

**Padmalochan Misra Vs. the State**

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**Court :** Orissa

**Decided On :** Jul-28-1976

**Reported in :** 42(1976)CLT1035; 1977CriLJ700

**Judge :** K.B. Panda, J.

**Appellant :** Padmalochan Misra

**Respondent :** The State

**Judgement :**

**K.B. Panda, J.**

1. The appellant stands convicted under Section 161, Indian Penal Code and sentenced to rigorous imprisonment for one year and to pay a fine of Rs. 500/- in default to undergo rigorous imprisonment for a further period of one month by the Special Judge, Bhubaneswar on 16-9-1974.

2. The admitted background of the case in brief is as follows : The appellant while working as the Bench clerk of the Judicial Magistrate, Khandapara on 26-11-1968 received as bribe of Rs. 120/- from P.W. 5 as a motive or reward to show favour to the defence in G. R. Case No. 58 of 1966 in which P.W. 5 of this case figured as an accused.

3. The appellant abjured the charge. His explanation was that as per Court's orders, the defence in that case (G, R. Case No. 58 of 1966) was to deposit a sum of Rs. 120/- as witness batta for summoning the Medical Officer and the Investigating Officer who were scheduled to be examined on 6-12-1963. Be it stated here that by then the doctor and the I.O. had retired from service. The doctor had intimated the Court in the concerned G.E. case that his travelling allowance should be paid in advance - vide post card Ext. C/a. The Magistrate thereupon directed the office to verify the same. The appellant placed a note (Ex. 6/1). The Sheristadar (P.W. 3) gave his own note as per Ext. 6/2. Ext. 6/3 is the Calculation sheet. P.W. 5 in this case and his associates who were accused in the relevant G.R. Case No. 58 of 1988 contested the office note of depositing witness batta of Rs. 170/- through Advocate Shri Satpathy of Nayagarh Bar. The Court heard the lawyer, considered the office note and finally passed the following orders:

28. 16-10-1968:

Accused (convict) Jogeswar Lenka is present. He reports that the accused parson has not received notices and undertakes to produce all the accused persons on that date.

No P.Ws., The report of the B, C. and the office note thereon dated 14-10-1968 is put up. The witnesses (M.O., Dr. B.M. Saha and I.O.G.S. Das) who have since been retired from service are to be examined on behalf of the defence in their private capacity. Sri K, C. Satpathy, Advocate files power on behalf of accused Jogeswar Lenka. He submits that the above witnesses be summoned at the cost of the prosecution. Heard. Seen the office note. I do not find any irregularity in the office note and it is accepted. The defence is directed to deposit Rupees 170/- tentatively towards costs of the batta expenses of the M.O., and I.O. Keep extract of the post card D/- 23-9-1968 of M.O. Dr. B.M. Saha in connection with G.R. 55/67 of this Court for reference.

Summon to witnesses Dr. B.M. Saha and the I.O.G.S. Das to their present address fixing 11-11-1968 for evidence.

The accused present is directed to produce all the remaining accused persons on the date fixed.

Sd/- G.S. Rao

16-10-1968.

29. 19-10-1968:

Advocate for accused files a petition praying to deposit Rs. 50/- and undertakes to pay the balance of witness (batta) if necessary. Heard. Petition allowed. Nazir to receive and remit the amount to Sri B.M. Saha for his attendance on the date fixed. Call on the date fixed.

Sd/- G.S. RAO

19-10-1968.

30. 11-11-1968:

All the accused persons present. I, W. present. M.O. is absent and intimates vide his letter received today that due to illness he cannot come to court and pray for an adjournment.

I am in indisposed condition and unable to take evidence of the I.O. today. Call on 12-11-1968 for the examination of I.O. He is directed to appear tomorrow. Accused persons as before.

Sd/- G.S. RAO

11-11-1968.

31. 12-11-1968:

All the accused persons present. I.O. is present. Advocate for accused has filed a petition, praying to call for the case diary to F. I, R, and the charge-sheet of G.R. 67/66, Heard. The F.I.R. and the charge-sheet are already available for reference today. But the C.D. is not readily available. Petition allowed. Call for the same

fixing 6-12-1968 for evidence. The witness is directed to appear on the date fixed. The defence to pay the expenses of the witnesses in the meantime. Summon the M.O. Accused as before.

