A

STATE OF MAHARASHTRA

v.

RASHID BABUBHAI MULANI

JANUARY 4, 2006

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[S.B. SINHA AND R.V. RAVEENDRAN, JJ.]

Constitution of India, 1950:

Article 136—Acquittal by High Court—Interference with—If two views C *are possible and the view of High Court in acquitting the accused cannot be said to be wholly improbable, Supreme Court will not interfere, but where material on record leads to only conclusion of guilt of accused, judgment of High Court will not be sustained—On facts, High Court was not justified in accepting explanation of the accused and giving him benefit of doubt.*

D

Prevention of Corruption Act, 1947/Penal Code, 1860:

ss. 4,5(2) read with s.5(1)(d)/s.161—Presumption that gratification accepted as motive or reward—Rebuttal of—Accused in his statement u/s 313 Cr.P.C. explaining that the money was received towards a government loan—Held, the statutory presumption will not stand rebutted merely by offering an E *explanation u/s 313—Contrary position should be established by the accused either from inferences legally drawn from the evidence on record led in by prosecution or by letting in direct evidence in regard to the explanation—On facts, the evidence relating to demand, payment and acceptance of illegal gratification is clear—There is nothing on record to support the explanation* F *of the accused.*

Service of communication—Certificate of posting—Held, is not comparable to a receipt for sending a communication by registered post—Department of Posts may have to evolve some procedure whereby a record in regard to issuance of certificates of posting is regularly maintained.

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Respondent, while working as Talathi of the village of the complainant, demanded a certain amount as bribe from the complainant to delete the name of the mortgagee from the revenue records over his land. The complainant made the part payment and as regards demand

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A for balance of Rs. 300/-, lodged a report with the Anti-Corruption Bureau. A trap was laid; the accused was said to have made again a demand for balance amount of Rs.300/-; the complainant paid the marked currency notes to the accused and gave a signal to the raiding party, which apprehended the accused and recovered the marked currency notes from his pocket. During the trial, the accused gave an explanation in his B statement u/s 313 Cr.PC that he accepted Rs.300/- from the complainant as repayment of interest on loan taken by his brother from the Government in respect of which he had sent a notice dated 6.9.1986 to the complainant. The trial court convicted the accused of offences punishable under s.161 IPC and s. 5(2) read with s.5(1)(d) of the C Prevention of Corruption Act, 1947. However, the High Court held that the explanation offered by the accused was reasonable and probable; and acquitted him of the charge giving him benefit of doubt. Aggrieved, the State filed the present appeal.

Allowing the appeal, the Court

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HELD: 1.1. Though, it is well-settled that the accused is not required to establish his explanation by the strict standard of 'proof beyond reasonable doubt', and the presumption under Section 4 of the Prevention of Corruption Act , 1947 would stand rebutted if the explanation or defence offered and proved by the accused is reasonable and probable, E yet the burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Sec. 161. [197-C-E-F]

F *Chaturdas Bhagwandas Patel* v. *The State of Gujarat,* AIR 1976 SC 1497 and *Dhanvantrai Balvantrai Desai* v. *State of Maharashtra,* AIR (1964) SC 575, relied on. [196-E]

Punjabrao v. *State of Maharashtra,* [2002] 10 SCC 371, distinguished. [195-E]

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A. Abdul Kaffar v. *State of Kerala,* [2004] 9 SCC 333 and *T. Shankar Prasad* v. *State of AP.* [2004] 3 SCC 753, referred to. [196-A]

1.2. The evidence of PW-1 (complainant), PW-2 (Panch witness) and PW-3 (Police Inspector) clearly proves the ingredients of a valid trap case. H The evidence of the complainant shows that there was a demand by the

accused, payment of Rs. 300 as illegal gratification by the complainant to the accused and acceptance thereof by the accused. The evidence of PW-2, who accompanied the complainant, fully corroborates the evidence of the complainant. [197-H; 198-A]

1.3. As regards the defence, the evidence clearly shows that no amount was due from complainant to the State; and therefore, the case put forth by the defence that a notice of demand dated 6.9.1996 was sent to complainant to pay the dues cannot be accepted. Besides, the said notice of demand on 6.9.1986 was not sent by registered post to the complainant, nor delivered personally against acknowledgement; it was said to have been posted on 6.9.1986 at Pune and a certificate of posting was obtained. It is clear that no notice dated 6.9.1986 was issued to the complainant and the accused has tried to create an explanation by securing a certificate of posting dated 6.9.1986 from Pune after the event. [198-F; 199-B-E]

