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offence under s. 4(1)(g) to be in possession of materials, still, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor. Under s. 4(2)(a), if a person is found to be in possession of materials or other things mentioned in the sub-section, there is a presumption that he has committed an offence under s. 4(1)(g), but it is open to him to account satisfactorily therefor. The contention, therefore, that there is no reasonable relation between the presumption and the offence is, in our opinion, based on a misreading of the section.

Both the contentions urged on behalf of the appellants having failed, these appeals are dismissed.

Appeal dismissed.

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November, 29.

MOHAMMAD GHOUSE

v.

STATE OF ANDHRA

[S. R. DAS C.J., BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS, JJ.]

Government - Servant—Judicial Officer—Disciplinary Proceedings—Enquiry into charges—Jurisdiction of the High Court—Order of suspension pending final orders by the Government—Power of the High Court—Constitution of India, Art. 311—Madras Civil Services (Classification, Control and Appeal) Rules, rr. 13, 17(e)—Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948—Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, r. 4(1) (a).

The appellant was at the relevant dates posted as Subordinate Judge at Masulipatam and Amalapuram. Charges were made against him of bribery and serious irregularities in the discharge of official duties, and they were enquired into by one of the judges of the Madras High Court who sent his reports on August 20, 1953, and November 10, 1953. On the basis of the reports the High Court decided on January 25, 1954, that the appellant should be dismissed from service on the charge of bribery and removed from service on the charge of irregularities, and on January 28, 1954, placed him on suspension until further orders. The appellant moved the High Court under Art. 226 of the Constitution of India for quashing the order of suspension on the ground (1) that under r. 4(1)(a) of the Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, an enquiry into the

conduct of a Government servant drawing a monthly salary of Rs. 150 and above could be made only by a Tribunal to be appointed by the Government, and that as the rule came into effect from October 1, 1953, the order of the Madras High Court dated January 28, 1954, was without jurisdiction, and (2) that the order was repugnant to Art. 311 of the Constitution of India. The High Court dismissed the application and on appeal against the judgment.

Held : (1) that in view of the amendment of r. 4 of the Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, on April 11, 1955, excluding, with retrospective effect, the jurisdiction of the Tribunal in respect of enquiries into the conduct of the judicial officers, the order of the Madras High Court dated January 28, 1954, was not open to attack.

(2) that an order of suspension pending final orders is neither one of dismissal nor of removal of service within Art. 311 of the Constitution.

(3) that under r. 13 of the Madras Civil Services (Classification, Control and Appeal) Rules, the High Court had the power to impose suspension pending enquiry into grave charges under r. 17(e) against the Members of the State Judicial Service.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 133 of 1955.

Appeal by special leave from the judgment and order dated November 19, 1954, of the Andhra High Court in Writ Petition No. 342 of 1954.

N. C. Chatterji, M. S. K. Sastri and *Sardar Bahadur,* for the appellant.

Porus A. Mehta, T. V. R. Tatachari and *T. M. Sen,* for the respondent.

1956. November 29. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—The appellant was recruited to the Madras Provincial Judicial Service as District Munsif in 1935. In 1949 he was promoted to the office of Subordinate Judge, and on June 19, 1950, he was posted as Subordinate Judge of Masulipatnam, Krishna District. Among the suits which he tried were O.S. No. 95 of 1946 and O.S. No. 24 of 1949, which were connected, and on July 27, 1950, arguments were heard therein, and judgment reserved. On August 22, 1950, while judgment was still pending, Lingam

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Sitarama Rao, who was the fifth defendant in both the suits, filed an application in the High Court of Madras for transferring them to some other court on the ground that the appellant was attempting through his brother to obtain bribe from the parties, and on this application, the High Court passed an order on the same date, staying the delivery of judgment. The suits themselves were eventually transferred to the court of the Subordinate Judge of Gudivada, and the appellant was also transferred on September 16, 1950, to the Subordinate Court of Amalapuram in East Godavari District. Thereafter, the High Court started investigation into the allegations made in the affidavit in the stay petition, and as a result of the enquiries and reports received, the following charge was framed against the appellant on April 2, 1953:

"That you in or about August 1950 being at that time Additional Sub-Judge, Masulipatnam, entered into a conspiracy with your brother Md. Riazuddin *alias* Basha for the purpose of obtaining a bribe from the parties to O.S. Nos. 24/49 and 95/46 on the file of your Court, and that, in pursuance of the conspiracy, the said Mr. Riazuddin at Vijayawada attempted between 11-8-1950 and 13-8-1950 to obtain a bribe from Lingam Satya Narayana Rao and his son Lingam Seetarama Rao (the 5th defendant in both the above suits).

