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M. KARUNANIDHI

v.

UNION OF INDIA

February 20, 1979

[Y. V. CHANDRACHUD, C.J., P. N. BHAGWATI, N. L. UNTWALIA,
B S. MURTAZA, FAZAL ALI AND R. S. PATHAK, JJ.]

Tamilnadu Public Men (Criminal Misconduct) Act, 1973—*Whether inconsistent with the provisions of Code of Criminal Procedure* 1898, *Prevention of Corruption Act* 1947 *& Criminal Law (Amendment) Act,* 1952—*Art.* 254 *of Constitution of India—Inconsistency between laws made by Parliament and laws made by legislature of states—Effect of.*

C *Constitution of India* 1950—*Arts.* 164 *&* 167—*Nature, constitutional position and status of Minister or Chief Minister.*

Indian Penal Code 1869—*S.* 21(12)—*Public servant & Criminal Procedure Code* 1898—*S.* 199(2)—*'Other public servant'—Scope of—Chief Minister whether 'public servant'.*

Words & Phrases—'in the service or pay of the Government'—S. 21(12)(*a*)
D *IPC—Meaning of.*

In December 1973, the Madras Legislature passed an Act known as the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 after obtaining the assent of the President. The State Act was amended by Act 16 of 1974 and the President's assent was received on April 10, 1974. The provisions of the State Act were brought into force with effect from May 8, 1974. The State
E Act was repealed and the President's assent to the repealing Act was given on September 6, 1977.

The Act provided for the investigation in respect of a complaint of criminal misconduct against any public man by a Commissioner or the Additional Commissioner of Inquiries appointed for this purpose. The word 'public man' had been given a specific connotation in s. 2(c) of the Act and clearly excluded a Government servant.

F The appellant was the former Chief Minister of the State of Tamilnadu. On June 15, 1976 the Chief Secretary to the State Government requested the Central Bureau of Investigation to make a detailed investigation into certain allegations that the appellant and others were alleged to have abused their official position in the matter of purchase of wheat from Punjab. With the State Governor's sanction a charge sheet was filed after investigation for the
G prosecution of the appellant under ss. 161, 468 and 471 IPC and s. 5(2) read with S. 5(1)(d) of the Prevention of Corruption Act for allegedly having derived pecuniary advantage to the extent of Rs. 4 to 5 lakhs for passing favourable orders in respect of some firms.

The appellant applied for discharge under s. 239 Cr. P.C. on the ground that the prosecution against him suffered from various legal and constitutional
H infirmities. On the application being rejected, the appellant applied to the High Court for quashing the proceedings and for setting aside the order of the Special Judge refusing to discharge him. The High Court rejected the applications.

In the appeals to this Court, it was contended on behalf of the appellant : A

(1) Even though the State Act was repealed, the provisions of the Central Acts having themselves been protanto repealed by the State Act when it was passed could not be pressed into service for the purpose of prosecuting the appellant unless these provisions were re-enacted by the appropriate legislature.

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(2) It was contended that even assuming that the State Act had ceased to exist and the Central Acts applied, the appellant cannot be prosecuted under any of the sections of the Penal Code or the Corruption Act, because by virtue of the position that the appellant enjoyed as Chief Minister, there was no relationship of master and servant between him and the Government and he was acting as a constitutional functionary, and therefore could not be described as a 'public servant' as contemplated by s. 21(12) of the Penal Code.

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(3) The provisions contained in the State Act run counter to those of the Central Acts in respect of the following matters; (a) The procedure for investigation of the offences by a Central Agency as contemplated by the Corruption Act is dispensed with and is instead invested in a Commissioner appointed under the State Act. (b) The provisions under the Prevention of Corruption Act regarding the grant of sanction under s. 197 of the Code to the accused is given a complete go by and instead a Commissioner is appointed to hold a regular inquiry for himself and then to submit his report. An accused who has to be tried under the State Act is thus deprived of the protection afforded to every Government servant regarding grant of a sanction by the appointing authority. Therefore the protection if any, given by the State Act is purely illusory, and

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(4) By virtue of the fact that the State Act has obtained the assent of the President, it will be deemed to be a dominant legislation, and therefore it would over-rule the Central Acts.

Dismissing the appeals,

HELD : 1. The scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Art. 254(1). Thirdly, so far as the matters in List II, i.e. the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. [263 D-E]

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2. In such matters repugnancy may result from the following circumstances :—

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(i) Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconciliable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

A (ii) Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with cl. (2) of Art. 254.

(iii) Where a law passed by the State legislature while being substantially B within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the lay may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List an entrenchment, if any, being purely incidental or inconsequential.

C (iv) Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with or repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Art. 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and over-rule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will D exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Art. 254. [263 F-264 D]

3. A careful analysis, therefore, of the various provisions of the State Act leads to the irresistible inference that the State Act was passed with a view to afford sufficient protection to a public man by enjoining a summary inquiry or E investigation by a high and independent Tribunal of the status of a High Court Judge or a Senior District Judge to instil confidence in the people and to prevent public men from being prosecuted on false, frivolous and vexatious allegations. Although the ingredients of criminal misconduct as defined in s. 5(1)-(d) of the Corruption Act are substantially the same in the State Act as in the Central Acts but here also the punishment is much severer in the case of the F State Act than the one contained in the Central Acts. It is, therefore, manifest that the State Act does not contain any provision which is repugnant to the Central Acts, but is a sort of complementary Act which runs *pari passu* the Central Act. [270 G-271 A]

4. *Prima facie*, there does not appear to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied : G

(i) That there is a clear and direct inconsistency between the Central Act and the State Act; (ii) that such an inconsistency is absolutely irreconcilable; (iii) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying H the other. [272D-E]

5. (1) In order to decide the questions of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions,

so that they cannot stand together or operate in the same field; (2) that there can be no repeal by implication unless the inconsistency appears on the face of the two statutes; (3) that where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results; (4) that where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field. [278 F-H]

Hume v. *Palmer,* 38 CLR 441; *Union Steamship Co. of New Zealand* v. *Commonwealth,* 36 CLR 130; *Clyde Engineering Co.* v. *Cowburn,* 37 CLR 466; *Ex. Parte McLean,* 43 CLR 472; *Zavarbhai Amaidas* v. *State of Bombay,* [1955] 1 SCR 799; *Ch. Tika Ramji & Ors. etc.* v. *The State of U.P. & Ors.* [1956] SCR 393 *Shyamakant Lal* v. *Rambhajan Singh,* 1939 FCR 188; *Om Prakash Gupta* v. *State of U.P.,* [1957] SCR 423; *Deep Chand* v. *State of UP & Ors.* [1959] 2 Supp. SCR 8, *Megh Raj & Ors.* v. *Allah Rakhia & Ors.* AIR 1942 FC 27; *State of Orissa* v. *M. A. Tulloch & Co.* [1964] 4 SCR 461; *T. S. Balliah* v. *T. S. Rangachari,* [1969] 3 SCR 65; referred to.

Colin Heward's Australian Federal Constitution Law 2nd Edn. Nicholas Australian Constitution 2nd Edn. p. 303 referred to.

