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find out such user, it becomes clear that while a part of the land was used for growing some guava trees and some flowers, a pacca room was also erected on a portion of the land. On a consideration of all these things we find ourselves in agreement with the High Court that the purpose of the lease was not agricultural or horticultural.

We have, therefore, come to the conclusion that the High Court was right in decreeing the plaintiff's suit. The appeal is accordingly dismissed with costs.

Appeal dismissed.

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November, 9.

VIRUPAXAPPA VEERAPPA KADAMPUR

v.

THE STATE OF MYSORE

(S. J. IMAM, K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Criminal Law—Police Officer preparing false report—"Act done under colour of duty", Meaning of—Statute providing time limit for prosecution—Validity of conviction—Indian Penal Code 1860 (Act 45 of 1860), s. 218—Bombay Police Act, 1951 (Bom. 22 of 1951), ss. 64, 161(1).

The appellant, a Head Constable, was charged with an offence under s. 218 of the Indian Penal Code. The prosecution case was that on February 23, 1954, on receipt of information that some persons were attempting to smuggle *Ganja*, the appellant caught N with a bundle containing 15 packets of *Ganja* and seized them, that he then prepared a Panchnama in which he incorrectly showed the seizure of 9 packets of Ganja only, and that on the next day he, however, prepared a new report in which it was falsely recited that the person with the bundle ran away on seeing the police after throwing away the bundle containing 9 packets of Ganja only. The allegation against the appellant was that he prepared a false report with

the dishonest intention of saving N who had actually been caught with Ganja from legal punishment. The Trial Court accepted the prosecution case and convicted the appellant. The appellant challenged the legality of the conviction on the ground, inter alia, that the alleged offence had been committed "by an act done under colour of duty" within the meaning of s. 161(1) of the Bombay Police Act, 1951, and that, therefore, the prosecution was barred under that section inasmuch as it was instituted admittedly more than six months after the date of the act complained of.

Held, that under s. 161(1) of the Bombay Police Act, 1951, the words "under colour of duty" have been used to include acts done under the cloak of duty, even though not by virtue of the duty ; that when the appellant prepared a false report he was using the existence of his legal duty as a cloak for his corrupt action and that, therefore, the act thus done in dereliction of his duty must be held to have been done "under colour of the duty."

Madhav Ganpat Prasad v. *Maihidkhan*, (1917) I.L.R. 41 Bom. 737 and *Narayan Hari* v. *Yeshwant Raoji*, A.I.R. 1928 Bom. 352, approved.

Observations in *Parbat Gopal Walekar* v. *Dinkar S. Shinde*, (1960) 63 Bom. L.R. 189, 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 of duty", disapproved.

Held, further, that the word "offences" in s. 161(1) of the Act refers to offences under any law, and is not restricted to offences under the Act only.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 144 of 1961.

Appeal by special leave from the judgment and order dated March 8, 1961, of the Mysore High Court in Criminal Appeal No. 362 of 1959.

Anil Kumar Gupta and *R. K. Garg*, for the appellant.

R. Gopalakrishnan and *P. D. Menon*, for the respondent.

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1962. November 9. The Judgment of the Court was delivered by

DAS GUPTA, J.—The only question for decision in this appeal is whether the appellant's prosecution was barred by the special rule of limitation in s. 161(1) of the Bombay Police Act, 1951.

In February 1954, the appellant was employed as a Head Constable at the Kalkeri Outpost attached to the Hippussagi Police Station. On February 23, 1954, the appellant went to Budhihal Road on receipt of information about the smuggling of Ganja from the then Hyderabad State to Kalkeri and at about 2 or 3 p.m. actually caught one Nabi Sab Kembhavi with a bundle containing 15 packets of Ganja. These 15 packets of Ganja were seized and for this seizure the appellant prepared a Panchnama in which however he incorrectly showed the seizure of 9 packets of Ganja only. On February 24, 1954, it is alleged, the appellant had a new Panchnama prepared in which it was falsely recited that a person who was coming towards the village of Budhihal ran away on seeing the Panchas and the Havaldar, after throwing away a bundle and this bundle was found to contain 9 packets of Ganja weighing one tola each. The date in the Panchnama was mentioned as February 23, 1954. A report to the same effect was also prepared. The prosecution case is that no such thing happened on February 24, 1954, or February 23, 1954, but that this Panchnama and the report were falsely prepared by the appellant with the dishonest intention of saving Nabi Sab Kembhavi who had actually been caught with Ganja from legal punishment.

