

TRILOK CHAND JAIN

v.

STATE OF DELHI

August 19, 1975

[Y. V. CHANDRACHUD, P. N. BHAGWATI AND R. S. SARKARIA, JJ.]

Prevention of Corruption Act (2 of 1947) ss. 4(1) and 5(1), (2), and Indian Penal Code (Act 45 of 1860) s. 161—Scope of presumption under s. 4(1).

An inspector of the Delhi Electric Supply Undertaking demanded a bribe for giving the complainant a power connection for his factory. Information having been given to the anti-corruption police a trap was set. The inspector did not turn up at the appointed time to receive the money, but the appellant, a permanent labourer working under him, came to the complainant's factory, told him that he had been sent by the Inspector, and that the money should be given to him. The complainant, at first, insisted that the inspector himself should come, but later gave him the money. The money was recovered from the appellant, and the inspector and the appellant were charged with offences under the Prevention of Corruption Act. The trial court acquitted the inspector but convicted the appellant under s. 5(2) read with s. 5(1)(d) of the Act, and under s. 161, I.P.C., with the aid of the presumption under s. 4(1) of the Act. The conviction was confirmed by the High Court.

Allowing the appeal to this Court,

HELD : (1) The question whether a government servant receiving money had the requisite incriminatory motive is one of fact. [353H, 354A]

(2) One of the essential ingredients of the offence under s. 161, I.P.C., is that the gratification must have been received by the accused as a motive or reward for committing an act or omission in connection with his official functions. Even if the government servant was incapable of showing any favour or rendering any service in connection with his official duties, he may be guilty; but, the existence of an understanding that the bribe was given in consideration of some official act or conduct is an important factor bearing on the question as to whether the accused had received the gratification as a motive or reward as mentioned in s. 161, I.P.C. [353GH]

(3) The appellant being a mere labourer was incapable of showing any favour or rendering any service to the complainant in connection with his official duties. It had not been shown by the prosecution that he was in any way officially concerned with the installation of poles or the giving of electric connection; nor was it shown that the appellant made any representation, claim or promise, that he would either himself or through his inspector get an official act done for the complainant, or that the appellant had demanded bribe from the complainant. [353A-C, F]

In the absence of any such circumstances the conduct of the appellant was not incompatible with the role of an innocent carrier of money without the requisite *mens rea*. [353E]

(4) The charge under S. 5(1)(d) also is unsustainable because, it could not be reasonably said that the appellant obtained the money by using corrupt or illegal means or otherwise abusing his official position, as a public servant. [354-EF]

(5) Section 4(1) of the Prevention of Corruption Act provides that in the trial of an offence punishable under s. 161 or 165, I.P.C., or under cls. (a) or (b) of s. 5(1) read with sub-s. 5(2) of the Act, if the prosecution proves that the accused had accepted or obtained a gratification other than legal remuneration the court has to presume that the gratification was accepted or obtained by the accused as a motive or reward as mentioned in s. 161, I.P.C. [351-H, 352B]

A (6) (a) The presumption, however, is not absolute and is rebuttable. The quantum and nature of proof required to displace the presumption, varies according to the circumstances of each case. Such proof may partake of the shape of defence evidence adduced by the accused or, it may consist of circumstances appearing in the prosecution evidence itself as a result of cross-examination or otherwise. While the mere explanation given by the accused in his examination under s. 342, Cr. P.C., may not be enough the burden on him to negate the presumption may stand discharged, if the effect of the material brought on record, in its totality, renders the existence of the fact to be presumed improbable. B The accused may, therefore, rebut the presumption by showing a mere preponderance of probability in his favour and it is not necessary for him to establish his case beyond reasonable doubt. [352-CF]

Mahesh Prasad Gupta v. State of Rajasthan, AIR 1974 S.C. 773 followed.—

C (b) Further, the sole purpose of the presumption under s. 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offence under s. 5(1) and (2) of the Act and s. 161, I.P.C. The presumption, therefore, can be used only *in furtherance of the prosecution case and not in derogation of it.* [352F-G]

(c) In the present case, the statutory presumption being antithetical to the prosecution story, namely, that it was the inspector who demanded the bribe for showing a favour and that the payment was intended for him, could not be availed of by the prosecution against the appellant. [354-CD]

D (7) Nor can the appellant be held guilty of abetting the alleged attempt made by the inspector to obtain illegal gratification. Intention to aid the commission of the crime is the gist of the offence of abetment, and such intention on the part of the appellant is lacking in this case. It has not been shown that the appellant was present on any occasion when the inspector demanded the bribe. [354-D-G]

E (8) Moreover, the principal accused had been acquitted. The prosecution having failed to prove that the money had been paid to the appellant pursuant to the demand for a bribe by the inspector, the court cannot make out a new case for the prosecution and hold that the amount had been received by the appellant on his own or for some person other than the inspector. [355 B, D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 116 of 1971.

