PETITIONER:
PADAM SEN AND ANOTHER

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH

DATE OF JUDGMENT:
27/09/1960

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
IMAM, SYED JAFFER
SARKAR, A.K.

CITATION:
1961 AIR 218 1961 SCR (1) 884
CITATOR INFO :
E 1962 SC 527 (21,44)
R 1966 SC1899 (5)
D 1975 SC1685 (9)
RF 1983 SC1272 (21)
R 1986 SC 421 (35)

ACT:
Commissioner--Appointment for seizing account books--Validity of--Inherent Powers of civil Court--Code of Civil Procedure, 1908 (V of 1908), ss. 75, 151, O. XXVI.
Public Servant--Commissioner appointed by Civil Court without jurisdiction--Whether in Possession of the situation of a Public servant--Indian Penal Code, 1860 (XLV of 1860), S. 21, EXP. 2.

HEADNOTE:
A Munsif appointed one R as a commissioner for seizing the account books of the plaintiff in a suit and to produce them before him. R seized the account books, and while they were still in his possession the appellants offered a bribe to R for being allowed to tamper with them. The appellants were tried and convicted under s. 165-A of the Indian Penal Code. The appellants contended that the Munsif had no jurisdiction to appoint a commissioner for seizing account books, that the appointment of R as a commissioner was null and void and that consequently R was not a public servant and the appellants committed no offence in offering him a bribe. The respondent urged that the Munsif had jurisdiction under his inherent powers under s. 151, Code of Civil Procedure, to appoint the commissioner and that in any case as R was in actual possession of the situation of a public servant within Explanation 2 to S. 21 Of the Indian Penal Code, he would be deemed to be a public servant.
Held, that R was not a public servant and the appellants did not commit any offence under s. 165-A of the Penal Code by offering him a bribe.
The Munsif had no inherent powers to appoint a commissioner to seize account books and his order was null and void. The inherent powers under s. 151, Code of Civil Procedure, were with respect to the procedure to be followed by a Court in deciding the cause before it; such powers did not extend

over the substantive rights of litigants. A party had full rights over his account books and the Court had no inherent power to forcibly seize his property.
Explanation 2 to S. 21, Indian Penal Code, applied only to a person actually in possession of a pre-existing office of a public servant. In the present case there was no post or office of a commissioner in existence which could be said to have been occupied by R. His appointment being without jurisdiction R could not be deemed to be a public servant.
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JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 149/1958.
Appeal from the judgment and order dated October 27, 1958, of the Allahabad High Court in Criminal Appeal No. 1154 of 1956.
N. C. Chatterjee and R. L. Kohli, for the appellant.
G. C. Mathur and C. P. Lal, for the respondent.
1960. September 27. The Judgment of the Court was delivered by
RAGHUBAR DAYAL J.-This is an appeal by Padam Sen and Shekbar Chand against the order of the Allahabad High Court dismissing their appeal against the order of the Special Judge, Meerut, convicting them of an offence under s. 165-A of the Indian Penal Code. The High Court granted leave to appeal against its order.
One Genda Mal, father of Shekhar Chand, appellant No. 2, sued Mithan Lal and others in the Court of the Additional Munsif, Ghaziabad, for money on the basis of promissory notes executed by the defendants in his favour. The defendants apprehending that the plaintiff would fabricate his books of account with respect to payments made by them, applied for the seizure of the account books of the plaintiff. The Additional Munsif, by his order dated March 27, 1954, appointed Sri Raghubir Pershad, Vakil, Commissioner to seize those books of account. The Commissioner accordingly seized those books and brought them to Ghaziabad.
The appellants were convicted by the Special Judge under s. 165-A of the Indian Penal Code for having offered bribe to the Commissioner for being allowed an opportunity to tamper with those books of account. Their conviction was upheld by the High Court.
The two Courts below have found that the appellants went to the Commissioner's Office on March 30, 1954, and offered him Rs. 900 as bribe. The appellants do not challenge these findings of fact recorded by the Courts below. Their only contention is that
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Sri Raghubir Pershad, the Commissioner, was not a public servant, and therefore even on the basis of the findings of fact arrived at by the Courts below, they did not commit any offence under s. 165-A of the Indian Penal Code.
It has been contended for the appellants that the appointment of Sri Raghubir Pershad as Commissioner was null and void as the Additional Munsif had no power to appoint a Commissioner for the purpose of seizing the account books of the plaintiff on an application b application by the defendants, the power of a Civil Court to issue a commission being limited by the provisions of s. 75 and Order XXVI of the Code of Civil Procedure (hereinafter called the Code),