Sd/- G.S. RAO

J.M.F.C. 12-11-1968.

(The underlinings are mine).

4. The scope of the appeal lies in a very narrow compass. The sole point for consideration is if the acceptance of Rs. 120/- by the appellant from P.W. 5 on 26-11-1968 before the opening of the office as he was coming from his residence to attend the office was by way of receipt of an illegal gratification as alleged by the prosecution or acceptance thereof was as contended by the defence, the witness batta for summoning the I.O. and the doctor which evidently the appellant had already done on 18-11-1968 as he proceeded on leave the next day on 19-11-1968

5. The admitted background of the case which would throw a lucid light on the probabilities or otherwise of the prosecution case need be stated. P. Ws. 5, 8, 13, 14 and 15 along with nine others were convicted on 8-9-1967 in G.R. Case No. 58 of 1966 variously, the case as against some of them being one under Section 147, Indian Penal Code; as against some under Section 325, Indian Penal Code; and as against some under Section 323, Indian Penal Code. We are here not concerned with the sentences passed. It arose out of a case and a counter case due to party faction in the village. The counter case as it appears ended in acquittal, whereas this case ended in conviction of some of the appellants under some of the sections. Against G.R. Case No. 58 of 1966, that ended in conviction, an appeal was preferred before the Sessions Judge, Puri. While hearing the same, a contention was raised on behalf of the convicted appellants that the medical evidence and the evidence of the I.O. were very much necessary for disposal of the appeal arising out of G.R. Case No. 58 of 1966. The learned Sessions Judge accepted the contention and sent back the case for taking additional evidence of only the I.O. and the Medical Officer who had admittedly in the meantime retired.

Therefore, the office put up a note that a sum of Rs. 170/- need be deposited by the convicted appellants in G.R. Case No. 58 of 1966 (here some of the P. Ws.) so that summonses could be issued as against them. The accused-appellants in G.R. Case No. 58/66 (hereinafter to be referred to as P. Ws.) took the office note to be incorrect and contested the same engaging Shri K.C. Satpathy an Advocate of the Nayagarh bar. The relevant orders quoted above would indicate the subsequent developments in that connection and so need not be reiterated. Suffice it to say. the Court accepted the office note and thus in fitness of things, the P. Ws. should have deposited a sum of Rs. 170/-, But instead of doing so they deposited Rs. 50/- only. Thus the balance Rs. 120/- was to be deposited towards witness batta. This exact amount of Rs. 120/- that passed between P. W, 5 and the appellant is now in controversy. According to the prosecution it was a hush money and according to the defence it was the witness batta.

6. The prosecution examined 18 witnesses and the defence two. Out of the P. Ws., the material witnesses are P. Ws. 5, 6, 7, and 8. Out of them P.W. 6 was the bailor of the accused and P.W. 7 a relation of P.W. 5 and P. Ws. 5 and 8 were accused in the aforesaid G.R. Case No. 58 of 1966, and so too P. Ws. 13, 14 and 15. P. Ws. 1 and 2 are two formal witnesses. P. W, 3, the Sheristadar of the Court of the Judicial Magistrate is a material witness who supported the office note that the accused persons were to deposit Rs. 170/- towards witness batta and found fault with the appellant for having issued summonses when the batta money had not been deposited, P.W. 17 is the Magistrate, First Class, Nayagarh who was a member of the trap party, After detection, the party went to the adjacent room which belongs to the Tehsildar of Khandapara. There as the detection report (Ext. 10) was being written, P.W. 17 deposed that the appellant stated certain things which the I.O. (P.W. 181 was reluctant to record.