F Appeal by special leave from the Judgement and Order dated the 27th November, 1970 of the Delhi High Court in CrI. Appeal No. 35 of 1970.

Uma Datta, for the appellant.

Govind Das and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by

G. SARKARIA, J. This appeal by special leave is directed against a judgment of the High Court of Delhi upholding the conviction of the appellant under s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act and s. 161, Penal Code, recorded by the Special Judge, Delhi. The facts of the prosecution case are as follows :

H The complainant, S. K. Jain, manufactures rubber motor parts in his factory at Shahdara. On his application, the Delhi Electric Supply Undertaking at Gandhinagar sanctioned a power connection for his factory. The complainant deposited the estimate of expenses under the

terms of the sanction. In spite of it, for a period of four months, no steps were taken by the employees of the Undertaking to instal the poles and give the connection. S. P. Gupta, an Inspector of the Undertaking approached the complainant and solicited a bribe of Rs. 125/- in consideration of giving the connection. It was settled that Rs. 25/- would be paid on June 20, 1968 and the balance of Rs. 100/- after the electric connection. The complainant had no intention to pay the bribe. Consequently, he contacted S. K. Katoch, Deputy Superintendent of the Anti-Corruption Police on June 20, 1968 at about 1 p.m. and apprised the latter about the demand of the bribe by Inspector Gupta. The Deputy Superintendent recorded the complainant's statement, Ex. P.W. 1/A. He then co-opted Daya Nand Dua (PW2) and Bharat Prakash Khurana (PW 3), two clerks from the office of the Deputy Commissioner, and formulated a scheme for entrapping Gupta. The Police party reached the factory of the complainant at about 3.05 p.m. The complainant and the Panch witnesses went inside while the Police Officers waited outside. The complainant received a message from Gupta through a Lineman that instead of the 20th, he would be coming on the following day, that the installation of poles at the site had commenced and the complainant would be required to pay more amount. The complainant conveyed this information to D.S.P. Katoch.

On June 21, 1968, at about 10.15 a.m., Gupta came to the factory, along with his gang of labourers and started the installation work. Gupta informed the complainant that he would return to the factory either personally or send somebody else to collect the amount of Rs. 100/- at about 2 p.m. The complainant passed on this information also, to the D.S.P. Thereafter the D.S.P. along with the aforesaid witnesses and others came to the complainant at about 11.30 a.m. and settled the details of the trap. The complainant produced one currency note of the denomination of Rs. 100/-. The D.S.P. noted its No. and returned it to the complainant with the direction that he should pay it to Gupta. Gupta however did not turn up at 2 p.m. Instead, the appellant, a permanent labourer working under Gupta, came to the factory and told the complainant that he had been sent by Inspector Gupta and that the money be given to him. The complainant said that the appellant should send Gupta to receive the money. The appellant reiterated that he had been deputed by Gupta to collect the money and the same be given to him. Thereupon the complainant handed over the currency note of Rs. 100/- (Ex. P-1) to the appellant in the immediate presence of P.Ws. 2 and 3. The appellant put the note in the pocket of his pants. On receiving the agreed signal, the D.S.P. and his companions rushed in and recovered the currency note (Ex. P-1) from the person of the appellant. The D.S.P. then sent a report to the Police Station on the basis of which a case was registered. The appellant was arrested. Subsequently, on 22-6-1968, Gupta was also arrested. After obtaining the necessary sanction, the appellant and Gupta both were sent up for trial before the Special Judge, Delhi who acquitted Gupta but convicted the appellant and sentenced him to one year's rigorous imprisonment.

Examined under s. 342, Cr.P.C. the appellant admitted that at the material time he was a permanent labourer (Mazdoor) of the D.E.S.U.

A working in Shahdara Zone. He gave this account of the circumstances in which he had received the currency note (Ex. P1) from the complainant :

B “At about 12-30, I had come down from the first floor of my office and was going to my house to take my meal in the Hotel. I was called by Gupta. He was standing near the boundary wall. He inquired from me as to where I was going. I told him that I was going to take my food. He directed me that after taking my food I should visit the complainant’s factory where the labour was working and told me to ask Jain to pay the money which Guptaji had demanded. I did not know what sort of money it was and for what purpose it was to be paid by S. K. Jain and to be taken by Gupta, accused. One Mitter Sen was also present at that time when this talk took place between me and Gupta accused. I accordingly, after taking my food went to the complainant’s factory and checked the work of the labour and then went to the complainant and asked him to pay me the money which had been demanded by Guptaji. Complainant told me to send Guptaji but I told him that he had asked me to bring the money. He therefore paid me a currency note of Rs. 100/- without disclosing anything that this was bribe money to be paid to Gupta co-accused.”

