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# Padam Sen and another v. The State of Uttar Pradesh, 1961 AIR 218

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ANTO ROBERT G<sup>1</sup>

### ABSTRACT

*This commentary seeks to analysis the validity of Padam Sen and Another vs The State of Uttar Pradesh, 1961 AIR 218 as per the existing laws of the land. Apart from the Analysis of the Judgement, this work will also be providing appropriate suggestions.*

**Keywords:** *Issue of Commission, Validity.*

## I. FACTS

On the basis of the promissory note executed by the respondents in favour of the appellants, the appellants had sued them before the Additional Munsif Court at Ghaziabad. Merely because the respondents apprehended that the applicant would fabricate the books of accounts, they applied for seizure and the Additional Munsif had appointed a commissioner to execute the same.

In the meanwhile the Special Judge had appellants were also convicted U/S. 165-A of IPC for the charge of offering bribe to the commissioner so as to allow them for providing an opportunity to tamper the books of accounts.

Aggrieved by the same, the appellants preferred for appeal before the Allahabad High Court, but the same was dismissed by the High Court. Thereafter the Appellants have preferred for second appeal before this Apex Court.

<b>ISSUE:1</b>	<b>ISSUE:2</b>
Whether appointing 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?	Whether the commissioner appointed by the court is a public servant?
<b>JUDGEMENT/HOLDING</b>	<b>JUDGEMENT?HOLDING</b>
Appointment of Commissioner for Seizure	The commissioner appointed by the court is

<sup>1</sup> Author is a student at Tamil Nadu National Law University, India.

<p>of books of accounts is neither provided under in section 75 nor the Civil Court have inherent powers under section 151 of CPC.</p>	<p>not a public servant. Hence, the charge upon the commissioner for giving bribe is set aside.</p>
<p><b>REASONING</b></p>	<p><b>REASONING</b></p>
<ul style="list-style-type: none"> <li>➤ When section 75 explicitly provides for the exhaustive four corners pertaining to the purpose of issue of commission, section 151 can't be invoked for covering the appointment of commissioner for seizure of books of accounts.</li> <li>➤ Section 151 of CPC does not provide power for to court over the substantive rights which any litigant. In that regard, specific powers have to be conferred on the Courts for passing such orders.</li> <li>➤ Party has full rights over its books of account. The Court has no inherent power forcibly to seize its property. And it is not the business of the court to collect evidence on behalf of any party.</li> <li>➤ For the purpose of evidence, the courts can call for the same from the parities. If the concerned party fails to do so, then the court can only make adverse findings. But the court can't infringe one's private right.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Explanation 2 to Section 21 of IPC applies only when there is a pre-existing office of a public servant in existence. There is no post or office of a commissioner in existence. Henceforth the commissioner is not a public servant.</li> <li>➤ Since, the commissioner is not a public servant, the appellant did not commit any offence under Section 165A of IPC.</li> </ul>

## II. ANALYSIS OF THE DECISION

Now that this court had scrutinised the material aspects in the case of Padam Sen and Another vs The State of Uttar Pradesh, in this chapter, this court will be analysing the validity of the aforesaid decision and its reasoning.

### (A) Commissioner as Public Servant

In the said case, the appellants had not challenge the findings of the lower court pertaining to the change for giving bribe to the Commissioner appointed by the court so as to tamper the books of accounts. Rather they just contended on the mere technicality in considering commissioner as the public servant within the preview of Explanation 2 to Section 21 of IPC. Henceforth it is evident that the appellant had given bribe to the commissioner. Admittedly, this court's decision pertaining to the negation of the technical ground of "actual possession of situation of a public servant" is justified.

However, considering the laws of the land on the date of that judgement, the commissioner can be brought under the ambit of "*Juryman assisting a Court of Justice*" as contemplated in Section 21 of IPC. But unfortunately, neither the State had put forth this argument nor had the court by itself considered the same. Arguendo, the commissioner can't be brought under the ambit of section 21 of IPC, at least the court could have made adverse finding as against the appellants should have been made.