You are hereby required within 15 days of the receipt by you of this proceeding (i) to submit a written statement of your defence and to show cause why disciplinary action should not be taken against you in respect of the above charge,

and (ii) to state whether you desire an oral enquiry to be held or only to be heard in person."

The appellant filed his written statement in answer to the charge on June 22, 1953.

Meantime, complaints had also been received by the High Court that the appellant had committed serious irregularities in the discharge of his official duties in the Sub-Court, Amalapuram, such as that he had delayed delivering judgments in the suits and appeals for an unreasonable time, that he had made false returns to the District Court, and that to cover his

defaults, he had altered the records of the court so as to be consistent with those returns. Charges were framed with reference to these irregularities on January 15, 1953, and further charges relating to the same matter were framed on May 6, 1953, to all of which he filed his explanation on June 22, 1953.

One of the Judges of the High Court of Madras, Balakrishna Ayyar, J., was deputed to enquire into these charges, and after making an elaborate enquiry in which several witnesses including the appellant were examined, he sent a report on October 20, 1953, that the charge of corruption was made out, and he concluded as follows :

"Therefore, I find the charge proved. What punishment should be imposed on Mr. Ghouse can be decided only after he has been heard in that regard, but, at this stage, I am inclined to take the view that he should be dismissed from service."

With reference to the charges of irregularities, etc., Balakrishna Ayyar J. submitted his report on November 10, 1953, in which also he found that the charges were all substantially established, and he concluded as follows :

"In the result, I find Mr. Ghouse guilty of the charges framed to the extent already indicated.

In respect of another charge against Mr. Ghouse, that I enquired into I expressed the view that he should be dismissed from service. In view of that no further recommendation for punishment in respect of these charges is necessary. Certain observations, however, may not be out of order. A judicial officer who delays judgments, in the absence of special or extenuating circumstances, furnishes evidence of his own incompetence. But a judicial officer who systematically sends false returns is guilty of moral turpitude. If in addition he instructs members of his office to make false entries in the records of the court he would be guilty of even more blameworthy conduct. One would hardly desire to keep such persons in service."

These reports were considered at a meeting of the Judges of the Madras High Court on January 25, 1954, and they decided that "the proper punishment to be

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awarded to the officer as regards the two counts are (1) regarding the first charge of bribery, dismissal from service and (2) regarding the second charge of various delinquencies, such as delaying judgments, etc., removal from service." Then they passed an order on January 28, 1954, placing the appellant on suspension until further orders, and the same was communicated to him on January 30, 1954.

On April 28, 1954, the appellant filed in the High Court of Madras a petition under Art. 226 of the Constitution, for a writ quashing the order of suspension dated January 28, 1954, on the grounds, firstly, that under the Andhra Civil Services (Disciplinary Proceedings Tribunals) Rules, 1953, which had been published by the Andhra Government on October 22, 1953, with effect from October 1, 1953, enquiry into the conduct of Government servants on a monthly salary of Rs. 150 and above could be held only by a Tribunal to which the Government might refer the same, and that, therefore, the proceedings of the High Court of Madras after October 1, 1953, culminating in the order of suspension dated January 28, 1954, were without jurisdiction, and secondly, that the order in question was void, as it was in contravention of Art. 311 of the Constitution. It must be mentioned that the State of Andhra had come into existence on October 1, 1953, but that the High Court of Madras continued to have jurisdiction over the Andhra State until July, 1954, when a separate High Court was established therefor. The writ petition which was pending in the High Court of Madras was then transferred to the Andhra High Court.