2. A certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by registered post, as in the case of certificate of posting, no record is maintained by the Post Office either about the receipt of the letter or the certificate issued. The ease with which such certificates can be procured by affixing ante-dated seal with the connivance of any employee of the Post Office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificates is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of such communications is disputed or denied as in this case. [199-F, G, H]

3. It is no doubt true that if two views are possible and the view of the High Court acquitting the accused cannot be said to be wholly improbable, this Court will not interfere with the decision of the High Court. But where the material on record leads to only one conclusion viz., the guilt of the accused, the judgment of the High Court will not be sustained. In the instant case, the High Court was not justified in accepting the explanation regarding receipt of Rs.300/- by the accused as being towards Tagai loan. The conclusion of guilt is inescapable. Consequently, the order of the High Court is set aside and the judgment of the trial court is restored. [200-A-C]

A *State of Andhra Pradesh* v. *K. Narasimhachary,* **(2005) 8 SCALE 266, relied on. [200-B]**

4. In regard to sentence, the incident occurred about 19 years ago. The accused was a Talathi coming from a poor background with a family to support. In the circumstances, while restoring the conviction, the B **sentence is reduced from one year to four months both under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Act. [200-D-E]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 557 of 1999.

C From the Judgment and Order dated 25.11.1997 of the High Court of Bombay in Crl. A. No. 92 of 1990.

V.N. Raghupathi and Ravindra Keshavrao Adsure for the Appellant.

D Mrs. Jayashree Wad, Ashish Wad, Neeraj Kumar, Arvind Gupta and Priyank Adhyaru for Respondent.

The Judgment of the Court was delivered by

RAVEENDRAN, J. State has come up in appeal by special leave, E against the judgment of acquittal dated 25.11.1997 passed by the Bombay High Court allowing Criminal Appeal No.92 of 1990 filed by the accused, thereby setting aside the conviction and sentence under the judgment dated 7.2.1990 passed by the Additional Special Judge, Pune, in Special Case No.1/ 1987. By the said judgment, the Special Judge had convicted and sentenced the respondent herein to undergo RI for one year in regard to an offence F under Section 161 of the I.P.C. and RI for one year for an offence punishable under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 ('the Act' for short), and to pay a fine of Rs. 1,000 and in default to suffer further RI for three months, with a direction that both the substantive sentences shall run concurrently.

G 2. The prosecution case was as under : -

(2.1.) The respondent was working as the Talathi of village Kodit, District Pune. One Mahadeo Bhimaji Badade (complainant) and his elder brother Baban were the owners of an ancestral field at village Kodit. They H had taken a loan from one Krishna Badade and had secured the said land in

his favour by way of a mortgage. The mortgage suit filed by the mortgagee ended in a compromise on 16.6.1973. In the year 1986, when the complainant obtained a '7/12 extract' in regard to the said land, he found that the name of the mortgagee was continued to be shown as the holder and person in possession. The complainant, therefore, requested the respondent/accused to delete the name of Krishna Badade in view of repayment of the mortgage loan in terms of the compromise. The accused informed the complainant that there will be some expenses in that behalf. Thereafter, when the complainant again went to the office of the accused on 6.9.1986 to verify whether the name of Krishna Badade was deleted, he found to his surprise that the names of the sons of Krishna Badade had also been entered. Krishna Badade and his sons had no objection for removal of their names from the revenue record. Therefore, the complainant again met the accused on 7.9.1986 with a request to remove the names of Krishna Badade and his sons. The accused informed him that the complainant will have to pay Rs.1,000. When the complainant expressed his financial difficulty, the accused reduced the demand to Rs.900, and instructed the complainant to come with the money.

(2.2.) The complainant went to the Circle Office on 10.9.1986 and paid Rs. 600 to the accused. The accused wrote out the necessary application for the complainant and obtained his signature. He, however, stated that the work would not be done unless the balance of Rs. 300 was paid. Thereafter, when the complainant went to Gram Sevak's Office on 2.10.1986, for some work, the accused met him and asked him again to bring Rs. 300 to Circle Office at Saswad and he would keep the '7/12 Extract' ready.