7. The learned lower Court discarded the bulk of the prosecution case, yet he convicted the appellant on the finding that the witness expenses were not to be paid according to the Rules to the Bench Clerk and when the Bench Clerk-appellant accepted the same the probabilities are that the defence theory is false and therefore the presumption under Section 4, Sub-section (1) of the Prevention of Corruption Act.(hereinafter referred to as the Act) is applicable. His categorical

findings are : (i) the attempts to establish a fitting background for payment of illegal gratification clearly fail; (ii) the case of the prosecution that the accused demanded and accepted on a previous occasion Rs. 20/- as illegal gratification is not only not proved but the prosecution evidence on this aspect of the case is interested, discrepant, and generally incredibla; (iii) P.W. 5 who offered Rs. 120/- to the appellant is unreliable; (iv) the office note of the Sheristadar (P.W. 3) was that the appellants were to deposit Rs. 170/- towards witness batta (v) the. evidence of P. Ws. 5, 8, 13 and 15 that they paid Rs. 27/- to the I.O. on 12-11-1968 is not true; (vi) the prosecution case that a week before the date of occurrence the appellant demanded Rupees 200/- and with bargaining it was settled at Rupees 120/- is not believable; (vii) the F.I.R (Ext 14) dated 25-11-1968 on the basis of which the trap was laid contains averments which are contrary to the facts of the case; (viii) by order dated 16-10-1968 the accused in G.R. Case No. 58 of 1966 were directed to deposit Rs. 170/- as witness batta and by petition (Ext. 5/2) they prayed for permission to deposit Rs. 50/- and if necessary to pay the rest afterwards; (ix) the prosecution case that the application of the accused, that is, Ext. 5/2 was subsequently interpolated is baseless and not acceptable; (x) the evidence of P. Ws. 9, 13, 15 and 16 that Rs. 30/- was paid to the Medical Officer (P.W. 9) on 6-12-1963 is unbelievable; and that the prosecution witnesses such as P. Ws. 5, 8, 13, 14 and 15 had fabricated the accounts Exts. 17 series.

8. It was contended on behalf of the appellant that the learned lower Court having disbelieved the material witnesses and the incriminating circumstances relied on by the prosecution it was not justified in convicting the appellant invoking the presumption under Section 4(1) of the Act, simply because it was not the duty of the appellant to accept the batta money but the duty of the Nazir.

9. Evidently the fate of the case-rests on what credence can be given to the evidence of P.W. 5 who admittedly passed Rs. 120/- on the alleged date and time to the appellant. The documentary evidence in the case quoted above leaves no room for doubt that in fact the prosecution witnesses were to deposit Rs. 170/- and had only deposited Rs. 50/-. It is not disputed that the appellant had issued summons to the Medical Officer on 18-11-1968 although the witness batta for him had not been deposited. It is also not disputed that the appellant proceeded on

leave the next day and returned on 25-11-1968. It is in evidence of P.W. 3 the Sheristadar that:

The Nazir's seat and my seat are in the same room; our tables adjoin. On 25-11-1968. This accused enquired from the Nazir if the amount of Rs. 120/- had been deposited by the party in G.R. Case No. 58 of 66. The Nazir replied in the negative. The accused got worried at this. I asked this accused the reason for his worry. He told me that he had issued summons without the batta having been deposited by the party. The accused told further that the Magistrate had told him that if the party would not deposit the batta, then the accused should have deposited it. I got annoyed with such conduct of the accused and told him to see that the batta was deposited in time by the party.

Thus the evidence of the Sheristadar exhibits the anxiety of the appellant for having issued summons when the witness batta had not been deposited.

P.W. 6 is none but the bailor of the accused (P. Ws. 5 and others). It is almost the admitted case that the alleged demand was made through P.W. 6. He only refers to the payment of Rs. 20/- but not to Rs. 120/- and as such has been declared hostile.

P.W. 7 stated in examination-in-chief thus:

When the accused went to the door of the Court, the Vigilance Inspector asked him if his name was Padmalochan Misra and if he was the Peskar of the Judicial Magistrate. The accused answered in the affirmative. Then the Vigilance Inspector asked the accused if he had taken a bribe of Rs-. 120/- from P.W. 5. The accused replied that he received Rs. 120/- from P.W. 5 as witness batta and not as bribe. While the accused took out the money, from his pocket, the g.e. notes fell down on the ground. The Vigilance Inspector picked up the notes. Then all of them went to the Tahsildar's office.