There can be no doubt that the State Act creates distinct and separate offences with different ingredients and different punishments and it does not in any way collide, with the Central Acts. On the other hand, the State Act itself permits the Central Act, namely, the Criminal Law (Amendment) Act to come to its aid after an investigation is completed and a report is submitted by the Commissioner or the Additional Commissioner. [279 A-B]

6. Doubtless, the State Act is the dominant legislation but there are no provisions in the State Act which are irreconcilably or directly inconsistent with the Central Acts so as to over-rule them. [279 C]

The original s. 29 of the State Act underwent an amendment which was brought about by Tamil Nadu Act 16 of 1974 which substituted a new s. 29 for the old one. This amendment received the assent of the President on 10th April, 1974 and was published in the Tamil Nadu Government Gazette Extraordinary, dated 16 April, 1974. Although the State Act was passed as far back as 30 December, 1973 it received the assent of the President on the 10 April, 1974 that is, on the same date as Act 16 of 1974. The Act was however brought into force on the 8 May, 1974 when the new s. 29 which had already replaced the old section and had become a part of the statute. Therefore, for all intents and purposes the State Act cannot be read in isolation, but has to be interpreted in conjunction with the express language contained in s. 29 of the State Act. The legislature has in unequivocal terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only be "in addition to and not in derogation with any other law for the time being in force" which manifestly includes the Central Acts, namely, the Indian Penal Code, the Corruption Act and the Criminal Law (Amendment) Act. Thus, the Legislature about a month before the main Act came into force clearly declared its intention that there would be no question of the State Act colliding with the Central Acts referred to above. The second part

A of s. 29 also provides that nothing contained in the State Act shall exempt any public man from being proceeded with by way of investigation or otherwise under a proceeding instituted against him under the Central Acts. It is, therefore, clear that in view of this clear intention of the legislature there can be no room for any argument that the State Act was in any way repugnant to the Central Acts. [279 D-280 D]

B 7. The provisions of s. 29 would be presumptive proof of the fact that there is no repugnancy between the State Act and the Central Acts nor did either the legislature or the President intend to create any repugnancy between these Acts as a result of which the criticism regarding the repugnancy is completely obliterated in the instant case and we, therefore, hold that the State legislature never intended to occupy the same field as covered by the Central Acts. [281 B]

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8. So far as the first part of cl. (12) (a) is concerned, namely 'in the service of the Government undoubtedly signifies a relationship of master and servant where the employer employs the employee on the basis of a salary or remuneration. However, the second limb of the clause, 'in the pay of the Government' is concerned, that appears to be of a much wider amplitude so as to include within its ambit even a public servant who may not be a regular employee D receiving salary from his master. A Minister or a Chief Minister will be clearly covered by the said expression. [282 E-F]

A careful analysis of the meanings assigned to the word 'pay' in the various dictionaries and the texts would clearly reveal that the expression 'in the pay of' connotes that a person is getting salary, compensation, wages or any amount E of money. This by itself however does not lead to the inference that a relationship of master and servant must necessarily exist in all cases where a person is paid salary. [283 G-H]

Shorter Oxford English Dictionary; Websters Third New International Dictionary : Websters New World Dictionary : Words and Phrases, Permanent Edition Vol. 31A p. 176. Venkataramaya's F Law Lexicon Vol. 11 p. 1122. Corpus Juris Secundum Vol. 70 p. 200; referred to.

9. By virtue of the provisions contained in Art. 167, the Chief Minister undoubtedly performs a public duty of the nature as enjoined by clauses (a) to (c) of Art. 167. It is also clearly provided in the Constitution that the Chief Minister or the Ministers are entitled to salaries or allowances obviously G in lieu of public duties that they perform. The salaries given to the Chief Minister or the Ministers are given from the Government funds, and, therefore, there will be no difficulty in holding that the Ministers are in the pay of the Government inasmuch as they receive their salaries, remunerations or wages from the Government. [285 E-F]

H Once it is conceded that the Governor appoints the Chief Minister who is paid a salary according to a statute made by the legislature from the Government funds, the Chief Minister becomes a person in the pay of the Government so as to fall squarely within cl. (12) of s. 21 of the Penal Code. [286 B]

10. The use of the words 'other public servants' following a Minister of the Union or of a State clearly show that a Minister would also be a public servant as other public servants contemplated by s. 199(2) of the Code and the Code being a statute complementary and allied to the Penal Code can be looked into for the purpose of determining the real meaning and import of the words 'public servant' as used in the aforesaid section [286 F]

Dattatraya Narayan Patil v. *State of Maharashtra*, [1975], Supp. SCR 145; *Emperor* v. *Sibnath Banerji & Ors.*, AIR 1945 PC 156; *Rao Shiv Bakadur Singh & Anr.* v. *The State of Vindhya Pradesh*, [1953] SCR 1188; referred to.

S. Tara Singh v. *Director Consolidation of Holdings, Punjab, Jullundur & Ors.* AIR 1958 Pub. 302, *Bakshi Ghulam Mohd.* v. *G. M. Sadiq & Ors.*, AIR 1968 J & K 98; approved.

11. Three facts that have been proved beyond doubt :—

(i) That a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional function.

(ii) That a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him.

(iii) That the said salary is paid to the Chief Minister or the Minister from the Government funds. [290A-B]

12. It is thus incontrovertible, that the holder of a public office such as the Chief Minister is a public servant in respect of which the Constitution provides that he will get his salary from the Government Treasury so long he holds his office on account of the public service that he discharges. The salary given to the Chief Minister is coterminus with his office and is not paid like other constitutional functionaries such as the President and the Speaker. These facts, therefore, point to one and only one conclusion and that is that the Chief Minister is in the pay of the Government and is, therefore, a public servant within the meaning of s. 21(12) of the Penal Code. [290 C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 270-271 of 1977.

From the Judgment and Order dated 10-5-1977 of the Madras High Court in W.P. No. 429 and Crl. R.P. No. 50/77.

K. K. Venugopal, N. A. Subramaniam, C. S. Vaidyanathan, Mrs. Shanta Venugopal, K. R. Chowdhary and Mrs. Veena Devi Khanna for the Appellant.

S. N. Kackar, Sol. Genl. (In Crl. A. No. 270) *R. B. Datar* and *R. N. Sachthey*, for the Respondent.

V. P. Raman, Adv. Genl and *A. V. Rangam* for the State of Tamil Nadu.

A The Judgment of the Court was delivered by

FAZAL ALI, J. These two appeals by certificate are directed against a common order of the Madras High Court dated 10th May, 1977 dismissing the applications filed before the High Court by the appellant for quashing the order of the Special Judge, Madras dated B 4th January, 1977 refusing to discharge the appellant under section 239 of the Code of Criminal Procedure (hereinafter referred to as the Code).

The facts of the case have been detailed in the judgment of the C High Court and it is not necessary for us to repeat the same all over again. However, in order to understand the points in issue, it may be necessary to give a resume of the important stages through which the case has passed and the constitutional points argued before us.