and the Court having no inherent power to appoint a Commissioner for any purpose not mentioned in s. 75 and Order XXVI of the Code. On behalf of the State it is urged that the Court can appoint a Commissioner in the exercise of its inherent powers saved by s. 151 of the Code for purposes which do not come within the provisions of s. 75 and Order XXVI of the Code.

It is further submitted for the State that even if the Additional Munsif had no power to appoint the Commissioner for seizing the books of account, Sri Raghubir Pershad would be deemed to be a public servant in view of Explanation 2 to s. 21 of the Indian Penal Code because he was in actual possession of the situation of a public servant for he acted as Commissioner and was recognized as such by the appellants and others connected with the civil suit.

Section 75 of the Code empowers the Court to issue a commission, subject to conditions and limitations which may be prescribed, for four purposes, viz., for examining any person, for making a local investigation, for examining or adjusting accounts and for making a partition. Order XXVI lays down rules relating to the issue of commissions and allied matters. Mr. Chatterjee, learned counsel for the appellants, has submitted that the powers of a Court must be found within the four corners of the Code and that when the Code has expressly dealt with the subject matter of commissions in s. 75 the Court cannot

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invoke its inherent powers under s. 151 and thereby add to its powers. On the other hand, it is submitted for the State, that the Code is not exhaustive and the Court, in the exercise of its inherent powers, can adopt any procedure not prohibited by the Code expressly or by necessary implication if the Court considers it necessary, for the ends of justice or to prevent abuse of the process of the Court.

Section 151 of the Code reads:

> " Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court ".

The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the puposes mentioned in s. 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.

The question for determination is whether the impugned order of the Additional Munsif appointing Sri Raghubir Pershad Commissioner for seizing the plaintiff’s books of account can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by s. 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in the matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its

practice
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and procedure. A party has full rights over its books of account. The Court has no inherent power forcibly to seize its property. If it does so, it invades the private rights of the party. Specific procedure is laid down in the Code for getting the relevant documents or books in Court for the purpose of using them as evidence. A party is free to produce such documents or books in support of its case as be relevant. A party can ask the help of the Court to have produced in Court by the other party such documents as it would like to be used in evidence and are admitted by that party to be in its possession. If a party does not produce the documents it is lawfully called upon to produce, the Court has the power to penalize it, in accordance with the provisions of the Code. The Court has the further power to draw any presumption against such a party who does not produce the relevant document in its possession, especially after it has been summoned from it. Even in such cases where the Court summons a document from a party, the Court has not been given any power to get hold of the document forcibly from the possession of the defaulting party.
The defendants had no rights to these account books. They could not lay any claim to them. They applied for the seizure of these books because they apprehended that the plaintiff might make such entries in those account books which could go against the case they were setting up in Court. The defendants' request really amounted to the Court's collecting documentary evidence which the defendants considered to be in their favour at that point of time. it is no business of the Court to collect evidence for a party or even to protect the rival party from the evil consequences of making forged entries in those ac. count books. If the plaintiff does forge entries and uses forged entries as evidence in the case, the defendants would have ample opportunity to dispute those entries and to prove them forgeries.
We are therefore of opinion that the Additional Munsif bad DO inherent power to pass the order appointing a Commissioner to seize the plaintiff's
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account books. The order appointing Sri Raghubir Pershad as Commissioner for this purpose was therefore an order passed without jurisdiction and was therefore a null and void order.
Learned counsel for the State, Mr. Mathur, has submitted in the alternative that the impugned procedure adopted by the Additional Munsif comes within certain provisions of the Code and has referred to r. 5 of Order XXXVIII and rr. 1(b) and 7 of Order XXXIX and r. 1 of Order XL of the Code. We do not agree with this contention. The impugned order was not passed under any of these provisions. It was clearly an order which the Additional Munsif purported to pass in the exercise of the inherent powers of the Court. The order was:
" It is strange that an application of this kind has been made at this late stage, after over 2 years. However, in the interests of justice, issue commission to Sri Raghubir Pershad. Ho must go and recover Bahi Khatas for the year 1951 from the plaintiff and produce the same in Court. Fees Rs. 20, plus T. A. Report within six days. Costs of the commission will not be taxed."
Further, the provisions of r. 5 of Order XXXVIII are to prevent a decree that may be passed being rendered infructuous and r. 1(b) of Order XXXIX is applicable where

