seat as an assessor and in inviting and taking into consideration his opinion in deciding the case. It was held by the majority of the Court that the finding and the sentence appealed against had been passed by a Court of competent jurisdiction within the meaning of s. 537 of the Code and that the defect in the trial did not affect its validity and was cured by that section as the irregularity had not in fact occasioned a failure of justice. Mr. Justice Davies took a different view. This decision was clearly given on the peculiar facts and circumstances of that case and is no authority in support of the view contended for by Mr. Mehta.

(12) For the reasons given above, we are constrained to hold that the trial of the appellants conducted in the manner above stated was bad and the appellants have to be retried in accordance with the procedure prescribed by the Code.

(13) In the result we allow this appeal, quash the conviction and sentence passed on the appellants, and direct their retrial by the Sessions Judge in accordance with the procedure prescribed by the Code.

A/K.S. *Retrial ordered.*

A.I.R. 1953 Sup. Court 179 *[Vol. 40, C. N. 43.]*

(From Bombay : A. I. R. 1952 Bom. 435)

4th February 1953

MAHAJAN, S. R. DAS AND GHULAM HASAN JJ.

Mahadev Dhanappa Gunaki and another— Appellants v. *The State of Bombay.*

Criminal Appeal No. 60 of 1951.

(a) Penal Code (1860), S. 161—Delay in trapping accused.

The fact that nothing is done for a long time (here, two months) between the alleged offer to bribe and the actual trapping of the accused does not suggest that the story is false. The police authorities have per force to wait until the accused make a further move in the matter. It is not reasonable to suggest that the police authorities should go out of their way and actively invite bribes in order to trap the accused. [Para 4]

Anno. I. P. C., S. 161 N, 12.

(b) Penal Code (1860), S. 161 — Offer of bribe to public servant — Public servant fully performing his duty regarding the case before offer—Showing any favour or rendering any service to accused not possible—Whether offence is committed by offer of bribe *(Quære)—Case law referred.* [Para 5]

Anno. I. P. C., S. 161 N. 8, 9.

Dr. B. R. Ambedkar and Shri H. F. M. Reddy, Advocate, instructed by Shri M. S. K. Sastri, Agent - for Appellants; Shri M. C. Setalvad, Attorney-General for India and Shri C. K. Daphtary, Solicitor-General for India (Shri G. N. Joshi, Advocate, with them), instructed by Shri G. H. Rajadhyaksha, Agent—for the State.

CASES CITED.

(A) ('44) A.I.R. 1944 P. C. 66 : 45 Cri. L. J. 755 (P. C.).
(B) ('21) A.I.R. 1921 Cal. 344 : 23 Cri. L. J. 1.
(C) ('24) A.I.R. 1924 Mad. 851 : 26 Cri. L. J. 898.
(D) ('29) A.I.R. 1929 Mad. 756 : 30 Cri. L. J. 1055.
(E) ('28) A.I.R. 1928 All. 752 : 51 All. 467 : 30 Cri.L.J. 67.
(F) ('41) A.I.R. 1941 Lah. 276 : I.L. R. (1942) 23 Lah. 402 : 42 Cri. L. J. 656.
(G) ('48) A.I.R. 1948 All. 17 : I. L. R. (1947) All. 444 : 48 Cri. L. J. 467.
(H) ('48) A.I.R. 1948 Nag. 82 : 49 Cri. L. J. 124.
(I) ('50) A.I.R. 1950 Mad. 93 : 51 Cri. L. J. 886.
(J) ('52) A.I.R. 1952 Bom. 58 : I.L.R. (1952) Bom. 169 : 1952 Cri. L. J. 925.
(K) ('52) A.I.R. 1952 Orissa 78 : 1952 Cri.L.J. 867.