The appellant, M. Karunanidhi, was a former Chief Minister of D Tamil Nadu and was the petitioner before the High Court in the applications filed by him before the High Court. On 15-6-1976 a D.O. letter was written by the Chief Secretary to the Government of Tamil Nadu to the Deputy Inspector General of Police, CBI requesting him to make a detailed investigation into certain allegations against the appellant and others who were alleged to have abused their official position E in the matter of purchase of wheat from Punjab. A first information report was accordingly recorded on 16-6-1976 and four months later sanction under section 197 of the Code was granted by the Governor of Tamil Nadu for the prosecution of the appellant under sections 161, 468 and 471 of the Indian Penal Code and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act (hereinafter referred F to as the Corruption Act). Thereafter, the police submitted a charge-sheet against the appellant for the offences mentioned above and alleged that the appellant had derived for himself pecuniary advantage to the extent of Rs. 4 to Rs. 5 lakhs from Madenlal Gupta for passing favourable orders in respect of some firms. The case was registered before the G Special Judge and the necessary copies of the records were furnished to the appellant. The appellant on appearing before the Special Judge filed an application for discharging him under section 239 of the Code on the ground that the prosecution against him suffered from various legal and constitutional infirmities. The Special Judge, however, after hearing counsel for the parties rejected the application of the appellant H as a result of which the appellant filed two applications in the High Court for quashing the proceedings and for setting aside the order of the Special Judge refusing to discharge the appellant. As indicated

above, the High Court rejected the applications of the appellant but granted a certificate for leave to appeal to this Court and hence these appeals before us. A

As far back as 30th December, 1973 the Madras Legislature had passed an Act known as The Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 hereinafter referred to as the State Act. The State Act was passed after obtaining the assent of the President of India. This State Act was, however, amended by Act 16 of 1974 and the President's assent was received on 10th April, 1974. According to the provisions of the State Act the statute was brought into force by virtue of a notification with effect from 8-5-1974. According to the allegations made against the appellant, the acts said to have been committed by him fell within the period November 1974 to March, 1975. On 31-1-1976 by virtue of the provisions of Article 356 President's rule was imposed in the State of Tamil Nadu and the Ministry headed by the appellant was dismissed and a Proclamation to his effect was issued on the same date. The High Court decided the petitions of the appellant on 10-5-1977 and granted a certificate for leave to appeal to this Court on 27-7-1977. Subsequently, however, the State Act was repealed and the President's assent to the repealing of the State Act was given on 6-9-1977. Thus, it is manifest that by the time the appeal has reached this Court and was taken up for hearing the State Act no longer exists. Consequently, some of the constitutional points raised by the learned counsel for the appellant before the Court do not survive for consideration before us. B C D E

Faced with this situation, Mr. Venu Gopal, learned counsel for the appellant has raised only two points before us. In the first place, he submitted that even though the State Act was repealed on 6-9-1977 during the time that it was in force, it was wholly repugnant to the provisions of the Code, the Corruption Act and the Criminal Law Amendment Act and by virtue of Article 254(2) of the Constitution of India the provisions of the aforesaid Central Acts stood repealed and could not revive after the State Act was repealed. The constitutional position, it is submitted, was that even though the State Act was repealed the provisions of the Central Acts having themselves been protanto repealed by the State Act when it was passed could not be pressed into service for the purpose of prosecuting the appellant unless those provisions were re-enacted by the appropriate legislature. A number of grounds were raised by counsel for the appellant in support of the first plank of his argument that the State Act was repugnant to the provisions of the Central Acts as a result of which the former was rendered void. F G H

A Secondly, it was argued that even assuming that the State Act has ceased to exist and the Central Acts apply to the facts of the present case, the appellant cannot be prosecuted under any of the sections of the Penal Code or the Corruption Act, because being the Chief Minister of the State at the relevant time he was not a public servant as defined in section 21 clause (12) of the Indian Penal Code. The B argument was that by virtue of the position that the appellant enjoyed as Chief Minister there was no relationship of master and servant between him and the Government and he was acting as a constitutional functionary and, therefore, could not be described as a public servant as contemplated by section 21(12) of the Penal Code.

C We propose to deal with the two arguments separately. We would first deal with the question of repugnancy as raised by learned counsel for the appellant. It is true that the State Act was passed by the Legislature of Tamil Nadu and the assent of the President was obtained on 30th December, 1973. By virtue of the provisions of Article 254 (2) of the Constitution since the assent of the President had been D given the State Act was to prevail over the Central Acts so far as the State of Tamil Nadu was concerned, but the serious question to be considered is as to whether or not there was a real repugnancy resulting from an irreconcilable inconsistency between the State Act and the Central Acts. Article 254 of the Constitution runs thus :—

E "254. *Inconsistency between laws made by Parliament and laws made by the Legislatures of States* : (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated F in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

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(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legisla- H ture of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of State". A

It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislautres. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances :- B C D E

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy. F

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254. G

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List H

A the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List an entrenchment, if any, is purely incidental or inconsequential.

B 4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that C so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

D So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.

It is neither alleged or argued that Parliament has at any time after the State Act was passed proceeded to pass any law as contemplated E by the Proviso to Article 254. As, however, the State law has already been repealed and the President's assent to the said repeal has been received as far back as 6-9-1977 we are concerned only with the limited question as to whether if the State law had repealed or overruled the provisions of the Central law what will be the position after the State law itself ceases to exist. It is true that the doctrine of eclipse would F not apply to the constitutionality of the Central law and the only question we have to determine is whether there was such an irreconcilable inconsistency between the State Act and the Central Acts that the provisions of the Central Act stood repealed and unless re-enacted the said provisions cannot be invoked even after the State Act was itself G repealed. In order, however, to enter into the domain of repugnancy of the two Acts we have to consider the relevant provisions of the Central Acts and of the State Act. The High Court has on a very careful and cautious analysis of the various provisions of the two Acts come to a clear finding that there is no repugnancy between the State Act and the Central Acts, but the State Act merely creates a new and H distinct offence which in its nature and purport is essentially different from the offences contemplated by the Indian Penal Code and the Corruption Act. It has been pointed out by the High Court as also

by the Solicitor General that not only the ingredients of the offences created by the State Act are different from those of the Central Act, but even the procedure is different. It was further argued by the Solicitor General that there is absolutely no repugnancy between the two Acts and both can operate in their respective fields.

In order to appreciate this question, we would briefly refer to the scheme of the State Act. Section 2 defines certain dignitaries like Commissioner, Additional Commissioner, Government, Public man, public servant.

Clause (a) of section 2 defines 'Commissioner' thus :

> " 'Commissioner' or "Additional Commissioner" means the Commissioner of Inquiries or an Additional Commissioner of Inquiries, as the case may be, appointed under section 4".

Clause (c) of section 2 defines 'public man' thus :

"Public man" means

(i) any person who is or has been the Chief Minister or any other Minister of the State;

(ii) a person who is or has been a Member of the Legislative Assembly or of the Legislative Council of the State; or

(iii) a person who is or has been a Mayor or Deputy Mayor of the Municipal Corporation of Madras or of Madurai or Chairman of any Standing or Subject or other Committee constituted or deemed to be constituted under the Madras City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) or the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971) as the case may be;

(iv) a person who is or has been the Chairman or Vice-Chairman of a Municipal Council or Chairman of any Standing or Subject or other Committee constituted or deemed to be constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920) or any other law for the time in force;

(v) a person who is or has been the Chairman or Vice-Chairman of a Panchayat Union Council or Chairman or President of any Standing or Subject or other Committee of such council constituted or deemed to be

A constituted under the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958), or any other law for the time being in force;

(vi) a person other than a Government servant who is or has been the Chairman of—

B (a) any corporation (not being a local authority) established by or under a State or Provincial Act and owned or controlled by the State Government;

(b) any Government company within the meaning of C section 617 of the Companies Act, 1956 (Central Act 1 of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the State Government, or any company which is a subsidiary of a company in which not less than fiftyone per cent of the paid-up share capital D is held by the State Government".

It may be noticed here that the concept of public-man as contemplated by the State Act differs in certain respects from that of a public servant as contemplated by section 21(12) of the Penal Code.