At the hearing, the only contention that would appear to have been pressed by the appellant was that by reason of the Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, coming into force on October 1, 1953, it was only a Tribunal as provided in Rule 4(1) (a) of those Rules that could enquire into the charges, and that the proceedings in the High Court of Madras subsequent thereto were without jurisdiction. In rejecting this contention, the learned Judges observed that though Rule 4 of the Andhra Civil Services Rules different in some respects

from the corresponding Rule of the Madras Civil Services Rules, 1948, the differences were of an unsubstantial character, and were due more to inexpert drafting than to any deliberate intention to effect a change in the Madras Rules. They further held that if the Rule in question was intended to affect the jurisdiction of the High Court to hold an enquiry into the conduct of a Subordinate judicial officer, it would be in contravention of Arts. 227 and 235 of the Constitution, which vested in the High Court the control and superintendence of all the Courts in the State. In the result, they dismissed the application. The matter now comes before this Court in appeal under Art. 136 of the Constitution.

Before us, the appellant pressed both the grounds which were raised by him in his application under Art. 226. On the question whether by reason of the Andhra Civil Services Rules coming into operation with effect from October 1, 1953, the High Court had ceased to have jurisdiction to proceed with the matter, it is necessary first to refer to the relevant Rules. Rule 4 of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948, which was the Rule in force when the enquiry against the appellant was started, runs as follows :

4. "The Government may, subject to the provisions of rule 5, refer to the Tribunal :—

(a) Cases relating to Government servants on a monthly salary of Rs. 150 and above, in respect of matters involving corruption on the part of such Government servants in the discharge of their official duties.

(b) All appeals to the Government from Government servants against disciplinary orders passed by heads of departments and other competent authorities on charges of corruption, and

(c) any other case or class of cases which the Government consider, should be dealt with by the Tribunal.

Provided that cases arising in the Judicial Department and against Government servants in the subordinate ranks of police forces of the rank of

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Sub-Inspector and below shall not be referred to the Tribunal."

The corresponding Rule in the Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, which came into operation from October 1, 1953, is as follows:

4 (1) "The Government shall, subject to the provisions of rule 5, refer the following cases to the Tribunal, namely :—

(a) Cases relating to Government servants on a monthly salary of Rs. 150 and above in respect of matters involving corruption on the part of such Government servants in the discharge of their official duties : and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise the original orders passed on such charges :

Provided that it shall not be necessary to consult the Tribunal :

(i) in any case in which the Tribunal has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination, or,

(ii) Where the Government propose to pass orders rejecting such appeal or petition.

(2) The Government may, subject to the provisions of rule 5, also refer to the Tribunal any other case or class of cases which, they consider should be dealt with by the Tribunal :

Provided that the following cases shall not be referred to the Tribunal namely—

(i) Cases arising in the Judicial Department ;

(ii) Cases arising against the Government servants in the subordinate ranks of the police forces of the rank of Sub-Inspector and below, unless the cases are against them together with officers of higher ranks."

The argument of the appellant is that whereas under the proviso to Rule 4 of the Madras Civil Services Rules, enquiries against subordinate judicial officers could not be referred to a Tribunal, under Rule 4(1)(a)

of the Andhra Civil Services Rules it was obligatory on the part of the Government to refer the cases of all Government servants drawing a monthly salary of Rs. 150 and above to a Tribunal. According to the appellant, the result of this change was that such enquiry as was held after October 1, 1953, by the High Court and all orders passed by it thereafter were bad, and that he had a right to have his case referred to and determined by the Tribunal in accordance with Rule 4(1) (a). There has been some argument before us as to whether the concluding proviso in Rule 4 of the Andhra Civil Services Rules qualifies both sub-rules (1) and ((2) or only sub-rule (2). While, on the one hand, there is force in the contention of the appellant that having regard to its setting, the proviso should more properly be read as qualifying sub-rule (2), we are inclined to agree with the learned Judges, of the High Court that, read as a whole, the Rule does not show an intention to depart from the procedure laid down in the Madras Civil Services Rules. The point, however, is one of academic interest, as the Rule in question has subsequently been amended by G. O. No. 938 dated April 11, 1955, and it expressly provides that the amendment shall be deemed to have come into force on October 1, 1953. That amendment is as follows :

"In rule 4 of the said rules, the proviso occurring after sub-rule (2) shall be omitted, and in lieu thereof, the following sub-rule shall be inserted, namely :—

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), the following cases shall not be referred to the Tribunal, namely :

(i) cases arising in the Judicial Department ; and

(ii) cases arising against Government servants in the subordinate ranks of the Police forces of the rank of Sub-Inspector and below, unless the cases are against them together with officers of higher ranks."

