

be precluded from making the present application on the ground of res judicata. At the highest, a plea of res judicata may perhaps be raised against the third respondent but that would not be effective in view of the fact that in the present case, an application has been made by the fourth respondent as well. That is why Mr. Mehta did not seriously press the point of res judicata before us.

In the result, fails the appeal and is dismissed with costs.

Appeal dismissed.

KRISHAN LAL DHAWAN AND ANOTHER

v.

DELHI ADMINISTRATION

(J. L. KAPUR, K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Criminal Trial—Trial by Special Judge—Another special Judge conducts further proceedings—Conviction—Validity—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 350—Criminal Law Amendment Act, 1952 (46 of 1952). s. 8, sub-s. 3.

The appellants were charged under ss. 120B and 420 Indian Penal Code and s. 5 (1) (d) read with s. 5 (2) of the prevention of Corruption Act. The trial of the appellants was commenced before a special Judge who heard the prosecution evidence. Thereafter the trial was taken up by another special Judge who examined the defence witnesses and finally convicted the appellants. The appellants appealed to the High Court and the High Court upheld the conviction and sentence. The appellants thereupon appealed to the Supreme Court by special leave.

The sole question which was raised by the appellants was that in view of the fact the trial commenced before one Special Judge and another Special Judge took up the proceedings are incompetent. The respondent relying on s. 8, sub-s. (3), of the Criminal Law Amendment

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*The Fine Knitting
Co., Ltd.
v.
The Industrial Court,
Bombay
Gajendragadkar J.*

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Act, 1952, contended that trial was competent and the conviction and sentence were valid in law.

Held, that s. 350 of the Code of Criminal Procedure is not applicable when one special Judge is succeeded by another. Neither does s. 3 (a) of the Criminal Law Amendment Act, 1956, make the applicability of s. 350 of the Code of Criminal Procedure to a trial by a special Judge retrospective.

Payare Lal v. State of Punjab, (1962) 3 S. C. R. 328, followed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 196 and 197 of 60.

Appeal by special leave from the judgment and order dated May 12, 1958, of the Punjab High Court (Circuit Bench) at Delhi in Criminal Appeals Nos. 3-D and 1-D of 1958.

A.S.R. Chari, *M. K. Ramamurthi*, *R. K. Garg*, *D. P. Singh* and *S. C. Agarwal*, for the appellant (in Cr. A. No. 196/60).

N. S. Bindra, *I. M. Lal* and *A. G. Ratnaparkhi* for the appellant (in Cr. A. No. 197/60).

H. R. Khanna, *R. H. Dhebar* and *P. D. Menon*, for the respondents.

1962. February 15. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—These two appeals are directed against the judgment and order of the Punjab High Court confirming the conviction of the appellants under ss. 120-B and 420; Indian Penal Code, and s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act, 1947; and sentencing each of them to an aggregate sentence of six months' rigorous imprisonment.

It is unnecessary to set out the facts in detail but to put them briefly. The appellant; Albert Mosses was the Principal incharge of the Rehabilitation Centre, Malviya Nagar and Kalkaji

under the Ministry of Rehabilitation. The appellant, K. L. Dhawan, was a partner in the firm named M/s. Dhawan & Co. and they supplied a surface plate for a sum of Rs. 1,950/- to the Works Centre of which the appellant Albert Moses was the Principal.

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The trial of the appellants and R. P. Dhawan, who has been acquitted, commenced in the Court of Mr. Jawala Das, Special Judge, Delhi, and he heard the case from the date of the institution of the proceedings on May 21, 1956 to October 26, 1956. He heard the prosecution evidence which was closed on October 26, 1956. The case was then taken up by Mr. P. D. Sharma, Special Judge, Delhi, from December 20, 1956. He examined defence witnesses and finally convicted the appellants of the offences already mentioned and acquitted R. P. Dhawan.

Against the conviction and sentence an appeal was taken to the High Court but the conviction was upheld and also the sentences and against that judgment and order these two appeals by special leave have been brought by the two convicted persons. The sole question which has been raised in this Court is that in view of the fact the trial commenced before one Special Judge and another Special Judge took up the proceedings after December 20, 1956, the proceedings are not competent and, therefore, the conviction and the sentence cannot be upheld. Counsel relies upon a judgment of this Court in *Payara Lal v. State of Punjab*⁽¹⁾ in which it was held that "s. 350 is not applicable when one Special Judge is succeeded by another". In that view of the matter Mr. P.D. Sharma was not Competent to proceed with the trial from the stage at which it was left by Mr. Jawala Das.

(1) [1962] 3 S.C.R. 328.

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Counsel for the respondent relies on sub-s.(3) of s. 8 of the Criminal Law Amendment Act (Act 46 of 1952) which makes the provisions of the Code of Criminal Procedure, in so far as they are not inconsistent with that Act, applicable to proceedings before a Special Judge and also provides that a Special Judge shall be deemed to be a Court of Session when trying a case under the Criminal Law Amendment Act (46 of 1952). But this question was considered in the case decided by this Court in *Pyaralal's case*⁽¹⁾ in which it was held that sub-s.(3) of s. 8 of Act 46 of 1952 did not contemplate that s. 350 of the Criminal Procedure Code becomes applicable to proceedings before a Special Judge.

It was also held in the case that the amendment made in the Criminal Law Amendment Act by Act 2 of 1956 by which s. 3(a) was added to it making the provisions of s.350 of the Code applicable to a trial by Special Judges has no retrospective effect. In this view of the matter, the conviction of the appellants must therefore be set aside. The case will be disposed of in accordance with law.

Appeal allowed.

(1) [1962] 3 S.C.R. 328.