E To begin with, under the State Act a public-man clearly includes the Chief Minister or any other Minister of the State as also a member of the State Legislative Assembly or Legislative Council. Secondly, the word 'public man' appearing in Section 2(c) clearly excludes a *Government servant,* unless he falls within the categories of (a), (b) F and (c) of clause (vi) of section 2 of the State Act. This is a basic departure from the provisions of the Penal Code where the word 'public servant' has been used in the widest possible sense so as to include not only Government servants who are receiving salary from the Government, but also other dignitaries who are in the pay of the Government.

G Section 3 clauses (1), (2) and (3) define criminal misconduct which is almost the same as defined by the provisions of the Corruption Act and the Penal Code (sections 5(2) and 5(1)(d) of the Corruption Act and section 161 of the Indian Penal Code).

H It may, however, be noted here that the State Act does not make sections 468 and 471 of the Indian Penal Code any offence under this Act. Section 4 prescribes the procedure for appointment of a high

powered tribunal for the purpose of holding investigation into the allegations made against any public man. Sections 4 and 5 run thus :— A

"4. *Appointment of Commissioner of Inquiries and Additional Commissioner of Inquiries* : (1) For the purpose of conducting investigation in accordance with the provisions of this Act, the Government shall, on the recommendation of the Chief Justice of the High Court appoint, by notification, a person to be known as Commissioner of Inquiries and one or more persons to be known as Additional Commissioner of Inquiries. B

(2) The Commissioner shall be a person who is, or who is qualified for appointment as, or who has been, a Judge of a High Court and an Additional Commissioner shall be a person who is, or who is qualified for appointment as, or who has been, a District Judge. C

(3) Every person appointed as the Commissioner or Additional Commissioner shall, before entering upon his office, make and subscribe before the Chief Justice of the High Court or some person appointed in that behalf by him an oath for affirmation in the form set out for the purpose in the First Schedule. D

(4) The Additional Commissioner shall be subject to the administrative control of the Commissioner, and in particular, for the purpose of convenient disposal of investigations under this Act, the Commissioner may issue such general or special directions as he may consider necessary to the Additional Commissioner; E

Provided that nothing in this sub-section shall be construed to authorise the Commissioner to question any finding conclusion or recommendation of an Additional Commissioner. F

x x x x x G

5. *Term of office and other conditions of service of Commissioner and Additional Commissioner* :

x x x x x

(4) There shall be paid to the Commissioner and the Additional Commissioner such salaries as are specified in the Second Schedule. H

(5) The allowances and pension payable to, and other conditions of service of, the Commissioner or Additional Commissioner shall be the same as admissible —

(a) to a Judge of a High Court in the case of the Commissioner,

(b) to a District Judge in the case of an Additional Commissioner :

Provided that the allowances and pension payable to, and other conditions of service of, the Commissioner or an Additional Commissioner shall not be varied to his disadvantage after his appointment".

Another important provision which is contained in the State Act but not in the Central Acts is a provision regarding limitation. Under section 8 which was introduced by section 2 of the Tamil Nadu Amending Act 16 of 1974 it is provided that the Commissioner or the Additional Commissioner shall not investigate any complaint involving criminal misconduct which is made after the expiry of 5 years from the date on which the criminal misconduct complained against was alleged to have been committed or after the expiry of one year from the date on which the public man ceased to be such public man. The provisions of section 8 may be extracted thus :—

"6. *Limitation for preferring complaints* : (1) The Commissioner or an Additional Commissioner shall not investigate or cause to be investigated any complaint involving criminal misconduct if the complaint is made :—

(i) after the expiry of five years from the date on which the criminal misconduct complained against was alleged to have been committed; or

(ii) after the expiry of one year of the date on which the public ceases to be such public man,

Whichever is later.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner or an Additional Commissioner shall not investigate or cause to be investigated any complaint involving criminal misconduct, the complaint is made after the expiry of one year from the date on which the action complained against becomes known to the complainant".

Similarly section 10 of the State Act confers plenary powers on the Commissioner or the Additional Commissioner to prescribe a procedure for conducting an investigation in respect of a complaint and runs thus :—

"10. *Procedure in respect of investigation of criminal misconduct* : (1) The procedure for conducting any investigation in respect of a complaint of criminal misconduct against any public man shall be such as the Commissioner or the Additional Commissioner considers appropriate in the circumstances of the case.

(2) Subject to the provisions of sub-section (1), where any complaint of criminal misconduct against a public man is received by the Commissioner or Additional Commissioner, the Commissioner or Additional Commissioner shall make or cause to be made a preliminary investigation to find out whether there is any prima facie case against the public man in respect of the allegation of criminal misconduct :

x x x

(3) Where the Commissioner or Additional Commissioner gives a finding under sub-section (2) that there is no prima facie case against the public man in respect of the allegation of criminal misconduct, he shall dismiss the complaint after briefly recording his reasons for doing so :

Provided that the Commissioner or Additional Commissioner shall not dismiss any complaint under this sub-section, unless the complainant has been given an opportunity of being heard, if such complainant has not already been heard under clause (a) of the proviso to sub-section (2).

x x x x"

Under clause (3) of section 10 the Commissioner or the Additional Commissioner is empowered to dismiss the complaint if he is satisfied that no prima facie case against the public man has been made out, but such an order of dismissal can be made only after the complainant has been given an opportunity of being heard.

Section 11 is also a new provision as compared to the Central Acts which provides for grant of compensatory costs to the public man if the allegation made against him are found to be false, frivolous or vexatious to the knowledge of the complainant.

A Section 12 gives a right of appeal to a Division Bench of the High Court against any order passed by the Commissioner or Additional Commissioner under sub-section (1) of section 11 granting compensatory costs to the public man and runs thus :—

> *"Appeal against an order under section* 11 : (1) Against any order passed by the Commissioner or Additional Commissioner under sub-section (1) of section 11, the complainant may, within such period as may be prescribed, appeal to a Special Appellate Tribunal consisting of two Judges of the High Court nominated from time to time by the Chief Justice in that behalf".

C Section 14 provides the procedure for examination of witnesses, receiving of affidavits, issuing of commissions etc.

Section 15 provides an enhanced punishment of seven years for criminal misconduct as compared to the punishment provided by the D Corruption Act.

Section 16 provides for prosecution of a complainant if his complaint is found to be false, frivolous and vexatious and such a complainant is liable to be punished for a term which may extend to three years and fine, but such a prosecution can be launched only with the previous sanction of the Commisioner. Section 16 runs thus :— E

> "16. *Punishment for false, frivolous or vexatious complaint* : (1) Notwithstanding anything contained in this Act, every person who makes a false, frivolous or vexatious complaint against a public man under this Act, shall on conviction be punished with imprisonment for a term which may extend F to three years and shall also be liable to fine".