(2.3.) At that stage, the complainant went to the Anti-corruption Bureau, Pune and lodged a report on 4.10.1986. On 6.10.1986, the amount brought by the complainant (one currency note of Rs.100 and four currency notes of Rs.50) were applied with a chemical and the chemically treated currency notes were kept in complainant's pocket. The raiding party along with the complainant and Panch witnesses went to Saswad. The Complainant and Gulab Kangane (PW-2), a Panch witness, went to the Circle Office together, and the Police party followed them. That office was closed. However, they met the accused on the way and he asked the complainant to come to his residence. They also met one Kotwal. The complainant, Gulab and Kotwal went to the house of the accused. When complainant asked the accused as what happened to his work, the accused stated that the work was done, but he had to obtain the signature of the Circle Inspector. The accused asked the complainant whether he had brought the money. The complainant answered

A in the affirmative and paid the marked currency notes aggregating to Rs.300. The accused accepted the same, counted the notes and put them in his pocket. Thereafter, the complainant went out and gave a signal to the raiding party. The raiding party came inside and apprehended the accused and recovered the marked three currency notes (Rs.300) from his pocket. A Panchnama was B drawn and the amount was seized. Statements of witnesses were recorded. After completing the investigation and necessary formalities relating to sanction, a charge-sheet was filed before the Special Court, Pune, under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Act.

3. The defence as put forth in the cross-examination of the prosecution C witnesses and the explanation given in the statement under section 313 of Cr.P.C was as follows :-

Some amount was outstanding from the complainant in regard to a Tagai loan taken in the name of his elder brother Baban. The Tehsildar, Purandhar sent a communication dated 3.9.1986 to the accused stating that D one Baban Bhimaji Badade of Kodit (brother of the complainant) was due in a sum of Rs.2575.90 towards interest in respect of an engine loan taken in the year 1966. The accused was, therefore, instructed to recover the said amount and deposit it in the Government Treasury. Therefore, the accused sent a notice dated 6.9.1986 to the complainant, demanding payment of the E amount due. In pursuance of it, the complainant came to his house on 6.10.1986 and paid him Rs.300 towards the amount outstanding to the Government, and it was received by him as government dues and not as a bribe for showing any official favour to the complainant.

4. The explanation given by the accused was rejected by the Special F Judge, with detailed reasons. Accepting the case of the prosecution, he convicted and sentenced the accused, as stated above.

5. Feeling aggrieved, the accused filed Criminal Appeal No.92/1990. The High Court by judgment dated 25.11.1997 allowed the appeal, holding that the explanation given by the accused for receiving the amount was G reasonable and probable and therefore, the charge against the accused that he had accepted Rs.300 as illegal gratification was not proved beyond doubt and that the accused was entitled to benefit of doubt. The said judgment, acquitting the accused, is challenged by the State in this appeal.

H 6. The State contends that the High Court ought not to have disturbed the clear findings recorded by the Special Court based on specific evidence.

It is also contended that there is no justification for the High Court to accept a vague explanation without factual basis, that in respect of a Tagai loan due by the complainant, the accused had issued a notice of recovery to the complainant on 6.5.1986 by registered post and that in pursuance of it, the complainant paid Rs. 300 on 6.10.1986 towards the Tagai loan.

7. The respondent does not dispute the fact that Rs. 300 was received by him from the complainant on 6.10.1986. He contends that there was no demand for or acceptance of any illegal gratification and the amount was received as payment towards a government loan. He submits that if his explanation is reasonable and plausible, then he is entitled to benefit of doubt as held by the High Court. He places reliance on the decision of this Court in *Punjabrao* v. *State of Maharashtra,* [2002] 10 SCC 371. In that case, the accused was a Patwari and his explanation was that he received the amount as repayment of a loan. The Special Judge had accepted the explanation and acquitted the accused. But the High Court had reversed the decision. Interfering with the decision of the High Court, this Court observed :-

> "It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that when the investigating officer seized the amount from the accused Patwari, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused."

