

MAHESH PRASAD GUPTA

v.

STATE OF RAJASTHAN

December 3, 1973

[M. H. BEG AND Y. V. CHANDRACHUD, JJ.]

Prevention of Corruption Act, 1947—S. 5(1) (d) and s. 5(2) read with s. 161 I.P.C.—Appellant had accepted Rs. 15/- which was no part of his legal remuneration—The presumption is that the appellant accepted the amount as a reward for doing an official act—The burden of proving the contrary rests on the appellant.

The appellant had been convicted under s. 5(1) (d) read with s. 5(2) of the Prevention of Corruption Act, 1947, as also under s. 161 of the Penal Code and was sentenced to one year R.I. and a fine.

The question for consideration in this case was whether the concurrent finding of guilt recorded by the trial court and the High Court was in accordance with law and the evidence in the case.

The appellant was a clerk in the office of the Loco-Foreman, Western Railway, Kotah, and he had to process applications for advances from the Provident Fund Account. It is alleged that the appellant while processing the complainant's application, accepted a bribe of Rs. 15/- from the complainant in a hotel. The appellant admitted the receipt of the amount, but contended that the amount was paid to him by the complainant in part payment of a loan of Rs. 30/- which had been advanced by him to the complainant earlier. Both the trial Court and the High Court held the accused guilty.

Dismissing the appeal,

HELD : (1) Section 4(1) of the Prevention of Corruption Act, 1947 provides to the extent material, that where in any trial of an offence punishable under Section 161 of the Penal Code, or under s. 5(2) of the Act, it is proved that an accused person has accepted "any gratification (other than legal remuneration)", it shall be presumed, unless the contrary is proved, that he accepted that gratification as a motive or reward such as is mentioned in Section (161), Penal Code. The motive or reward mentioned in Section 161 is, *inter alia*, for doing or for-bearing to do any official act. [581 C]

In the present case, the prosecution had proved that the appellant had accepted Rs. 15/- which clearly was no part of his legal remuneration. The presumption, therefore, was that the appellant accepted the amount as a motive or reward for doing an official act.

(ii) Under s. 4(1) of the Act, the burden of proving the contrary must rest on the appellant. But the appellant urged that the presumption under s. 4(1) can be raised only if the prosecution establishes in the first instance that the amount was paid otherwise than as legal remuneration. This contention is contrary to the clear terms of s. 4(1) and would render illusory, the presumption arising under the Section. To cast on the prosecution the burden of proving that the amount was accepted by the accused otherwise than by way of legal remuneration is to ask the prosecution to prove that the amount was paid and accepted by way of bribe. If this be the true nature of the burden resting on the prosecution, no presumption at all need be raised, because apart from the presumption the prosecution would have to prove that the money was accepted by the accused and that it was accepted as a bribe. It is plain that if the prosecution proves the acceptance of the amount by the accused and the amount does not represent legal remuneration in any form or any kind, the accused must establish that the amount was not accepted by him as motive or reward such as is mentioned in s. 161 I.P.C. The accused can establish his case by preponderance of probabilities, that is to say, that he need not prove his case beyond a reasonable doubt. [581 E]

V. D. Jhingan v. The State of Uttar Pradesh A.I.R. 1966 S.C. 1762, referred to.

In the present case, both the courts have held that the defence of the appellant was false and the preponderance of probabilities was in favour of the view that the amount

was accepted by the appellant by way of bribe. Further, there was no particular intimacy between the appellant and the complainant and it was not likely that the appellant would give a loan to complainant without a receipt and without interest. Further, the complainant bore no enmity with the appellant and there is no evidence to hold that the complainant was influenced by anybody into lodging a false case against the appellant. As the appellant had failed to discharge his burden, the order of conviction and sentence must be confirmed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 130 of 1970.

Appeal by Special leave from the Judgment and Order dated the 6th July, 1970 of the Rajasthan High Court at Jodhpur in S. B. Criminal Appeal No. 342 of 1967.

Nuruddin Ahmad and *Sobhagmal Jain*, for the appellant *Maya Rao*, for the respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, J. In this appeal by special leave the question for consideration is whether the concurrent finding of guilt recorded by the learned Special Judge, Jaipur and the High Court of Rajasthan is in accordance with law and the evidence in the case. The appellant has been convicted under section 5(1) (d) read with section s (2) of the Prevention of Corruption Act, 1947 as also under section 161 of the Penal Code. He has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 100/- on each count.

The complainant Umashanker is a cleaner in the Loco Shed, Kotah. The appellant was working at the material time, as a clerk in the office of the Loco Foreman, Western Railway, Kotah, one of his duties being to process applications made by a certain class of employees for advances from the Provident Fund Account. On April 8, 1966, the complainant presented an application to the appellant asking for an advance of Rs. 150/- from his Provident Fund Account. It is alleged that the appellant refused to accept the application unless the complainant agreed to pay to him a gratification of Rs. 15/-. On April 10, the complainant approached a Vigilance Officer Srinath Sharan Srivastava, and lodged a complaint before him that the appellant was demanding a bribe. On the 12th the Vigilance Officer took the complainant to the office of the Special Police Establishment, Jaipur where Inspector Ajmera asked the complainant to make one more attempt to present the application to the appellant. Accordingly, the complainant re-submitted his application on the 13th when the appellant is alleged to have renewed his demand for a bribe. A trap was thereafter laid and it is alleged that the appellant accepted from the complainant a sum of Rs. 15/- on the evening of the 13th at 'Meghraj Hotel'. The two currency notes of Rs. 10/- and 5/- were treated with sodium carbonate powder and the payment is alleged to have been witnessed by the *motbirs* Jagdish Prasad Tiwari and Bhagwandas Makhija.