A careful analysis, therefore, of the various provisions of the State Act leads to the irresistible inference that the State Act was passed with a view to afford sufficient protection to a public man by enjoining a summary inquiry or investigation by a high and independent Tribunal G of the status of a High Court Judge or a Senior District Judge to instill confidence in the people and to prevent public man from being prosecuted on false, frivolous and vexatious allegations. Although the ingredients of criminal misconduct as defined in section 5(1)(d) of the Corruption Act are substantially the same in the State Act as in the Central Acts but here also the punishment is much severer in the H case of the State Act than the one contained in the Central Acts. It is, therefore, manifest that the State Act does not contain any provision which is repugnant to the Central Acts, but is a sort of comple-

mentary Act which runs *pari passu* the Central Acts mentioned above. After the investigation by the Commissioner under the State Act is complete and a report is submitted, section 18 of the State Act provides thus :—

> "18. *Report of the Commissioner and Additional Commissioner* : (1) Where as a result of any detailed investigation under sub-section (4) of section 10 in respect of a complaint of criminal misconduct against a public man, the Commissioner or an Additional Commissioner is of opinion, —
>
> (a) that it is expedient in the interest of justice that the public man against whom criminal misconduct has been alleged, should be prosecuted for an offence under section 15; or
>
> (b) that the allegation has not been substantiated, he shall record a finding to that effect stating his reasons therefor and report the same to the Government.
>
> (2) In cases falling under clause (a) of sub-section (1), the public man shall be prosecuted and tried under section 6 of the Criminal Law (Amendment) Act, 1952 (Central Act 46 of 1952)".

The State Act enjoins that the public man concerned will have to be prosecuted under the Criminal Law (Amendment) Act of 1952. Thus, far from there being any inconsistency, the provisions of the Criminal Law (Amendment) Act are directly applied to a public man by the State Act after the preliminary investigation by the Commissioner is over. It seems to us that what the State Act does is merely to create different and distinct offences and not to over-rule any provisions of the Central Act.

It was, however, strongly contended by Mr. Venu Gopal that the provisions contained in the State Act run counter to those of the Central Acts in respect of the following matters :

1. The procedure for investigation of the offences by a Central agency as contemplated by the Corruption Act is dispensed with and is instead invested in a Commissioner appointed under the State Act.
2. The provision under the Prevention of Corruption Act regarding the grant of sanction under section 197 of the Code to the accused is given a complete go by and instead a Commissioner is appointed to hold a regular

A inquiry for himself and then to submit his report. Thus, an accused who has been tried under the State Act is deprived of protection afforded to every Government servant regarding grant of a sanction by the appointing authority. It is thus suggested that the protection, if any, given by the State Act is purely
B illusory.

In order, however, to understand the argument of the learned counsel for the appellant, it may be necessary to consider the question of repugnancy in a little broader perspective.

It is well settled that the presumption is always in favour of the
C constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:—

D 1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into
E direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

In Colin Howard's Australian Federal Constitutional Law, 2nd Edition the author while describing the nature of inconsistency be-
F tween the two enactments observed as follows:—

"An obvious inconsistency arises when the two enactments produce different legal results when applied to the same facts".

In the case of *Hume* v. *Palmer*(1) Knox, C.J. observed as
G follows :—

"The rules prescribed by the Commonwealth Law and the State law respectively are for present purposes substantially identical, but the penalties imposed for the contravention differ.....

H In these circumstances, it is I think, clear that the reasons given by my brothers Issacs and Starke for the deci-

(1) 38 C. L. R. 441.

sions of this Court in *Union Steamship Co. of New Zealand* v. *Commonwealth*(1) and *Clyde Engineering Co.* v. *Cowburn*(2) establish that the provisions of the law of the State for the breach of which the appellant was convicted are inconsistent with the law of the Commonwealth within the meaning of sec. 109 of the Constitution and are therefore invalid".

Issacs, J. observed as follows:—

"There can be no question that the Commonwealth Navigation Act, by its own direct provisions and the Regulations made under its authority, applies upon construction to the circumstances of the case. It is inconsistent with the State Act in various ways, including (1) general supersession of the regulations of conduct, and so displacing the State regulations, whatever those may be; (2) the jurisdiction to convict, the State law empowering the Court to convict summarily, the Commonwealth Law making the contravention an indictable offence, and therefore bringing into operation sec. 80 of the Constitution, requiring a jury; (3) the penalty, the State providing a maximum of £ 50 the Commonwealth Act prescribing a maximum of £ 100, or imprisonment, or both; (4) the tribunal itself".

Starke, J. observed as follows:—

"It is not difficult to see that the Federal Code would be 'disturbed or deranged' if the State Code applied a different sanction in respect of the same act. Consequently the State regulations are, in my opinion, inconsistent with the law of the Commonwealth and rendered invalid by force of sec. 109 of the Constitution".

In a later case of the Australian High Court in *Ex. Parte Mclean*(3) Issacs and Starke, JJ. while dwelling on the question of repugnancy made the following observation:—

"In *Cowburn's* case (supra) is stated the reasoning for that conclusion and we will now refer to those statements without repeating them. In short, the very same conduct by the same persons is dealt with in conflicting terms by the Commonwealth and State Acts. A Court, seeing that, has

(1) 36 C. L. R. 130.
(2) 37 C.L.R. 466.
(3) 43 C.L.R. 472.

A no authority to inquire further, or to seek to ascertain the scope or bearing of the State Act. It must simply apply sec. 109 of the Constitution, which declares the invalidity pro tanto of the State Act".

Similarly Dixon, J. observed thus:—

B "When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes, and sec. 109 C applies. That this is so is settled, at least when the sanctions they impose are diverse *Hume* v. *Palmer* (supra)".

In the case of *Zaverbhai Amaidas* v. *The State of Bombay*(1) this Court laid down the various tests to determine the inconsistency between two enactments and observed as follows—

D "The important thing to consider with reference to this provision is whether the legislation is 'in respect of the same matter'. If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254 (2) will have no application. E The principle embodied in section 107 (2) and Article 254 (2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State".

F "It is true, as already pointed out, that on a question under Article 254 (1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if subject-matter of the later legislation is identical with that of the earlier, so that they cannot both G stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law".

In the case of *Ch. Tika Ramji & Ors. etc.* v. *The State of Uttar* H *Pradesh & Ors.*(2) while dealing with the question of repugnancy

(1) [1955] 1 S.C.R. 799.
(2) [1956] S.C.R. 393

between a Central and a State enactment, this Court relied on the observations of Nicholas in his Australian Constitution, 2nd Ed. p.303, where three tests of inconsistency or repugnancy have been laid down and which are as follows:— A

> "(1) There may be inconsistency in the actual terms of the competing statutes *R. Brisbane Licensing Court*(1).
>
> (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code *Clyde Engineering Co. Ltd.* v. *Cowburn* (supra). B
>
> (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter *Victoria* v. *Commonwealth*(2) *Wenn* v. *Attorney General*(3) C

This Court also relied on the decisions in the case of *Hume v. Palmer* as also the case of *Ex Parte Mclean* (supra) referred to above. This Court also endorsed the observations of Sulaiman, J. in the case of *Shyamakant Lal* v. *Rambhajan Singh* (4) where Sulaiman, J. observed as follows: D

> "When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other, and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility". E F

In the case of *Om Prakash Gupta* v. *State of U.P.*(5) where this Court was considering the question of the inconsistency between the two Central enactments, namely, the Indian Penal Code and the Prevention of Corruption Act held that there was no inconsistency and observed as follows:— G

> "It seems to us, therefore, that the two offences are distinct and separate. This is the view taken in *Amarendra*

(1) 28 C.L.R. 23
(2) 58 C.L.R. 618.
(3) 77 C.L.R. 84. H
(4) [1939] F. C. R. 188.
(5) [1957] S.C.R. 423.

A *Nath Roy* v. *The State*(1) and we endorse the opinion of the learned Judges, expressed therein. Our conclusion, therefore, is that the offence created under section 5 (1) (c) of the Corruption Act is distinct and separate from the one under section 405 of the Indian Penal Code and, therefore, there can be no question of section B 5 (1) (c) repealing section 405 of the Indian Penal Code. If that is so, then, Article 14 of the Constitution can be no bar".