the defendant threatens to dispose of his property to defraud creditors. None of these provisions has any application to the facts of the present case. Rule 7 of Order XXXIX empowers the Court, on the application of any party to a suit, to make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit or as to which any question may arise therein. The account books of the plaintiffs were not ' property ' which were the subject-matter of the suit nor such that about them a question could arise in the suit. The account books could, at best, have been piece of evidence, if the plaintiff or the defendant had cared to rely on them. We therefore hold that the Additional Munsif had no power under the Code to appoint the Commissioner for seizing the plaintiff's books of account.

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Lastly it was urged for the State that even if the appointment of Sri Raghubir Pershad as Commissioner was null and void as the Additional Munsif had no jurisdiction to appoint a Commissioner for seizing the account books of the plaintiff, Sri Raghubir Pershad should be treated to be a 'public servant' in view of Explanation 2 to s. 21 of the Indian Penal Code. It has not been disputed for the appellant that if the appointment Of Sri Raghubir Pershad as Commissioner bad been valid, he would have been a public servant in view of the Fourth Clause to s. 21 of the Indian Penal Code. Explanation 2 to s. 21 reads:

> "Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

The contention for the State is that though there was a legal defect in Sri Raghubir Pershad's appointment as Commissioner on account of the Additional Munsif having no power to appoint a Commissioner for the purpose of seizing the plaintiff's books of account, that will not affect his being a public servant as he was in actual possession of the situation of a public servant. We do not agree with this contention, and are of opinion that the Explanation applies only when there be a post in existence. The Explanation does not apply when there is no pre-existing post or when the person appointing has no authority to appoint.

The word 'situation' according to Webster's New International Dictionary of the English Language, means: position or place of employment, place, office; as a situation in a store. The apposite meaning for the purposes of this Explanation would be 'office'. 'Office' again, according to the same Dictionary, means a special duty, trust, charge or position, conferred by an exercise of governmental authority and for a public purpose ; a position of trust or authority conferred by an act of governmental power ; a right to exercise a public function or employment and receive the emoluments (if any) thereto belonging; as, an executive or judicial office..... In a wider sense, any position or place in the employment of the

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government, especially one of trust or authority. The Dictionary further notes the differences in the con. notations of the various words office, post, appointment, situation and place and says: Office commonly suggests a position of (especially public) trust or authority ; and situation emphasizes the idea of employment, especially in a subordinate position; as, to seek a situation as governess, as private secretary.

It is therefore clear that it is necessary for the application of this Explanation that the person concerned should be in actual possession of the pre-existing office of a public servant. If there be no office or post, there could be no question of any person's being in actual possession thereof, and of the person concerned coming within the terms of this Explanation. There was no post or office of a Commissioner in existence. All that happened here was that Sri Raghubir Pershad was authorized to seize and keep certain documents in his possession. In the present case there was neither any existing office of Commissioner, nor the Additional Munsif had power to appoint Sri Raghubir Pershad as Commissioner for the purpose of seizing the plaintiff's account books and therefore this Explanation does not apply to the appointment of Sri Raghubir Pershad as Commissioner. It follows, there. fore, that Sri Raghubir Persbad cannot be held to be a public servant.

We therefore accept the contention for the appellants and hold that Sri Raghubir Pershad was not a public servant and that therefore the appellants did not commit any offence under s. 165-A of the Indian Penal Code by their offering him money in order to have an opportunity to tamper with the books of account which were in his custody. We therefore allow the appeal, set aside the order of the Court below and acquit the appellants of the offence under s. 165-A and direct that the fine, if paid, be refunded. The appellants are on bail and therefore the bail bonds will be cancelled.

Appeal allowed.

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