S. R. Das J.—The two appellants before us were charged before the Additional Magistrate, First Class, Belgaum, for having, on or about 23.3.1949 at the Police Club in Belgaum, in furtherance of the common intention of themselves and one Madivalappa Veerappa Pattan who had died during the investigation, offered Rs. 15,000 as an illegal gratification to one Sri P. P. Naik, Police Inspector, Anti-Corruption Branch, Belgaum, in order that he should help them in getting the income-tax inquiry against them dropped and that he should see that the account-books attached by the Anti-Corruption Police were returned to them and having thereby committed an offence punishable under s. 116 read with ss. 161 and 34, Penal Code. The prosecution case was as follows: The appellants and one Madivalappa Veerappa Pattan were residing and carrying on business in partnership in Silk, Yarn, Sarees and other articles in Rabkavi in the district of Belgaum. Having received information that the firm was evading income-tax to a great extent, one Sri Gudi, the Deputy Superintendent of Police, Anti-Corruption Branch, along with Sri Naik, Inspector of Police, went from Belgaum to Rabkavi and searched the residence and business premises of the appellants on 24th/25th-1-1949 and seized their account-books. At this time the appellant Durdi offered to pay Rs. 15,000 to Rs. 20,000 to Sri Naik to hush up the matter. A similar offer was also made to Sri Gudi. Both the officers characterised the offer as improper and declined to accept it. The two officers returned to Belgaum on 26-1-1949 and on their return they informed their superior officers Sri Malpathak, the Superintendent of Police and Sri Wagh, the then head of the Anti-Corruption Branch about the offers of bribe made to them by the appellants. They also had a talk about these offers with Shri Jadhav, the District Magistrate of Belgaum who advised them to arrange for a trap to catch the appellants. On 21-2-1949 Shri Gudi issued an order (EX. 1A) directing Sri Naik to examine the books of account attached by them and to submit his report. In the first week of March 1949 at Hubli, which was about 100 miles away from Rabkavi, the appellants contacted one Sri Keshavain who was known to them and was also a friend of Sri Naik and through him offered to pay Sri Naik an amount up to Rs. 30,000 for saving them from the enquiry and for the return of the books of account. Sri Keshavain later on informed them that he had seen Sri Naik but the latter had asked him to inform the appellants that the offer was an improper one. On 12-3-1949 Sri Naik submitted his report

(EX. 10A) stating in substance that a cursory examination revealed that huge profits made by black marketing had been concealed and the payment of income-tax on such profits had been evaded. The report ended with the following paragraph :

"(9) I have not examined the other account-books attached. This examination of mine was very cursory. If a detailed and careful examination is made along with secret papers, balance sheets and other important documents by an expert the profits made by Mr. Durdi for remaining 7 years might come several lacs. So I submit that the A.A.I.G.P., A.C., Poona, may please be moved in the matter to send the books to the Commissioner of Income-tax for further disposal."

In the second week of MARCH 1949, the appellants again requested Sri Keshavain to try again and renew the offer to Sri Naik. In the meantime Sri Naik informed Sri Gudi about the offer made through Sri Keshavain and Sri Gudi advised Sri Naik to consent to accept the amount with a view to trap the appellants. Accordingly, when Sri Keshavain renewed the offer to Sri Naik, the latter told him that if the appellants came with the money to Belgaum he (Sri Naik) would see to the rest of things. This reply of Sri Naik was conveyed by Sri Keshavain to the appellants. On 22-3-1949 the appellants and the deceased Pattan saw Sri Keshavain at Hubli and said that they would like to hand over the money personally to Sri Naik and requested Sri Keshavain to accompany them to Belgaum which the latter agreed to do. Accordingly, on 23-3-1949 the appellants and Pattan and Sri Keshavain came to Belgaum. Sri Keshavain then arranged for their meeting with Sri Naik at 7 to 7-30 P. M. near Mitra Samaj. Sri Naik kept Sri Gudi informed as to what had happened. At the appointed time Sri Naik went near the Mitra Samaj and met the appellants and Sri Keshavain. The appellants requested Sri Naik to accept the money but Sri Naik said that matters of this kind should not be discussed on the public road and asked them to see him in his room at the Police Club at 10 to 10-30 P. M. Sri Naik informed Sri Gudi about this appointment. Sri Gudi asked Sri Naik to submit a report in writing which the latter did (EX. 1-B). Sri Naik and Sri Gudi then went to the District Magistrate Sri Jadhav who, not being able to be present in person at the time of the trapping, wrote a D. O. (EX. 3A) to Sri Kamat, the Additional Magistrate, to witness the trapping. Sri Jadhav also authorised Sri Gudi to investigate into the offence by making an endorsement on Sri Naik's report (EX. 1-B). Then Sri Gudi and Sri Naik returned to the Police Club where Sri Arur, Sub-Inspector, and the Panchas were waiting. Sri Gudi also brought Sri Kamat to the Police Club. A Panchnama (EX. 2A) about the search of the room and of the person of Sri Naik was made by Sri Gudi in the presence of the Panchas and Sri Kamat. Then the party left the room and concealed themselves, leaving Sri Naik alone in the room waiting for the arrival of the appellants.