Similarly in the case of *Deep Chand v. The State of Uttar Pradesh & Ors.* (2) this Court indicated the various tests to ascertain the question of repugnancy between the two statutes and observed as follows:—

"Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:—

D (1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and

E (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field".

In the case of *Megh Raj and Ors. v. Allah Rakhia* & Ors.(3) where Varadachariar, J. speaking for the Court pointed out that where as in Australia a provision similar to section 107 of the Government F of India Act, 1935 existed in the shape of section 109 of the Australian Constitution, there was no corresponding provision in the American Constitution. Similarly, the Canadian cases have laid down a principle too narrow for application to Indian cases. According to the learned Judge, the safe rule to follow was that where the paramount legislation does not purport to be exhaustive or unqualified there is G no inconsistency and in this connection observed as follows :—

"The principle of that decision is that where the paramount legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provision made in it, it can-

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(1) A. I. R. 1955 Cal. 236.
(2) [1959] 2 Supp. S.C.R. 8
(3) A.I.R. 1942 F.C. 27.

not be said that any qualification or restriction introduced by another law is repugnant to the provision in the main or paramount law".

"The position will be even more obvious, if another test of repugnancy which has been suggested in some cases is applied, namely, whether there is such an inconsistency between the two provisions that one must be taken to repeal the other by necessary implication"

In the case of *State of Orissa* v. *M. A. Tulloch & Co.* (1) Ayyangar J. speaking for the Court observed as follows:

"Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation".

In the case of *T. S. Balliah* v. *T. S. Rangachari*(2) it was pointed out by this Court that before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent that it becomes impossible for them to stand together. In other words, this Court held that when there is a direct collision between the two enactments which is irreconcilable then only repugnancy results. In this connection, the Court made the following observations :—

"Before coming to the conclusion that there is a repeal by implication, the Court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot

(1) [1964] 4 S.C.R. 461

(2) [1969] 3 S.C.R. 65.

A stand together and the repeal of the express prior enactment must flow from necessary implication of the language of the later enactment. It is therefore necessary in this connection to scrutinise the terms and consider the true meaning and effect of the two enactments".

B "The provisions enacted in s. 52 of the 1922 Act do not alter the nature or quality of the offence enacted in s. 177, Indian Penal Code but it merely provides a new course of procedure for what was already an offence. In a case of this description the new statute is regarded not as superseding, nor repealing by implication the previous law, but as C cumulative".

"A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the D offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence".

E

On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge :—

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain F inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

G 3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute oc- H cupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

In the light of the propositions enunciated above, there can be no doubt that the State Act creates distinct and separate offences with different ingredients and different punishments and it does not in any way collide with the Central Acts. On the other hand, the State Act itself permits the Central Act, namely, the Criminal Law (Amendment) Act to come into its aid after an investigation is completed and a report is submitted by the Commissioner or the Additional Commissioner. It was contended however by Mr. Venu Gopal that by virtue of the fact that the State Act has obtained the assent of the President, it will be deemed to be a dominant legislation, and, therefore, it would overrule the Central Acts. Doubtless, the State Act is the dominant legislation but we are unable to agree with Mr. Venu Gopal that there are any provisions in the State Act which are irreconcilably or directly inconsistent with the Central Acts so as to overrule them.

Last but not the least there is a very important circumstance which completely and conclusively clinches the issue and takes the force out of the argument of Mr. Venu Gopal on the question of repugnancy. It would be seen that in the original State Act, section 29 ran thus :—

> "*Act to overrule other laws, etc.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of a court or other authority".

This section underwent an amendment which was brought about by Tamil Nadu Act 16 of 1974 which substituted a new section 29 for the old one. The new section which was substituted may be extracted thus :—

> "Saving—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public man from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him".

This amendment received the assent of the President on 10th April, 1974 and was published in the Tamil Nadu Government Gazette Extraordinary dated 16th April, 1974. We have already shown that although the State Act was passed as far back as 30th December, 1973 it received the assent of the President on the 10th April, 1974 that is to say, on the same date as Act 16 of 1974. The Act was however brought into force on the 8th May, 1974 when the new section 29

A which had already replaced the old section and had become a part of the statute. Therefore, for all intents and purposes the State Act cannot be read in isolation, but has to be interpreted in conjunction with the express language contained in section 29 of the State Act. This section has in unequivocable terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only B be "in addition to and not in derogation with any other law for the time being in force" which manifestly includes the Central Acts, namely, the Indian Penal Code, the Corruption Act and the Criminal Law (Amendment) Act. Thus, the Legislature about a month before the main Act came into force clearly declared its intention that there would be no question of the State Act colliding with the Central Acts C referred to above. The second part of section 29 also provides that nothing contained in the State Act shall exempt any public man from being proceeded with by way of investigation or otherwise under a proceeding instituted against him under the Central Acts. It is, therefore, clear that in view of this clear intention of the legislature there D can be no room for any argument that the State Act was in any way repugnant to the Central Acts. We have already pointed out from the decisions of the Federal Court and this Court that one of the important tests to find out as to whether or not there is repugnancy is to ascertain the intention of the legislature regarding the fact that the dominant legislature allowed the subordinate legislature to operate in E the same field *pari passu* the State Act.

Craies in his Interpretation on Statute Law 6th Ed. p. 369 observes as follows:—

> "Many earlier statutes contain clauses similar in effect to the general rule, but without the confusing words as to F contrary intention. These statutes, of some of which a list is given below, seem not to be affected by the above rule, save so far as it enables the revisers of the statute-book to excise the particular clauses. In accordance with this rule, penalties imposed by statute for offences already punishable G under a prior statute are regarded as cumulative or alternative and not as replacing the penalty to which the offender was previously liable."

Such an intention is clearly discernible from the provisions of section 29 of the State Act. Mr. Venu Gopal tried to rebut this argument on H the ground that section 29 would have no application where the inconsistency between the dominant statute and the subordinate statute is direct and complete. We have already found on a discussion of

the various provisions of the State Act that there is no direct inconsistency at all between the State Act and the Central Acts, and this affords a sufficient answer to the argument of Mr. Venu Gopal. Having, therefore, given our anxious consideration to the import and ambit of section 29 it seems to us that the provisions of section 29 would be presumptive proof of the fact that there is no repugnancy between the State Act and the Central Acts nor did either the legislature or the President intend to create any repugnancy between these Acts as a result of which the criticism regarding the repugnancy is completely obliterated in the instant case and we, therefore, hold that the State legislature never intended to occupy the same field covered by the Central Acts.

A B C

It was also contended by Mr. Venu Gopal that if the Central Acts being repugnant to the State Act are pressed into service even after the repeal of the State Act, the Central Acts would stand repealed hence the prosecution of the appellant would be hit by Article 20(3) of the Constitution, i.e. the appellant cannot be prosecuted for an ex post facto offence. On our findings in this case that there is no inconsistency between the State Act and the Central Acts the application of Article 20(3) of the Constitution to the facts of this case does not arise at all. We, therefore, find ourselves in complete agreement with the view taken by the High Court that the State Act creates new and distinct offences and is not in any way repugnant to any provisions of the Central Acts and consequently overruled the first limb of the argument of counsel for the appellant.