This witness has also been declared hostile. Obviously because he corroborated the defence version in that he stated that the immediate explanation of the appellant was exactly what he stated later in Court. Even the Magistrate (P.W. 17)

who was a witness to the trap was constrained to admit that Shri Sarangi, meaning the I.O. (P.W. 18) did not record the explanation of the appellant in Ext. 10, that is, the detection report to which he took exception. Thus from the documentary and the oral evidence it cannot be said that the plea taken by the appellant in Court was an afterthought.

10. That apart, certain broad features of the, case that tell their own tale can hardly be ignored. P.W. 5 and his associates had been convicted and the appeal was lying before the Sessions Judge. The case had been sent back for recording the evidence of the Investigating Officer and the Medical Officer to be transmitted to the Sessions Judge for disposal of the appeal. In this context, the trying Court has no part to play excepting recording the evidence of these two witnesses. In that background it is difficult to find as to the assistance or help the complainants party were expecting from the Bench Clerk. The allegation against him in Ext. 14 is as though he was from the inception of the original case extracting money from them and as such they had a grievance against him. Even in Ext. 14, the F.I.R. it is stated.

Shri Padamanabha Misra from the very inception of this case till now is greatly harassing us and threatening us. Has misappropriated much money from us. Now the doctor and the Police Daroga are to be summoned. Though they are present in Court yet due to the Peshkar's machinations these witnesses are returning without giving their evidence and are taking their batta money from us.

The record shows that only the I.O. had been present on 11-11-1968 but as the Court was indisposed the case was adjourned to the next date for examination of the I.O. The doctor had not come at all. That apart, on their own petition (Ext. D) dated 12-11-1968 to call for the case diary, the case had to be adjourned without the examination of the I.O. Thus, the allegation in the F.I.R. that these witnesses were appearing and taking their batta from them through the instrumentality of the Peshkar is false and motivated.

P. W, 5 and his associates appear to be astute litigants. To contest the office note of depositing Rs. 170/- as witness batta, they engaged an outside lawyer. In this setting, it is difficult to presume that they would not have consulted their lawyer

when the Peshkar on one occasion demanded a lump sum of Rs. 120/- as illegal gratification. They admit that on every date they were ungrudgingly giving Rs. 2/- to the Peshkar and he was content with it. If so, why was this demand of Rs. 120/- made remains unexplained. Besides, this allegation of payment of Rs. 120/- exactly tallying with the balance witness batta is significantly intriguing. Here I may say that I am not going to discuss the propriety or otherwise of the official order directing in a cognizable case the accused persons to pay the expenses of the defence witnesses and much more so when the question was not mooted nor the learned Government Advocate could throw any light either way.

11. On behalf of the State, reliance was placed on two cases, namely, 1970 Cri LJ 793 (Delhi) (Mohinder Lal Bagai v. The Delhi Administration) and : AIR1967 Bom1 (Deonath Dudhnath Misra v. The State of Maharashtra), In the first case, the point decided was when a payment of some money is made to a public servant whether paid before or after doing of any official act would constitute bribe. There is no dispute over this proposition of law. At one time the law was otherwise. But the present trend of decision is that if the illegal gratification is received even after the official act is done, yet it will constitute an offence under Section 161, Indian Penal Code. I see no reason why this decision was cited. In the next case, a sum of Rs. 5/- was received by the accused-appellant and his plea was that he received it for sending the licence by post. It was held that since delivering licences was the duty of the accused, sending licence by post instead of delivering it in person was nothing but discharging the duty by the accused as public servant and hence he was deemed to be a public servant at the time he received this money. Consequently it was held that in the circumstances the appellant cannot get out of the offence which has been established beyond any doubt. To say the least, these two citations are not at all relevant for a detailed discussion.