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E He further admitted that soon after the collection of this amount from the complainant, the D.S.P. came there with his party and recovered the same currency note from his possession. He added that he was only a labourer and was not in a position to show any favour, whatever, to the complainant. He did not know that the note was bribe money. He claimed to be an innocent carrier.

In defence, he examined Mitter Sen (DW 1) who corroborated the appellant’s version as to how Gupta had instructed the appellant to collect and bring the money from the complainant.

F Two charges, one under s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act and the other under s. 161, Penal Code were framed against the appellant. The charges were in the alternative and it was stated therein that the money was obtained by him either for himself or for Gupta, or for both.

G The courts below have convicted the appellant mainly on the ground that proof of receipt of Rs. 100/- (currency note) by the appellant from the complainant raises a presumption under s. 4(1) of the Prevention of Corruption Act against him and the appellant has not been able to rebut that presumption.

Section 4(1) of the Prevention of Corruption Act reads :

H “Wherein any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code (or of an offence referred to in clause (a) or clause (b) of sub-section (1) of section 5 of this Act punishable under sub-s. (2) thereof, it is proved that an accused person has accepted or obtained, or

has agreed to accept or attempt to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.”

From a reading of the above provision it is clear that its operation, in terms, is confined to any trial of an offence punishable under s. 161 or s. 165, Penal Code or under clause (a) or (b) of s. 5(1) read with sub-section (2) of that section of the Act. If at such a trial, the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the court has to presume the existence of the further fact in support of the prosecution case, viz., that the gratification was accepted or obtained by the accused as a motive or reward such as mentioned in s. 161, Penal Code. The presumption however, is not absolute. It is rebuttable. The accused can prove the contrary. The quantum and the nature of proof required to displace this presumption may vary according to the circumstances of each case. Such proof may partake the shape of defence evidence led by the accused, or it may consist of circumstances appearing in the prosecution evidence itself, as a result of cross-examination or otherwise. But the degree and the character of the burden of proof which s. 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under s. 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under s. 342, Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour; it is not necessary for him to establish his case beyond a reasonable doubt—see *Mahesh Prasad Gupta v. State of Rajasthan*(¹).

Another aspect of the matter which has to be borne in mind is that the sole purpose of the presumption under s. 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offences under s. 5(1)(2) of the Prevention of Corruption Act and s. 161, Penal Code. The presumption therefore can be used *in furtherance* of the prosecution case and not *in derogation* of it. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as still born.

Let us now consider the facts of the present case in the light of the principles enunciated above. The testimony of its star witness, S. K.

(1) A. I. R. 1974 S. C. 773.

A Jain (P.W. 1) is that it was Inspector Gupta who had demanded that money as a motive or reward for expediting the installation of the power connection and that the money was handed over to the appellant only for transmission to Gupta in pursuance of the latter's instructions given to the complainant earlier in the morning. It is not the case of the complainant that the appellant had ever demanded any bribe from the complainant, or that the appellant was present on any occasion on which B Gupta had demanded the bribe. Nor has it been shown by the prosecution that the appellant was in any way officially concerned with the installation of the poles or the giving of the electric connection. At the material time according to the appellant he was working as a mere labourer or *Mazdoor* in the first floor of the D.E.S.U. Office at Shahdara. This fact is not controverted by the prosecution. Of course, it is in evidence that on coming to the factory of the complainant at about C 2 P.M., the appellant first went to see the labour working at the installation site and then went to the complainant to receive the money saying that he had been sent by Gupta to fetch it.

D Mr. Gobind Das, the learned Counsel for the State contends that this conduct of the appellant in checking the labour, showed that he was not an innocent carrier of the money for Gupta but knew that it was being obtained as a bribe in connection with the installation of the power connection. In any case, maintains the Counsel the appellant was guilty of abetment of an offence under sec. 161 Penal Code and s. 5 of the Act.