In *Punjab Rao's* case (supra), it was admitted that on the date when the payment was made, the Patwari was on a collection campaign collecting loan amounts. The fact that the complainant was a debtor from whom amount was due to the government was also not disputed. In these peculiar circumstances, this Court accepted the explanation, even though such explanation was not immediately offered to the Investigating Officer, but was given in the section

A 313 statement. But for such special facts, courts are wary of accepting belated explanations given for the first time in the statement under section 313 and not at the first available opportunity. [See : *A. Abdul Kaffar* v. *State of Kerala,* [2004] 9 SCC 333 and *T. Shankar Prasad* v. *State of AP,* [2004] 3 SCC 753]

B 8. Section 4 of the Act, *inter alia*, provided that where in any trial of an offence punishable under Section 161 IPC or Section 5(1)(a) or (b) punishable 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 C a motive or reward, such as is mentioned in the said Section 161. This would mean that a mere explanation in the statement under Section 313 that the amount was received towards a loan will not be sufficient. The contrary position should be established by the accused either from inferences legally drawn from the evidence on record let in by the prosecution, or by letting in direct evidence in regard to the explanation. The statutory presumption raised D under Section 4 will not stand rebutted merely by offering an explanation under Section 313 if such explanation does not find support from the evidence let in by the prosecution.

9. In *Dhanvantrai Balvantrai Desai* v. *State of Maharashtra,* AIR (1964) E SC 575, this Court observed thus :

> "Therefore, the Court has no choice in the matter once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though money was not due to him F as legal remuneration, it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114, Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused G is reasonable and probable. It must further be shown that the explanation is a true one. *The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible.* A fact is said to be proved when its existence is H directly established or when upon the material before it the Court

finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. ..... Something more, than raising a reasonable probability, is required for rebutting a presumption of law. *The bare word of the appellant is not enough and it was necessary for him to show that upon the established practice his explanation was so probable that a prudent man ought, in the circumstances, to have accepted it."*

[Emphasis supplied]

10. Though, it is well-settled that the accused is not required to establish his explanation by the strict standard of 'proof beyond reasonable doubt', and the presumption under Section 4 of the Act would stand rebutted if the explanation or defence offered and proved by the accused is reasonable and probable, the following words of caution in *Chaturdas Bhagwandas Patel* v. *The State of Gujarat,* AIR (1976) SC 1497 should be kept in mind before it can be said that the presumption stood rebutted :

"Thus it had been indubitably established that the appellant, a public servant accepted a gratification that is a sum of Rs. 500 which was not his legal remuneration, from Ghanshamsinh (PW 1). On proof of this fact, the statutory presumption under Section 4(1) of the Prevention of Corruption Act was attracted in full force and the burden had shifted on to the appellant to show that he had not accepted this money as a motive or reward such as is mentioned in S. 161, Penal Code. ..... It is true that the burden which rests on an accused to displace this presumption is not as onerous as that cast on the prosecution to prove its case. *Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Sec. 161."*

(Emphasis supplied)

11. The evidence of PW-1 (complainant), PW-2 (Panch witness) and PW-3 (Police Inspector) clearly prove the ingredients of a valid trap case. The evidence of the complainant (PW-1) shows that there was a demand by the accused, payment of Rs.300 as illegal gratification by the complainant to

A the accused and acceptance thereof by the accused. The evidence of PW-2 (Gulab) who accompanied the complainant, fully corroborates the evidence of the complainant. PW-2 has stated that the Police Inspector Mulani called him and disclosed to him about the trap, that four currency notes of Rs.50 each and one note of Rs.100 were kept in the shirt pocket of the complainant, after being treated with chemicals; that he accompanied the complainant to B the Circle Office; that the Office was closed and when they came near the bus-stand, the accused met them and took them to his house; that in his presence, the complainant asked the accused about the fate of his work and the accused enquired whether the complainant had brought the money and told that he had to obtain the signature of the Circle Officer; that thereafter C the complainant took out a sum of Rs.300 and gave it to the accused who took it, counted it and kept it in his pocket; and that was followed by the Police party and Panch witnesses entering the house and seized the amount.