At about 10-30 P. M. the appellants and Pattan entered the room of Sri Naik. After receiving them and offering them seats Sri Naik asked the appellants as to what he could do for them. The appellant Gunaki told him that they should be saved from the income-tax inquiry and that their books of account should be returned to them. The appellant Durdi also made similar requests. Thereafter, on a signal from the appellant Gunaki, the appellant Durdi handed over a bundle wrapped in cloth to Sri Naik who opened it and found that it contained bundles of currency notes. Sri Naik kept the notes on the cot where he was sitting and the appellant Gunaki then wanted the return of the unstamped Sarees which had been seized. He also enquired as to when the books would be returned. Sri Naik said that the sanction of the Magistrate would be necessary before the books could be returned. The appellant Gunaki then said that the balance amount would be paid on receipt of the books. At this stage Sri Naik signalled to Sri Gudi through the window and the latter with his party including Sri Kamat rushed into the room. Sri Naik handed over the bundles of notes to them and the formalities of drawing up a Panchnama were gone through.

(2) After some further investigation, in the course of which Madivalappa Veerappa Pattan the partner of the appellants died, the two appellants were sent up for trial on the charge mentioned above. The prosecution examined, amongst others, Sri Naik, Sri Kamat, Sri Jadhav, Sri Keshavan, Sri Gudi, Sri Arur and the Panch in support of its case. The appellants pleaded not guilty and denied having made any offer of a bribe. They said that they paid RS. 15,000 to Sri Naik as and by way of composition money in settlement of the State's claim for income-tax and examined five defence witnesses. The trial Magistrate disbelieved the defence witnesses and accepting the evidence of the prosecution witnesses as substantially correct found that the sum of RS. 15,000 had been offered as illegal gratification for hushing the income-tax inquiry and for the return of the books and convicted and sentenced each of the appellants to undergo rigorous imprisonment for one year and to pay a fine of RS. 1,000 and in default to undergo rigorous imprisonment for two months. The sum of RS. 15,000 was confiscated to the Government.

(3) The appellants preferred an appeal but the Additional Sessions Judge, in agreement with the trial Magistrate, came to the conclusion that the sum of RS. 15,000 had been offered as illegal gratification and not as composition for income-tax and accordingly upheld the conviction and sentences passed by the trial Magistrate and dismissed the appeal. The appellants moved the High Court in revision but that application was also dismissed. The appellants applied for and obtained leave of the High Court to appeal to this

Court on a certificate under Art. 134 (1) which runs as follows :

"Leave applied for granted inasmuch as the case is principally decided upon the view that, when the offerer of a bribe is prosecuted, the question to be considered is whether he gave the bribe with a view to corrupt the Government servant. So far as he is concerned, mens rea, the gist of the offence, consists in the attitude of mind that the officer should favour and not in any possibility of the officer showing favour."

(4) Dr. B. R. Ambedkar appearing in support of this appeal contends on the authority of certain observations to be found in *H. T. Huntley* v. *Emperor*, A. I. R. 1944 F. C. 66 (A) that the prosecution had not excluded every reasonable possibility of innocence of the appellants. The accused in that case was convicted by a Special Tribunal from whose decision there was no appeal. There was only an application for revision to the High Court which dismissed that revision petition but granted a certificate under S. 205 (1), Government of India Act, 1935. There was, therefore, no question of there being concurrent finding by two Courts entitled to go into questions of facts such as there is in the case before us. Further, as it will be presently seen, the facts relied on by the learned counsel only have a bearing on the question of appreciation of the evidence. Thus, it is said that although there was a definite allegation of the alleged offer of bribe made by the appellants to the two police officers on 24/25-1-1949 and although the two police officers informed their superior officers and the latter advised the trapping of the appellants nothing was done for two months and it is concluded from such inaction that no bribe had in fact been offered and that this story was, therefore, false. We see no force in this argument, because the police authorities had per force to wait until the appellants made a further move in the matter. It is not reasonable to suggest that the police authorities should go out of their way and actively invite bribes in order to trap the appellants. In the next place it is said that although Sri Naik in his report dated 12-3-1949 suggested that there had been evasion of tax on a large scale there was really no substance in such report for the additional tax eventually demanded was a paltry sum of Rs. 71-8-0 for the year 1945-1946 and a sum of Rs. 63-11-0 for the year 1946-1947 and it is suggested that it cannot be believed that the appellants would, in such circumstances, be prepared to pay a bribe up to Rs. 30,000 or even a bribe of Rs. 15,000. The fact that Rs. 15,000 was offered is not disputed. The argument is that it is highly improbable that the appellants would offer a bribe of Rs. 15,000 when they knew that a very small sum was due on account of income-tax. The self-same argument would make it equally improbable that the appellants knowing that the amount of income-tax payable was very small would be prepared to offer Rs. 15,000 as and by way of composition for the income-tax liability. In the third place it is said that the evidence of the prosecution witnesses as to what was actually said when the money was paid is not consistent. Our attention has been drawn to the different statements made by the prosecution witnesses Sri Naik, Sri Areer, Sri Keshavain, the Panch and Sri Kamat but we do not find any substantial discrepancy in their statements. Finally it is urged that as the appellants were taking steps by means of applications to the higher authorities for the return of their books which fact indicated that they knew that the proper authority to release the books was the District Magistrate, there could, therefore, be no reason for their offering a bribe to Sri Gudi or Sri Naik who had not got it in their power to return the books without the sanction of the District Magistrate. It was reasonably clear that before the District Magistrate would pass any order on the appellants' application for return of the books he would consult the officers at whose instance the books had been attached—as, in fact, the District Magistrate did in this case—and the appellants may, therefore, have thought that a favourable report from Sri Gudi or Sri Naik would facilitate their obtaining an order for return of their books. As already stated, the concurrent findings of fact by the trial Magistrate as well as by the Additional Sessions Judge in appeal are against the appellants and we do not consider that the several points advanced by the learned counsel as hereinbefore mentioned constitute a sufficient ground for departing from the ordinary practice of this Court to accept the concurrent findings of fact as correct.