### **(B) Giving Bribe to Commissioner**

On plain understanding of then provision Section 165A and section 21 of IPC it is evident that it had intended to cover all possible bribes. Considering the prevailing vacuum in the legislations, and in order to cover "*giving bribe to the commissioner appointed by the court,*" this court could have passed appropriate direction so as to bring this technical lack no to the knowledge of legislators.

Now that, by virtue of the special enactment, The Prevention of Corruption Act, 1988, "*the commissioner appointed by the court*" has been covered under definition of public servant in section 2(c)(v) of the act. Therefore, it is invariably evident that, according to the existing laws of the land, *persons giving bribe to the commissioner appointed by the court will be penalised* under the Prevention of Corruption Act, 1988.

### **(C) Intend of the Legislation**

The exhaustive list of purposes for which commission can be issued has been contemplated section 75 of CPC. Originally section 75 provided that commissioner can be appointed, only for examining any person, for making a local investigation, for examining or adjusting accounts and for making a partition. Thereafter, by virtue of amendment made in the 1976, three other additional grounds have been added. But none of these provisions empowers the court to issue commission for the purpose of seizure of books of accounts. If one keenly scrutinise the timeline, even though amendment to section 75 has been made only after the judgement of this Padam Sen, no provision for seizure of books of accounts by commissioner has been

incorporated. Hence, the intent of legislators in not including seizure of books of accounts is evident.

#### **(D) Appreciation of Rationality in Decision**

This court was absolutely right in not entertaining the seizure of books of accounts. It is because it invades the private rights of the party. Also, Seizure can be done only when the defendant possess right over such properties. But in the present case, the respondent does not have any right over the appellant's books of accounts. Moreover, when application is made to the court, Rule 7 of Order XXXIX empowers the Court to make an order for the detention, preservation or inspection of any property. However, such property must be the subject-matter of the suit or upon which any question may arise therein. But in the present case, neither the books of accounts of the appellants is the 'property' which is the subject-matter of the suit nor about which a question could arise.

#### **(E) Practical Preview**

After 2 years from the institution of the suit, Respondents had applied for seizure of books of accounts for the sole reason that they apprehend the appellants might make such entries in the books of accounts which could go against the case they were setting up. Practically, even if they apprehend so, then by the time they make such application in the court and the court orders for the same, the appellants could have very well made such changes in the books of accounts before rendering producing the same. Arguendo, the appellants forges the entries in the books of accounts and uses forged entries as evidence in the case, the respondents who is aggrieved by the same will be having ample opportunity to prove them forgeries committed by the appellants.

#### **(F) Extended Remedy**

The Court has ample power in summoning the parties to produce the documents before the court. The respondents were free to do so, but still they merely preferred for seizure. Arguendo, the appellants in this case fail to comply with such order for producing the book of accounts, and then in that case, the court will be having power to draw presumption as against the appellants.

### **III. CONCLUSION AND SUGGESTIONS**

To the maximum, in this particular case, books of accounts can only be used as a piece of evidence. In that case such order for seizure can't be made. Even in CrPC, in order to seize the properties as evidences there are many procedures for the same. Hence, this apex court was

right in passing the said judgement. However, this court could have been more cautious while set asiding the charge on appellant for giving bribe to commissioner. But still, by virtue of the Prevention of Corruption Act, 1988, the legislators had rightly incorporated the provision for penalising giving bribe to the commissioner.

After analysing the said case, it is suggested that whenever such order regarding giving bribe is set aside merely on technical factors, the courts has to take reasonable efforts to intimate the existing vacuum to the legislators. Also, the section 75 of CPC has been widened by virtue of Sec. 75(g), but there is no clarity as to whether issue of commission for seizure of books of accounts can be brought in under “any ministerial act”

With due regard to the aforesaid averments, this court is in a considered opinion that, the laws enumerated in the case of *Padam Sen and Another vs The State of Uttar Pradesh, 1961 AIR 218* in terms of not accepting the commission for seizure of books of accounts stand valid as per the existing laws of the land.

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