12. If the accused has received the money towards a Government loan or at least being under a *bona fide* impression that it was towards repayment D of the Government loan, he will not be guilty. Let us examine whether the explanation by the accused is reasonable and plausible. The evidence clearly shows that no amount was due from complainant to the State. Even the case of the defence is that certain amount was due from Baban (complainant's brother) and the Tehsildar had instructed the accused by letter dated 3.9.1996 E to recover the amount due from Baban. When no amount was due from complainant, and when the instruction of the Tehsildar was that the amount outstanding from Baban should be recovered, there is no explanation as to why the accused should send a demand notice to the complainant and not Baban on 6.9.1986. In fact, the trial court has referred to the partition between Baban and complainant three years before the incident. Be that as it may. F When nothing is shown to be due from the complainant, the case put forth by the defence that a notice of demand dated 6.9.1996 was sent to complainant to pay the dues cannot be accepted. It is obviously an afterthought. If no amount was due to the government from the complainant, the question of accused accepting it as payment towards a government loan does not arise. G The evidence relating to demand, payment and acceptance of illegal gratification, is clear. The Trial Court had considered the entire evidence in detail and drawn proper inferences. On the other hand, the High Court accepted as explanation, an unsupported submission of counsel for the accused that the payment was in response to a notice of demand dated 6.9.1986 sent by H accused to complainant by registered post, (thereby ignoring the entire evidence regarding demand, payment and acceptance of a bribe) and held that the

accused should be given benefit of doubt. A

13. The entire story of sending a notice dated 6.9.1996 by the accused to the complainant is a clumsy belated attempt to explain away the receipt of the illegal gratification on 6.10.1986. Firstly, the direction dated 3.9.1996 by the Tehsildar, as noticed above, was to recover the amount due from Baban and there is no direction to recover the amount from the complainant. Accused B could not have, therefore, issued any notice of demand to the complainant. Secondly, the notice of demand on 6.9.1986 was not sent by registered post to the complainant, nor delivered personally against acknowledgement. The High Court appears to have accepted the explanation of the accused (that the payment was towards government dues) as probable, because it was submitted C on behalf of the accused that a notice of demand dated 6.9.1986 was sent to the complainant by the accused by registered post. On a specific query by us with reference to the list of documents dated 3.2.1990 filed by the accused before the Special Judge, learned counsel for the respondent conceded that the notice dated 6.9.1986 was not sent by registered post. She submitted that the notice was posted on 6.9.1986 at Pune and a certificate of posting was D obtained. It is strange that the notice dated 6.9.1986, if really sent, was not posted at the place where the accused was working, but from Pune which is at a distance of about 40 kms. from his place of work. In the written submissions filed before us on 3.10.2005, the accused has confirmed that the notice was not sent by registered post and has attempted to offer some lame E explanation as to why the notice dated 6.9.1986 was posted at Pune. It is clear that no notice dated 6.9.1986 was issued to the complainant and the accused has tried to create an explanation by securing a certificate of posting dated 6.9.1986 from Pune after the event.

14. A certificate of posting obtained by a sender is not comparable to F a receipt for sending a communication by registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the Post Office. But when a mere certificate of posting is sought, no record is maintained by the Post Office either about the receipt of the letter or the certificate issued. The ease with which such certificates can G be procured by affixing ante-dated seal with the connivance of any employee of the Post Office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificates is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of H

A such communications is disputed or denied as in this case. Be that as it may.

15. It is no doubt true that if two views are possible and the view of the High Court acquitting the accused cannot be said to be wholly improbable, this Court will not interfere with the decision of the High Court. But where the material on record leads to only one conclusion viz., the guilt of the B accused, the judgment of the High Court will not be sustained [vide *State of Andhra Pradesh* v. *K. Narasimhachary,* (2005) 8 SCALE 266]. In this case, we are clearly of the view that the High Court was not justified in accepting the explanation regarding receipt of Rs.300 by the accused as being towards Tagai loan. The conclusion of guilt is inescapable. Consequently, we allow C this appeal, set aside the order of the High Court and restore the judgment of the Additional Special Judge, Pune, in Special Case No.1/1987 convicting the respondent for the offences punishable under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Act.

16. In regard to sentence, we find that the incident occurred about 19 D years ago. The matter was pending for about 3 years before the Special Judge, and about 8 years before the High Court and, thereafter, for 8 years before this Court. The accused was hardly 32 years old when the incident occurred and now more than 50 years old. The accused was a Talathi coming from a poor background with a family to support. In the circumstances, while E restoring the conviction, we reduce the sentence from one year to four months both under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Act. Both the sentences to run concurrently. The accused, who is on bail, shall surrender forthwith to serve out the sentence.

R.P. Appeal allowed.