(5) Dr. Ambedkar then submits that in this case no offence had been committed. He points out that it was Sri Gudi and not Sri Naik who was authorised to seize the books. Sri Gudi directed Sri Naik to examine the books and make a report which the latter did on 12-3-1949, Ex. 10-A. After that date Sri Naik was functus officio, having fully performed whatever duty he had to perform, and, therefore, he was not the public servant who could, in the exercise of his official function, show any favour or render any service to the appellants. Learned counsel relied on the cases of *Shamsul Huq* v. *Emperor*, A. I. R. 1921 Cal. 344 (B), *In re P. Venkiah*, A. I. R. 1924 Mad. 851 (C) and *Venkatarama Naidu* v. *Emperor*, A. I. R. 1929 Mad. 756 (D). A perusal of the cases relied on by learned counsel will show that the question of law was not fully discussed and the reasons in support of the conclusions arrived at are not clear or convincing. On the other hand, the High Courts of Allahabad, Lahore, Nagpur, Bombay and Orissa have disapproved of the decisions relied on by Dr. Ambedkar. See *Ajudhia Prasad* v. *Emperor*, A.I.R. 1928 ALL. 752 (E), *Emperor* v. *Phul Singh*, A. I. R. 1947 LAH. 276 (F), *Ram Sewak* v. *Emperor*, A.I.R. 1948 ALL. 17 (G), *Gopeshwar Mandal* v. *Emperor*, A. I. R. 1948 Nag. 82 (H), *In re Varadadesikachariar*, A. I. R. 1950 Mad. 93 (I), *Indur Dayaldas Advani* v. *State*, A. I. R. 1952 Bom. 58 (J) and *State* v.

Sadhuacharan Panigrahi, A. I. R. 1952 Orissa 78 (K). The point of law appears to have been more fully discussed in these cases and the reasonings set out therein appear to us, as at present advised to be more convincing than those set out in the cases relied on by Dr. Ambedkar. It is, however, not necessary for the purposes of this case, to express any final opinion on this question, for we are satisfied, on the facts of this case, that Sri Gudi and Sri Naik had it in their power, in the exercise of their official functions, to show favour or render some service to the appellants. It will be remembered that the report of Sri Naik was in the nature of a tentative report made on a cursory examination of the books of account. The books of account were still in their custody and the matter was still under their investigation. In fact, the District Magistrate had on 20.8.1949 referred the application of the appellants for the return of the books to Sri Gudi for report. Sri Gudi made his report thereon on 25-8-1949 stating that the investigation was in progress and the books were heavy and that he would inform the District Magistrate as soon as the books would not be required any more. The offer of bribe, as already indicated, was last made to Sri Naik on 28-8-1949. On that date there was nothing to prevent Sri Naik from making a further report stating that on closer scrutiny of the books of account he found there was no tax evasion and there was nothing to prevent Sri Gudi from reporting to the District Magistrate that the books were not required and could be returned. In view of these facts the decisions in the three cases relied on by Dr. Ambedkar can have no application even if they were well-founded in principle. The contention of Dr. Ambedkar, therefore, must be rejected.