E We are unable to accede to this contention. In our opinion, this act of the appellant was a neutral circumstance. It was not indicative of a guilty mind. The appellant explained that he had checked the labour working at site because he had been asked to do so by Inspector Gupta. This conduct of the appellant, therefore, was no ground to hold that he had received the G.C. Note of Rs. 100/- with the requisite *mens rea*. Evidently in collecting this currency note from the complainant he was acting only as an innocent tool of Gupta. He was a mere labourer. Even in that humble position, he was not a member of the gang working F at the installation site in the factory of the complainant. He was not concerned in his official capacity with the installation work or the giving of power connection. Being an unconcerned menial, he was incapable of showing any favour or rendering any service to the complainant in connection with his official duties. One of the essential ingredients of the offence under s. 161, I.P.C. with which the appellant stands charged is, that the gratification must have been received by the accused as "a G motive or reward" for committing an act or omission in connection with his official functions. It must be shown that there was an understanding that the bribe was given in consideration of some official act or conduct. It is true that in law the incapacity of the government servant to show any favour or render any service in connection with his official duties does not necessarily take the case out of the mischief of these penal provisions. Nevertheless, it is an important factor bearing on the H question as to whether the accused had received the gratification as a motive or reward for doing or forbearing to do any official act or for showing any favour or disfavour in the exercise of his official functions. This question as to whether the government servant receiving the money

had the requisite incriminatory motive is one of fact. Could it be reasonably said in the circumstances of the instant case that the money was handed over to the appellant or received by him as a motive or reward such as mentioned in s. 161, Penal Code? It is nobody's case that while collecting the sum of Rs. 100/-, the appellant made any representation, claim or promise, whatever, that he would either himself or through Gupta get an official act done for the complainant. Indeed, a prudent businessman like Jain would never pay such a substantial amount as a bribe to a mere Class IV servant in consideration of any promise of favour or service held out by the latter. Such a tall claim or promise to do favour or service by a menial would be manifestly quixotic. It would not pass muster. Indeed the complainant did not hand over the money till he after repeated enquiry, was convinced that the appellant was asking for money not for himself but for Gupta and had been sent by the latter to collect and fetch it from the complainant. The conduct attributed by P.W. 1 to the appellant was not incompatible with the role of an innocent carrier. Thus, paradoxical as it may seem, the very story propounded by the complainant (P.W. 1) negates the presumption, nipping it—as it were—in the bud.

Be that as it may, this statutory presumption being antithetical to the prosecution story, could not be availed of by the prosecution. This being the position, the appellant could not be held guilty of the charge with the aid of s. 4(1) of the Act.

Nor can the appellant be held guilty of abetting the alleged attempt made by Gupta to obtain the illegal gratification. *Intention* to aid the commission of the crime, is the gist of the offence of abetment by aid. Such intention, on the part of the appellant was lacking in this case. Moreover, Gupta, the principal, has been acquitted and exonerated of committing the offending act, the commission of which is alleged to have been aided by the small fry, the appellant.

The charge under s. 5(1) (d) of the Act also cannot be sustained for the reason that in the peculiar circumstances of the case, it could not be reasonably said that the appellant had obtained the currency-note by using some corrupt or illegal means or otherwise abusing his official position as a public servant. This point was canvassed on behalf of the appellant before the High Court but was negatived by it in these terms :

“In this case the appellant had told the complainant that he had been sent by Inspector Gupta and that he should pay the money. It has been held by the Special Judge while acquitting Inspector Gupta that he was not the person who had sent the appellant to collect any money from the complainant. Before contacting the complainant the appellant had checked the labour which was working in the factory for installation of the lines for electricity. All this showed that he represented himself to the complainant as a person connected with the Department concerned. He also used corrupt means to ask the money on behalf of Inspector Gupta and thus this ingredient was satisfied.”

We find ourselves unable to agree with this reasoning. We have already noticed above that this was not the case of the prosecution, as

- A** put in evidence, that the appellant had demanded the money on his own account by any express or implied representation to get any favour or service done to the complainant. Rather, the positive case set up by the prosecution in evidence was that the money was demanded by Gupta and was received by the appellant on his behalf pursuant to the instructions of Gupta given to the complainant earlier. Therefore, if the prosecution has failed to prove that the money had not been paid to the appellant pursuant to any demand of bribe made by Gupta, the court cannot make out a new case for the prosecution to hold that the amount had been received by the appellant on his own or for some person other than Gupta. We have already held that the appellant was a mere labourer who was not concerned with the installation work at the site or with the giving of the power connection to the complainant.
- C** In view of the categorical position taken by the prosecution in evidence, it does not now lie in their mouth to say that the appellant must have received the money for himself or for some other person; much less can it be said that the appellant has abused his official position or has used any illegal means in acting as an innocent carrier for Gupta. Thus, the essential ingredient of the offence under s. 5(1)(d) was lacking in this case.

D We are therefore of the opinion that on the facts of this case, the prosecution had failed to bring home the charges to the appellant beyond a reasonable doubt. Accordingly we allow this appeal, set aside the conviction of the appellant and acquit him of the charges levelled against him.

V.P.S.

Appeal allowed.