The appellant admitted the receipt of the amount but contended that the amount was paid to him by the complainant in part payment of a loan of Rs. 30/- which had been advanced by him to the complainant on November 1, 1965. He stated that the complainant had not presented to him any application at all on April 8 and on the 13th the application was presented not to him but to the Head-clerk. According to

A him the application of the 13th was processed by him in the ordinary course and on the loan being recommended by the Loco Forman, the application was duly forwarded to the despatch clerk for obtaining the sanction of the Divisional Superintendent's Office.

B On the central issue whether the sum of Rs. 15/- had passed hands from the complainant to the appellant, we have the admission of the appellant himself but quite apart from that admission, there is clear and convincing evidence to show that the appellant had accepted the money from the complainant. The evidence of the complainant Umashanker (P. W. 4), Jagdish Prasad (P. W. 5) and Bhagwandas Makhija (P. W. 6) leaves no doubt on this point.

C Section 4(1) of the Prevention of Corruption Act, 1947, provides to the extent material, that where in any trial of an offence punishable under section 161 of the Penal Code or under section 5(2) of the Act, it is proved that an accused person has accepted "any gratification (other than legal remuneration)", it shall be presumed unless the contrary is proved that he accepted that gratification as a motive or reward such as is mentioned in section 161, Penal Code. The motive or reward mentioned in section 161 is *inter alia*, for doing or forbearing to do any official act.

D The prosecution having proved that the appellant had accepted the sum of Rs. 15/-, which clearly is no part of his legal remuneration, the presumption must be raised under section 4(1) of the Act that the appellant accepted the amount as a motive or reward for doing an official act. The official act in the instant case was the processing of the appellant's application for a loan from his Provident Fund Account.

E Under section 4(1) of the Act, the burden of proving the contrary must rest on the appellant. But learned counsel appearing on his behalf urges that the presumption under section 4(1) can be raised only if the prosecution establishes in the first instance that the amount was paid otherwise than as legal remuneration. This contention is contrary to the clear terms of section 4(1) and would render illusory the presumption arising under the section. To cast on the prosecution the burden of proving that the amount was accepted by the accused otherwise than by way of legal remuneration is to ask the prosecution to prove that the amount was paid and accepted by way of bribe. If this be the true nature of the burden resting on the prosecution, no presumption at all need be raised because apart from the presumption the prosecution would have to prove that the money was accepted by the accused and that it was accepted as a bribe. It is plain that if the prosecution proves the acceptance of the amount by the accused and the amount does not represent legal remuneration in any form or of any kind, the accused must establish that the amount was not accepted by him as a motive or reward such as is mentioned in section 161, Penal Code. As held in *V. D. Jhingan vs. The State of Uttar Pradesh*⁽¹⁾, the accused can establish his case by preponderance of probabilities, that is to say, he need not prove his case beyond a reasonable doubt.

(1) A.I.R. 1966 S.C. 1762.

Both the courts have held that the defence of the appellant is false and the preponderance of probabilities is in favour of the view that the amount was accepted by the appellant by way of bribe. The learned Special Judge described the loan theory propounded by the appellant as false, while the High Court observed that the conclusion is irresistible that the theory is an after-thought. We are in agreement with this finding.

There was no particular intimacy between the appellant and the complainant and it is not likely that the appellant would give a loan to the complainant, without a receipt and without interest. A copy of his monthly account (Ex. D-11) produced by the appellant shows that on November 1, 1965, when the loan is alleged to have been given, the appellant was himself in indigent circumstances. In September, 1965, his expenses exceeded his income for which he had to sell some silver lying in the house ; in October, he overstepped his income by more than Rs. 100/- and in the crucial month of November he had to take a loan of Rs. 80/- from the Railway Fund and to sell some wheat lying in the house in order to meet his expenses. The debit entry of Rs. 30/- in the name of the complainant was, as held by the High Court, evidently inserted after scoring off a writing against a sum of Rs. 30/-.

When Inspector Ajmera disclosed his identity to the appellant and asked him to produce the money, he became nervous and begged for mercy. He could not have forgotten that he was a creditor of the complainant in the sum of Rs. 30/- and that the amount was received by him in part payment of that loan.

The complainant bore no enmity with the appellant and assuming, as contended on behalf of the appellant, that there was some hostility between the appellant and the Head-clerk, Chandra Prakash Saxena, we see no foundation for the argument that Saxena influenced the complainant into lodging a false case against the appellant.

As the appellant has failed to discharge his burden, the order of conviction and sentence must be confirmed. Appellant will surrender to his bail forthwith.

Appeal dismissed.