12. On behalf of the appellant, reliance was placed on : 1970 CriLJ526 (Lachman Dass v. State of Punjab), In this case, an accountant in the Municipality was charged for receiving a bribe of Rs. 10/- from a contractor. The plea of the accused-appellant was that as he scrutinised the bills of the contractor which was his duty and the amounts claimed by the contractor were very much slashed down, hence the case. The accused also admitted to have received Rs. 10/- but

his defence was that he had actually demanded Rs. 8.12 P. for making good the over-payment already made to the complainant and had returned Rs. 1.88 P. to him. The record of the Municipality as well as the evidence of the three witnesses including the Executive Officer of the Municipality supported the defence case. Yet the trial Court convicted the accused for taking bribe depending on the sole evidence of the complainant and the High Court also maintained the conviction, although the evidence of the Executive Officer was not disbelieved. It was held 'as the conviction was based on the sole evidence of the complainant who had reason to harm the accused having reduced the bills substantially and as there was nothing to show why the Executive Officer should give false evidence in order to extricate the accused, the conviction of the accused should be set aside. The circumstantial and documentary evidence created room for doubt that the defence version was probably true and the statement of the complainant could not be accepted without corroboration.' In the instant case, as already discussed, the sole testimony of P.W. 5 forms the basis of the conviction although in material particulars his evidence has been discarded by the learned lower Court.

The next case relied on by the appellant is of *Sita Ram v. The State of Rajasthan* : 1975 CriLJ1224 . It is an authority for the proposition as to in what sort of cases the presumption contemplated under

S. 4(1) of the Act can be drawn. On the question of payment of illegal gratification in that case, their Lordships held thus:

On the point of payment of money by complainant Mohan Lal to the appellant the evidence of the former was of no help to the prosecution. The High Court found this fact established, as stated above, on the evidence of P.W. 2 Mukundisingh and P.W. 9 Sugansingh.

XX XX XX XX That makes his evidence hearsay on the point of acceptance of gratification by the appellant from Mohanlal. So many jerks and jolts seem to have been given to the prosecution case by contradictory and hostile statements of the witnesses that good part of it had to be rejected by the High Court. In the background of the High Court's findings that it had not been proved that the appellant had demanded any bribe from Mohan Lai, we do not consider it safe to

sustain its finding on the point of payment of the bribe by the complainant to the appellant on the testimony of P.W. 9 alone when the evidence of P.W. 2 is not admissible on the point. The result is that not only the story of demand of bribe by appellant from the complainant is not proved but even the story of payment of the money by the complainant is not established beyond reasonable doubt. That being so the rule of presumption engrafted in Section 4(1) cannot be made use of for convicting the appellant.

10. The main ingredients of the charge under Section 161 of the Penal Code with reference to the facts of this case are these:

(1) That the accused was a public servant.

(2) That he must be shown to have obtained from any person any gratification.

(3) The gratification should be other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to the person.

When the first two ingredients are proved by evidence then a rebuttable presumption arises in respect of the third ingredient. In absence of the proof of the first two facts, the presumption does not arise. On mere recovery of certain money from the person of an accused without the proof of the first two facts, the presumption does not arise. On mere recovery of certain money from the person of an accused without the proof of its payment by or on behalf of some person to whom official favour was to be shown the presumption cannot arise.

In the instant case, it is only the first ingredient, that is satisfied. As such no legal presumption as engrafted in Section 4(1) of the Act is available to the prosecution and to that extent, the judgment of the learned lower Court is erroneous. He has, after disbelieving most of the evidence for the prosecution, in the long run convicted the appellant on the theory that as a Bench Clerk it was not his duty to receive the batta money but the Nazir and therefore he had received illegal gratification. Suffice it to say the presumption availed of by the learned lower Court cannot be stretched so far. If it was the duty of the Nazir to receive the batta

money and not that of the peshkar and even if he did so, it is unimaginable how batta money will change its nature so as to come under the mischief of Section 161, Indian Penal Code. So that as it may, from the oral, documentary and circumstantial evidence discussed heretofore, it cannot be said that the prosecution has brought a formidable case against the appellant' and that his plea is bogus and an afterthought.

13. Consequently, I would accept this appeal, set aside the conviction and sentence imposed on him and accuit him of the charge. His bail bond be cancelled.

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