On these allegations the appellant was tried by the Additional Sessions Judge, Bijapur, on a charge under s. 218 of the Indian Penal Code. He pleaded not guilty and contended that the Panchnama and the report which are challenged by the prosecution as a

false Panchnama were correctly prepared by him on February 23, 1954, and mention the true state of affairs. It was also pleaded that Rule 542 of the Bombay Police Manual barred his prosecution as prior permission of the District Superintendent of Police had not been taken. A further defence was raised that in any case as the prosecution was commenced long after six months had elapsed after the alleged commission of the offence it was barred by s. 161(1) of the Bombay Police Act.

The appellant was however convicted by the Trial Court under s. 218 of the Indian Penal Code and sentenced to rigorous imprisonment for a period of one year.

Against that order, he appealed to the High Court of Mysore. The High Court agreed with the Trial Court that an offence under s. 218 of the Indian Penal Code had been made out. The defence under Rule 542 of the Bombay Police Manual was also rejected on the ground that this Rule had no statutory force. As regards the plea of limitation under s. 161(1) of the Bombay Police Act, 1951, the High Court was of the opinion that on February 24, 1954, the appellant had no duty to perform in regard to the crime detected on the 23rd and hence it was not possible to hold that the preparation of a false Panchnama and a false report "were acts done under colour or in excess of any such duty or authority as aforesaid" as found in s. 161(1) of the Bombay Police Act. Accordingly, the High Court dismissed the appeal.

Against that decision the present appeal has been preferred by special leave granted by this Court and the only question raised in the appeal is as regards the correctness of the High Court's conclusion that the prosecution of the appellant was not barred under s. 161(1) of the Bombay Police Act, 1951.

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Section 161(1) is in these words :—

"161(1). In any case of alleged offence by the Revenue Commissioner, the Commissioner, a Magistrate, Police Officer or other person, or of a wrong alleged to have been done by such Revenue Commissioner, 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."

In the present case, theprosecution was admittedly instituted much more than six months after the date of the act complained of. The allegation is that the offence was committed by a police officer. If, therefore, it appears that the offence alleged to have been committed "by any act done under colour or in excess of any such duty or authority as aforesaid" within the meaning of the above provision of law the prosecution was liable to be dismissed. From what has been said above about the prosecution allegations it is clear that the offence is alleged to have been committed by the preparation of a false Panchnama and a false report on February 24, 1954. The question that falls for decision therefore is whether the preparation of a Panchnama or a report was an "act done under colour or in excess of any such duty or authority as aforesaid." It is not disputed that the preparation of a correct Panchnama and a true report as regards the seizure of the Ganja was the duty of the police officer. It is equally clear that such preparation was the duty of the police officer as laid down in the Bombay Police Act. For s. 64 of the Act provides inter alia that it shall be the duty of

every police officer "to lay such information and to take such other steps consistent with law and with the orders of his superiors as shall be best calculated to bring offenders to justice"; (s. 64 (b)) and also "to discharge such duties as are imposed upon him by any law for the time being in force." That the appellant was an officer authorised under the Bombay Prohibition Act to seize the Ganja in the circumstances alleged is clear. In seizing it, he had necessarily to prepare a Panchnama, and to submit a report of the seizure.

In view of these provisions of law it has not been seriously disputed before us that the preparation of a correct Panchnama and a correct report as regards the seizure of Ganja was the duty of the appellant. This duty was, on the prosecution allegation, not performed. The act alleged to have been done, as already stated, was the preparation of a false Panchnama and a false report: The question still to be considered therefore is whether when the preparation of a correct Panchnama and a true report as regards the seizure is the duty of the police officer concerned, he prepares instead a false Panchnama and a false report, that act is done by him "under colour" or in excess of that duty.

The expression "under colour of something" or "under colour of duty", or "under colour of office", is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections for a charity. Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot

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properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in s. 161(1) to include this sense. It is helpful to remember in this connection that the words "colour of office" has been stated in many law lexicons to have the meaning just indicated above. Thus in Wharton's Law Lexicon, 14th Edition, we find at p. 214 the following :—

"Colour of office"

> "When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

In Stroud's Judicial Dictionary, 3rd Edition, we find the following at p. 521 :—

> *Colour : "Colour of office"* is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But 'by reason of the office' and 'by virtue of the office' are taken always in the best part."

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 to his falsehood." The acts thus

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

We do not see how the fact that the seizure was made on 23rd and the false report was prepared on the 24th affects this position. Whether the false report was prepared on the 23rd or the 24th the fact still remains that he prepared this under cover of his duty to prepare a correct Panchnama and a correct report and there is no escape from the conclusion that the acts by which the offence under s. 218 of the Indian Penal Code was alleged to have been committed by the appellant were done by him under colour of a duty laid upon him by the Bombay Police Act.