(6) Finally, Dr. Ambedkar urges that the sentence should be reduced, particularly as regards appellant 2. After giving the matter our best consideration we do not find any extenuating circumstance which should weigh with us in interfering with the sentence.

(7) The result, therefore, is that this appeal must be dismissed.

A/D.R.R. *Appeal dismissed.*

A.I.R. 1953 Sup. Court 182 *[Vol. 40, C. N. 44.]*

(From Patna : A. I. R. 1951 Pat. 157.)

3rd February 1953

MAHAJAN, S. R. DAS AND GHULAM HASAN JJ.

Gaya Electric Supply Co., Ltd., Appellant v. *State of Bihar, Respondent.*

Appeal No. 175 of 1951.

(a) Arbitration Act (1940), S. 34 — Duty to refuse stay.

The legal proceeding which is sought to be stayed must be in respect of a matter which the parties have agreed to refer and which comes within the ambit of the arbitration agreement. Where, however, a suit is commenced as to a matter which lies outside the submission, the Court is bound to refuse a stay. [Para 6]

Anno. Arb. Act, S. 34, N. 15.

(b) Arbitration Act (1940), S. 34 — "Matters agreed to be referred"—A.I.R. 1951 Pat. 157, REVERSED.

The arbitration clause is a written submission agreed to by the parties in a contract and like every written submission to arbitration must be considered according to its language and in the light of the circumstances in which it is made, when deciding whether the dispute in question is covered thereby. [Para 6]

If the arbitration agreement is broad and comprehensive and embraces any dispute between the parties "in respect of" the agreement, or in respect of any provision in the agreement, or in respect of anything arising out of it, and one of the parties seeks to avoid the contract, the dispute is referable to arbitration if the avoidance of the contract arises out of the terms of the contract itself. Where, however, the party seeks to avoid the contract for reasons de hors it, the arbitration clause cannot be resorted to as it goes along with other terms of the contract. Where, however, an arbitration clause is not so comprehensive and is not drafted in such broad language that proposition does not hold good. 1942 A. C. 356, *Rel. on.* [Para 6]

Agreement to take over electric company—Arbitration clause in agreement stating "Any difference or dispute ..... over valuation as arrived at by Government and that arrived at by Company ..... shall be referred to arbitration—*Held* arbitration Clause conferred jurisdiction on arbitrator only to decide dispute arising on valuation of the undertaking and not all disputes arising out of the agreement or in respect of it—Question relating to breach of the contract or its rescission are beyond reach of the clause : A. I. R. 1948 Cal. 230 and 41 Cal. W. N. 563, *Disting.* [Para 8]

Anno. Arbn. Act, S. 34 N. 8,

(c) Arbitration Act (1940), S. 34 — Court should be satisfied of grounds.

The only point which the Court exercising jurisdiction under the section can decide is whether the claim brought in the suit sought to be stayed comes within the submission to arbitration. The Court cannot go into the validity of that claim in the proceedings under this section : (1915) 8 K. B 167, *Rel. on.* [Para 9]

Anno. Arbn. Act, S. 34 N. 6.

Shri N. C. Chatterjee, Senior Advocate (Shri Rameshwar Nath, Advocate, with him), instructed by Shri Rajinder Narain, Agent, for Appellant; Shri M. C. Setalvad, Attorney-General for India, and Shri Mahabir Prasad, Advocate-General of Bihar (Shri H. J. Umrigar Advocate, with them), instructed by Shri P. K. Chatterjee, Agent, for Respondent.

CASES CITED :

(A) (1942) A. C. 356 : 111 L. J. K. B. 241.
(B) (1915) 8 K. B. 167 : 84 L. J. K. B. 1091.
(C) ('37) 41 Cal. W. N. 563.
(D) ('48) A. I. R. 1948 Cal. 230 : I.L.R. (1948) 1 Cal. 161.

Mahajan J. — This appeal by special leave arises out of an application made by the State of Bihar against the Gaya Electric Supply Co. Ltd., under S. 34, Arbitration Act, for stay of proceedings in a suit filed by the company on 28-9-1950. The facts relevant to this enquiry are these :

A licence for the supply of electric energy in the town of Gaya was obtained by one Khandelwal in the year 1928 under the Electricity Act, 1910. With the required sanction of the Government the licence was transferred to the company in 1932. By a notification dated 23.6.1949 the