D E

Similarly the contention of Mr. Venu Gopal as to whether or not the prosecution of the appellant would be violative of Article 14 of the Constitution is not available to the appellant, and consequently the learned counsel gave up this point and in our opinion very rightly because since the State Act has now been repealed the question of the prosecution of the appellant hereafter under the State Act does not arise at all, and, therefore, the question of two remedies being open to the prosecution which they may elect at their own option does not arise in this case. The appellant can be prosecuted only under the Corruption Act and the Penal Code and under no other Act at the moment. Moreover, it was obviously wrong to say that the earlier Central Law became violative of Article 14 as soon as the State law was enacted.

F G

This brings us to the second limb of the argument of the learned counsel for the appellant which relates to the import and connotation of the term 'public servant' appearing in section 21(12) of the Indian

H

Penal Code. Clause 12 of section 21 which is the relevant provision so far as the present case is concerned runs thus :—

> "21. The words 'public servant' denote a person falling under any of the descriptions hereinafter following namely :—
>
> x x x
>
> Twelfth—Every person—
>
> (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government:
>
> x x x

It was vehemently contended by Mr. Venu Gopal that having regard to the constitutional and public duties of a Chief Minister or a Minister he cannot be deemed to be a public servant in any sense of the term. He further contended that the entire clause (12) (a) should be read as a whole and cannot be severed into two limbs inas much as the words 'in the service or pay of the Government' are used as synonyms. It was further contended that the words 'in the service or pay of the Government' clearly connote the relationship of master and servant—a relationship which is completely beyond the concept of the position of a Minister or a Chief Minister. We, however, agree that so far as the first part of clause (12) (a) is concerned, namely 'in the service of the Government' undoubtedly signifies a relationship of master and servant where the employer employs the employee on the basis of a salary or remuneration. But we are of the opinion that so far as the second limb 'in the pay of the Government' is concerned, that appears to be of a much wider amplitude so as to include within its ambit even public servant who may not be a regular employee receiving salary from his master. In other words, we think that even a Minister or a Chief Minister will be clearly covered by the expression 'person in the pay of the Government'. Mr. Venu Gopal, however, relied on the meaning of the words "in the pay of' as appearing in the various dictionaries.

In Shorter Oxford English Dictionary the expression 'in the pay of' is defined thus—

> "To give money, etc., in return for something or in discharge of an obligation. Of a thing or action. To yield an adequate return. To give money or other equivalent value for".

Similarly 'Payer' is defined thus:

> "One who pays a sum of money".

In Webster's Third New International Dictionary the expression 'in the pay of' is indicated to mean:— A

> "Compensate, remunerate, satisfy, reimburse, indemnify, recompense, repay. Pay is a general term, lacking particular connotation but sometimes bluntly stressing the purchase of service, pay a machinist high wages". B

> "Wages, salary remuneration".

In Webster's New World Dictionary the expression 'in the pay of' is thus defined:— C

> "Stresses the idea of payment for a service rendered, but it often also carries an implication of reward (a bumper crop remunerated the farmer for his labors)".

In Words and Phrases, Permanent Edition Vol. 31A p. 176 the meaning of the word 'pay' is given thus:— D

> "Pay" is remuneration, wages or salary. To remunerate; to recompense, to give any pay".

In Venkataramaya's Law Lexicon Vol. II p.1122 the expression 'to pay money' has the following connotation:—

> "To pay money is to pay it in respect of a right which some person has to receive it". E

In Corpus Juris Secundum Vol. 70 at page 200 the word 'pay' if used as a noun is defined as remuneration, wages, compensation, salary and the following observations are also made:— F

> "To noun 'pay' has been held equivalent to, or synonymous with, 'compensation', salary and wages and has been compared with, or distinguished from, 'allowance' and 'consideration' ".

A careful analysis of the meanings assigned to the word 'pay' in G the various dictionaries and the texts referred to above would clearly reveal that the expression 'in the pay of' connotes that a person is getting salary, compensation, wages or any amount of money. This by itself however does not lead to the inference that a relationship of master and servant must necessarily exist in all cases where a person is paid salary. This aspect of the matter would become crystal clear H if we examine the nature and the constitutional position and status of a Minister or a Chief Minister.

A Article 164 of the Constitution runs thus:—

> "Other provisions as to Ministers: (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office
B during the pleasure of the Governor:
>
> Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in Charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work".

C

This Article clearly shows that a Chief Minister is appointed by the Governor and having been appointed by the Governor it is manifest that he is subordinate to the Governor. Even in section 52 (1) of the Government of India Act, 1935 which preceded our Constitu-
D tion the provision was worded thus:—

> "52(1) The Governor of a Governor's province may, by notification, appoint ministers, not being members of his executive council or other officials to administer transferred subjects, and any ministers so appointed shall hold office during his pleasure:
E
> There may be paid to any minister so appointed in any province the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the legislative council of the province".

F In this section also it was the Governor who alone had the power to choose the ministers. In fact, in Article 164 the word 'appointment' is much higher than the concept of a person being chosen. Article 164(5) provides for the salary and allowances of Ministers and runs thus:—

G
> "164 (5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule".

Under this provision the Ministers on being appointed by the
H Governor are entitled to such salaries and allowances as the Legislature of the State may determine from time to time and until this is done, the emoluments will be such as are specified in the Second

Schedule. As however all the Legislatures of the States as also Parliament have already passed Acts providing for the salaries and emoluments of the Chief Minister and the Ministers the specification of their emoluments in the Second Schedule to the Constitution have been deleted.

Article 167 lays down the duties of the Chief Minister and runs thus:—

> "167. *Duties of Chief Minister as respects the furnishing of information to Governor etc.* It shall be the duty of the Chief Minister of each State—
>
> (a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;
>
> (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;
>
> (c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council".

It is, therefore, clear that by virtue of the provisions contained in Article 167, the Chief Minister undoubtedly performs a public duty of the nature as enjoined by clauses (a) to (c) of Article 167. It is also clearly provided in the Constitution that the Chief Minister or the Ministers are entitled to salaries or allowances obviously in lieu of public duties that they perform. The salaries given to the Chief Minister or the Ministers are given from the Government funds, and therefore, there will be no difficulty in holding that the Ministers are in the pay of the Government inasmuch as they receive their salaries, remunerations or wages from the Government. Mr. Venu Gopal, however, submitted that no analogy can be drawn between the constitutional provisions and the provisions contained in the Government of India Act because the constitutional position of a Chief Minister under the Constitution was not the same as under the Government of India Act where the Governor enjoyed vast and plenary powers and was not bound by the advice of the Council of Ministers as the Governor is under our Constitution. It is not necessary to probe into this aspect of the matter, because the Constitution clearly lays down that the Governor appoints the Chief Minister and being the appoint-

A ing authority he is also the dismissing authority. We are not at all concerned in the instant case as to the circumstances under which the Governor can appoint or dismiss the Chief Minister. Once it is conceded that the Governor appoints the Chief Minister who is paid a salary according to a statute made by the legislature from the Government funds, the Chief Minister becomes a person in the pay of the B Government so as to fall squarely within clause (12) of section 21 of the Penal Code.

There is another circumstance to show that a Chief Minister or a Minister is undoubtedly a public servant which was relied upon by the High Court in repelling the argument of Mr. Venu Gopal. Section C 199 of the Code runs thus:—

> "199 (2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code is alleged to have been committed against a person who, at the time of such commission is the President of India, the Vice President of India, the Governor of a State, the Administrator of a Union Territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor".