The interpretation of the words "under colour of office" as used in s. 80, sub-s. 3 of the Bombay District Police Act, 1890, which was in almost the same words as the present s. 161 (1) except that the new section gives the protection also to the Revenue Commissioner or the Commissioner, came up before the Bombay High Court on several occasions. In *Madhav Ganpat Prasad* v. *Maihidkhan* (1) the complaint was that a Sub-Inspector of Police had vexatiously seized the complainant's property and so committed an offence punishable under s. 63 (b) of the Bombay District Police Act, 1890. It was held —or rather assumed—that the case fell within the provisions of s. 80, sub-s. 3. The matter was considered by a Full Bench of the Bombay High Court in *Narayan Hari* v. *Yeshwant Raoji* (2). There the allegation against the police officer was that while investigating a case he had deliberately taken down the statement of a witness incorrectly. The police officer was prosecuted under s. 167 and s. 218 of the Indian Penal Code more than six months after the statement had been recorded. The question raised was whether the complaint should be dismissed under s. 80, sub-s. 3, on the ground that the act complained of was done under colour of a duty. The

(1) [1917] I.L.R. 41 Bom. 737. (2) A.I.R. 1928 Bom. 352.

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full Bench decided that even though the act was done in deliberate disregard of his proper duty and authority the act was one done under colour or in excess of a duty imposed or an authority conferred on him by the Police Act. This view of the meaning of the word under colour of duty was, in our opinion, correct.

Learned Counsel drew our attention to another decision of the Bombay High Court in *Parbat Gopal Walekar* v. *Dinkar & Shinde* (1) where the act of a police constable in driving rashly and negligently when driving a police jeep which was carrying a Sub-Inspector of Police, was proceeding for an enquiry was held not be one "under colour or in excess of the duty imposed upon him as a constable-driver." In the concluding portion of the judgment the learned Judge has observed thus :—

> "If the police are entitled to have the benefit of a shorter period of limitation when they are acting in pursuance of a duty imposed on them by the Police Act or any other law in force or any rule thereunder, and if the act is alleged to amount to an offence or a wrong, then if it is found to have been done in gross violation of their duty or in contravention of the limits placed upon the performance of such duty by the law itself or any rules framed thereunder, the act would cease to be an act done under colour or in excess of their duty."

On the facts of that particular case the decision may well be justified on the ground 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.

(1) (1960) 63 Bom. L.R. 189.

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 be no reason to think that the act has not been done under colour of the duty.

We have come to the conclusion that on a proper interpretation of the words "under colour of duty", the acts in respect of which the prosecution was instituted were acts done under colour of duty imposed upon him by the Police Act.

On behalf of the State it was contended next that s. 161 (1) of the Bombay Police Act is limited to offences against the Act and has no application to offences under the Indian Penal Code. We can find no substance in this contention. "Offence" has been defined in the Bombay General Clauses Act to mean any act or omission made punishable by any law for the time being in force. On this definition the word "offence" as used in s. 161 (1) clearly includes an offence under the Indian Penal Code. If it was the intention of the legislature to limit the application of s. 161 (1) to offences under the Bombay Police Act only that would have been clearly mentioned. It is worth noticing in this connection the language used in s. 150 of the Bombay Police Act. That section runs thus :—

> "Offences against this Act, when the accused person or any one of the accused persons is a police officer above the rank of a constable, shall not be cognizable except by a Presidency Magistrate or a Magistrate not lower than a second class Magistrate."

If the legislature had intended to limit the application of s. 161 (1) to offences under the Police Act only, it would have instead of using the words

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"in any case of alleged offences" used words like "in any case of offences against this Act." It appears clear that the legislature deliberately gave the protection of s. 161 (1) to offences against any law and there is no justification for our limiting that protection to offences under the Police Act only. It must accordingly be held that the prosecution against the appellant should have been dismissed in accordance with the provisions of s. 161 (1) of the Bombay Police Act.

We accordingly allow the appeal, set aside the order of conviction and sentence passed against the appellant and order that the case against him be dismissed.

Appeal allowed.

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November, 13.

FRENCH MOTOR CAR CO., LIMITED

v.

WORKMEN

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Fixation of wage scale—Industry cum-region basis—Application—Large and dissimilar concerns, if and when can be taken for comparison—Adjustment—Power of Tribunal.

The three matters canvassed in this appeal from an award of the Industrial Tribunal related to (1) wages and scales of pay for clerical staff, (2) dearness allowance for clerical staff and (3) provident fund. The Tribunal found that the business of the appellant company was able to bear the burden it imposed. The Tribunal also went into the history of the company and found there had been several revision of wage scales and dearness allowance in the recent past, but since there had been a large increase in the cost of living index for workmen from 1955