 49-B.

The assessee submitted his estimate of income for advance payment of tax under s. 18-A, in which he did not include his dividend income. The Income-tax Officer held that under s. 18-A(2) the assessee was bound to include in his estimate, and to pay advance super-tax, on his dividend income. Since that was not done and the advance tax paid was less than 80% of the tax determined on regular assessment, he levied penal interest under s. 18-A(6) in respect of the super-tax payable on the dividend income. The assessee contended (i) that the dividend income was income in respect of which provision was made under s. 18 for "deduction of income-tax at the time of payment" and as such s. 18-A was not applicable to it, and (ii) that since s. 18(5) was applicable to dividend income the penal provisions of s. 18-A(6) were not attracted.

Held, (per Das, Kapur and Hidayatullah, JJ., Sarkar and Dayal, JJ., *dissenting*) that s. 18(5) read with ss. 16(2) and 49-B provided for the "deduction of income-tax at the time of payment" in respect of dividend income and therefore s. 18-A did not apply to such income. A shareholder's right to the dividend arises upon its declaration. Under the legal fiction