The use of words 'other public servants' following a Minister of the Union or of a State clearly show that a Minister would also be a F public servant as other public servants contemplated by section 199 (2) of the Code are the Code being a statute complimentary and allied to the Penal Code can be looked into for the purpose of determining the real meaning and import of the words 'public servant' as used in the aforesaid section.

G The Solicitor General placed reliance on the decision of this Court in the case of *Dattatraya Narayan Patil* v. *State of Maharashtra*(1) where this Court had held in a slightly different context that a Minister was a public servant. Mr. Venu Gopal has, however, distinguished this decision on the ground that this Court proceeded on the assumption H that it was not disputed before the Court that the Minister was a Public Servant and the case having been decided on the concession

(1) [1975] Supp. S.C.R. 145.

of the parties cannot be relied upon by the Solicitor General. In that case to which two of us (Untwalia and Fazal Ali, JJ.) were parties to the judgment, the following observations were made:— A

> "The duty assigned to a public servant by his master, be it be under a statute or by an executive order, will assume the character of public duty, provided the duty assigned is not illegal or against public policy. Will it make any difference in the case of a Minister? In our judgment, not. The Minister is a public servant—not disputed". B

These observations no doubt fortify our opinion that the Chief Minister is a public servant which is based on the reasons that we have already given and which are different from those given in the case cited before us. C

In the case of *Emperor* v. *Sibnath Banerji & Ors.*(1) the Privy Council clearly held that it was not in a position to accept the suggestion of the counsel that the Minister was not subordinate to the Governor. This was the precise argument which had been put forward by Mr. Venu Gopal when he contended that the Chief Minister is not subordinate to the Governor. The Privy Council observed as follows in this connection:— D E

> "So far as it is relevant in the present case, their Lordships are unable to accept a suggestion by counsel for the respondents that the Home Minister is not an officer subordinate to the Governor within the meaning of s.49 (1), and so far as the decision in *Emperor v. Hemendra Prosad Ghoshe* (19) I.L.R. (1939) 2 Cal. 411 decides that a Minister is not such an officer their Lordships are unable to agree with it. While a Minister may have duties to the Legislature, the provisions of s.51 as to the appointment, payment and dismissal of Ministers, and s.59 (3) and (4) of the Act of 1935, and the Business Rules made by virtue of s.59, place beyond doubt that the Home Minister is an officer subordinate to the Governor". F G

We find ourselves in complete agreement with the view taken by the Privy Council. In fact the case of the Privy Council referred to above was noticed and relied upon by this Court in the case of *Rao* H

(1) A.I.R. 1945 P. C. 156.

A *Shiv Bahadur Singh & Anr.* v. *The State of Vindhya Pradesh*(1) where this Court observed as follows:—

> "Clause 9 of section 21 Indian Penal Code shows that every officer in the service or pay of the Crown for the performance of any public duty is a 'public servant'. The decision of the Privy Council in *King Emperor* v. *Sibnath Banerji*(2) is decisive to show that a Minister under the Government of India is 'an officer' subordinate to the Governor. On the same reasoning there can be no doubt that the Minister of Vindhya Pradesh would be an 'Officer of the State of Vindhya Pradesh. Therefore, prior to the passing of Ordinance No. XLVIII of 1949 and on the view that the Indian Penal Code with necessary adaptation mutatis mutandis was in force at least in the Rewa portion of Vindhya Pradesh (if not in the entirety of Vindhya Pradesh) the first appellant was a public servant as defined in section 21, Indian Penal Code, as adapted. The amendment of the said section brought about therefore no substantial change in the position of the first appellant".

In the case of *Namdeo Kashinath Aher* v. *H. G. Vartak & Anr.*(3) Deshpande, J. observed as follows:—

> "Whatever be the practical and actual position, the fact remains that it is the Governor who can accept the resignation of the Ministry or Minister and it is the Governor again who can dismiss or remove the Minister from office. Under section 3(60) of the General Clauses Act, 1897, the word 'State Government' has been defined. Clause (c) of section 3(60) is applicable to the present case and therefore the State Government is to mean the Governor for the purpose of the present case. The result therefore is that accused No.1 is a public servant who can be said to be removable only by the State Government, meaning thereby the Governor, and I do not find any difficulty in coming to the conclusion that the second requirement of Section 197, Cr. P.C. also is fully satisfied as far as accused No.1 is concerned".

(1) [1953] S.C.R. 1188..
(2) [1945] F.C.R. 195.
(3) A.I.R. 1970 Bom. 385.

In the case of *S. Tara Singh* v. *Director Consolidation of Holdings, Punjab, Jullundur & Ors.*(1) the Punjab High Court took the same view and observed as follows:— A

> "It follows from the above conclusion that under Article 154 (1) of the Constitution the Governor may act directly or through his subordinate officers. In the present case he has acted through the Development Minister. The question arises whether he could so act. Obviously the executive authority carries on the business of the Government and part of this business is the power given to the State Government under section 42 of the Consolidation Act. Under Article 166 (3) of the Constitution the Governor can allocate this business to any Minister he likes.....Moreover there can be no doubt that a Minister is subordinate to the Governor. The Governor is the executive head of the State and this position he does not share with the Chief Minister or any other Minister. He allocates his executive duties to various Ministers under Article 166 (3) of the Constitution. B C D
>
> He appoints a Minister albeit on the advice of the Chief Minister and the Minister holds office during his pleasure. Therefore it is open to a Governor under the Constitution to dismiss an individual Minister at his plesure. In these circumstances there can be no doubt that a Minister is to be considered as an officer subordinate to the Governor". E

We find ourselves in complete agreement with the view taken and the reasons given by the Punjab High Court in the aforesaid case. F

To the same effect is a decision of the J & K High Court in the case of *Bakshi Ghulam Mohd.* v. *G. M. Sadiq & Ors*(2) where Anant Singh, J. observed as follows:—

> "A Minister of a State is paid from its public exchequer, and he is paid for doing public duty and, in my opinion, a Minister is a 'public officer' within the meaning of Sec. 80 as defined in Sec. 2 (17) (h) of the Civil Procedure Code". G

The opinion expressed by the learned Judge is clearly in consonance with the view that we have taken in this case.

H

(1) A.I.R. 1958 Punjab. 302.

(2) A. I. R. 1968 J & K. 98.

A Three facts, therefore, have been proved beyond doubt:—

1. That a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional functions.

B 2. That a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him.

3. That the said salary is paid to the Chief Minister or the Minister from the Government funds.

It is thus incontrovertable, that the holder of a public office such as the Chief Minister is a public servant in respect of whom the C Constitution provides that he will get his salary from the Government Treasury so long he holds his office on account of the public service that he discharges. The salary given to the Chief Minister is co-terminus with his office and is not paid like other constitutional functionaries such as the President and the Speaker. These facts, therefore, point to one and only one conclusion and that is that the Chief D Minister is in the pay of the Government and is, therefore, a public servant within the meaning of section 21 (12) of the Penal Code.

For the reasons given above, we are satisfied that a Chief Minister or a Minister is undoubtedly a public servant as defined in section E 21(12)(a) of the Penal Code and the view taken by the High Court on this point was absolutely correct in law. The result is that all the contentions raised by Mr. Venu Gopal, counsel for the appellant fail and the appeals are dismissed. The case before the Special Judge will now proceed to its ultimate end according to law.

F N.V.K. *Appeals dismissed.*