By reason of this amendment, which is expressly retrospective in character, the main ground of objection on which the application of the appellant was founded, is no longer tenable. In view of this conclusion, it becomes unnecessary to consider the contention

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of the respondent that Rule 4 of the Andhra Civil Services Rules could not, in any event, apply to enquiries which had been validly initiated previously thereto.

It was next contended on behalf of the appellant that as the authority which appointed him was the Governor of the Province, it was only that authority that could dismiss or remove him from service, and that the order of suspension made by the High Court on January 28, 1954, was in contravention of Art. 311 of the Constitution, and was, in consequence, bad. This contention does not appear to have been pressed in the High Court, and is, moreover, without substance. The facts are that Balakrishna Ayyar J. sent his report on the enquiry into the charges against the appellant, and expressed his opinion that he should be dismissed or removed from service. The High Court approved of it, and passed an order on January 28, 1954, suspending him until further orders. The report was then sent to the Government for action, and, in fact, the Andhra Government has issued a notice to the appellant on August 12, 1954, to show cause why he should not be dismissed or removed from service. Thus, it is the appropriate authority under Art. 311 that proposes to take action against the appellant, and it is for that authority to pass the ultimate order in the matter. The order passed by the High Court on January 28, 1954, is merely one of suspension pending final orders by the Government, and such an order is neither one of dismissal nor of removal from service within Art. 311 of the Constitution. It was also argued that the High Court had no authority under the rules to suspend a judicial officer pending final orders of the Government. But under Rule 13 of the Madras Civil Services (Classification, Control and Appeal) Rules, it is the High Court of Judicature at Madras that is constituted as the authority which may impose suspension pending enquiry into grave charges under rule 17(e) against the Members of the State Judicial Service. The order in question, therefore, falls within this rule, and is perfectly *intra vires.*

It was lastly contended for the appellant that even if the High Court could hold a preliminary enquiry into the conduct of a judicial officer, it had no jurisdiction to decide the matter finally, that the findings given by Balakrishna Ayyar J. should not be held to conclude the question against the appellant, and that the Government was bound to hold a fresh enquiry and decide for itself whether the charges were well-founded. No such question was raised in the petition or in the High Court, and we must, therefore, decline to entertain it.

In the result, the appeal is dismissed with costs.

Appeal dismissed.

OM PRAKASH GUPTA

v.

STATE of U. P.

(with connected appeals)

1957
January, 11.

(S. R. DAS C. J., BHAGWATI, VENKATARAMA AYYAR, S. K. DAS and GOVINDA MENON JJ.)

Implied repeal—Whether s. 409 of the Indian Penal Code is impliedly repealed by s. 5(1)(c) of the Prevention of Corruption Act, 1947 (II of 1947)—Whether the application of s. 409 of the Indian Penal Code to a public servant infringes Art. 14 of the Constitution—Sanction—Whether sanction under s. 6 of the Prevention of Corruption Act necessary for prosecution under s. 409 of the Indian Penal Code.

The offences under s. 409 of the Indian Penal Code and s. 5(1)(c) of the Prevention of Corruption Act, 1947 are distinct and separate, and there is no question of s. 5(1)(c) of the Prevention of Corruption Act, 1947 repealing s. 409 of the Indian Penal Code.

Amarendra Nath Roy v. *The State*, A.I.R. [1955] Cal. 236, approved.

The legislature would not have intended in the normal course of things, that a temporary statute like the Prevention of Corruption Act, 1947, should supersede an enactment of antiquity like the Indian Penal Code.

In the view that the two offences under s. 409 of the Indian Penal Code and s. 5(1)(c) of the Prevention of Corruption Act are distinct and separate there is no infringement of Art. 14 of the