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**State Vs. Harbans Lal**

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**SooperKanoon Citation** : sooperkanoon.com/683865

**Court** : Delhi

**Decided On :** Oct-25-1968

**Reported in** : 5(1969)DLT45

**Judge** : I.D. Dua,; Hardayal Hardy and; V.S. Deshpande, JJ.

**Acts** : Prevention of Corruption Act, 1947 - Sections 4(1)

**Appeal No.** : Criminal Appeal No. 15 of 1966

**Appellant** : State

**Respondent** : Harbans Lal

**Advocate for Pet/Ap.** : K.C. Pandit,; Prithvi Raj and; K.D. Sood, Advs

**Judgement** :

**V.S. Deshpande, J.**

(1) This is an appeal by the State against the decision of the learned Special Judge acquitting the accused of a charge for the offence of criminal misconduct in discharge of offcial duty punishable under Section 5 of the Prevention of Corruption Act. The appeal was originally heard by a Division Bench consisting of two of us, namely. Hardy and Deshpande Jj The arguments at the Bar before the Division Bench were limited only to the aspects of the case which were dealt with in the judgment of the learned Special Judge under appeal. In writing the

judgment, however, the Division Bench had to consider several toher aspects of the case including the following questions of law :- '(1) 'What is the precise nature and effect of the presumption raised by section 4 of Prevention of Corruption Act (2) Whether the High Court can convict the respondent under sections 161 and 165, Indian Penal Code, though he was acquitted by learned Special Judge of the Charge purported to have beenframed against him only under section 5 of the Prevention of Corruption Act (3) Whether the sanction to prosecute parporting to be under section 6 of the Prevention of Corruption Act but without mentioning the names of the offences was valid because the facts constituting the offences had been considered by the sanctioning authority-'

(2) Though the answers suggested to the above questionsof law in the jugdment of the Division Bench speaking through Deshpande J.were clear enough, the Division Bench referred the case to the Full Bench on the 27th September, 1968 mainly for the following reasons :- The decisions of these questions would affect a large number of pending and future eases and would also serve as guidance to the authorities concerned. The learned counsel would thereby get a full opportunity to have their say as to these questions. Further certain observations made by antoher Division Bench of this Court to which one of us namely. Hardy J. was a party in Criminal Appeal No. 88 D of 1964 (Delhi Administration Delhi v. Shri S. P. Kohli, Deputy Municipal Engineer,) decided on 8th February, 1968, would have to be reconsidered in the light of the observations made in the referring order in this case and this could be done only by a larger Bench.

(3) On this reference, thereforee, we heard the learned counsel on all the aspects of the case including the above questions of law. We are in full agreement with the findings of the Division Bench on the various issues of fact and law tentatively arrived at in the referring older which also contains a full discussion of the facts, evidence and the statute law and the case law. We do nto, thereforee, consider it necessary to go over the same ground again. We would only like to reconsider the following observations made by the Division Bench in the decision in Delhi Admi ministration, Delhi v. S P. Kohli Deputy Municipal Engineer, referring to 4(1) of the Prevention of Corruption Act :- I. C. A No. 88U of 1984.

'THEREjs neither any tbiEg new nor startling aboto the presumption arising under this section. It is nto unusual in certain classes of cases or in certain circumstances to throw the onus of proof of a defense on the accased person. Sections 105 and 106 of the Evidence Act are instances in point. The law is however well-settled that it is nto incumbent upon the accused to establish his plea in defense with the same rigidity and exactitude an the prosecution and even where an accased fails to prove the same beyond reasonable doubt the decision of the Court has still to be given upon and as a result of the whole of the case including evidence adduced by the defense and if open such review a reasonable doubt is created in the mind of the court the accused is entitled to acquittal.'

'SINCEthe intitial burden of prcof still lay on the prosecution the learned Judge finally concluded that the charges had nto been brought home to the accused beyond reasonable doubt.'

'THErespondent is entitled to benefit of doubt as the prosecution has nto succeeded in establishing is case against him beyond reasonable doubt.'

(4) With great respect we like to point out that the nature of presumption raised by section 4 of the Prevention of Corruption Act is that the case of the prosecution is regarded as 'proved' thereby in the sence in which the word proved' is used in the Indian Evidence Act. The effect is that the accused is thereupon required to 'disprove' the case of the prosecution again in the sense in which the word 'disproved is used in the Evidence Act. The effect is that the general burden of proving the case against the accused beyond reasonable doubt no longer remains on the prosecution after the presumption is raised under Section 411) of the Prevention of Conuption Act. The shifting of the burden of proof from the prosecution to the accused thereafter is nto similar to the shifting of the burden of proof from the prosecution to the accused under Sections 105 and 106 of the Evidence Act. Under the said provisions of the Evidence Act, the burden shifts only partially to the accused. The accased does nto have to disprove the ingredient of the offence proved against him. He merely escapes from being convicted by proving general or special exceptions because of which he is nto held guilty of the offence though the main ingredient of the offence have been proved

against him under Section 4 of the Prevention of Corruption Act has to be rebatted by the accused by disproving the main ingredients of the offence itself so that it may be held that the ingredients of the offence themselves have nto been proved against him.

(5) As the harden of proof shifted to the accased by Section 4 of the Prevention of Corruption Act has to be discharged by him by proving that the defense case is by itself more probable than the prosecution case deemed to be proved with the help of the said presumption, the accased can secure acquittal only by proving that preponderance of probability in his favor. This is different from the benefit of doubt which would secure the acquittal of an accased in an ordinary criminal case in which the presumption under Section 4 of the Prevention of Corruption Act is nto raised against the accused In any ordinary criminal case a mere preponderance of probability is nto sufficient to secure the conviction of the accused. The prosecution case has to be proved beyond reasonable doubt. This is why the accused is to be acquitted by being given the benefit of doubt. When the presumption under Section 4 is, howevar, raised against the accased the case against him is already deemed to be proved beyond reasonable doubt. After that he cannto be acquitted by being giving the benefit of doubt. He can secure acquittal only by disproving the prosecution case which he can do by showing that the defense case is itself is more probable than the prosecution case in the sense, that according to the standard of proof applicable to the decision of a civil case, the defense case would be believed by the Court in preference to the prosecution case.

(6) For the reasons given in the referring order we find the respondent guilty of the offences punishable under Sections 161 and 165 of the Indian Penal Code. We, thereforee, allow the appeal, set aside the acqaittal and convict the respondent of the offences punishable under Sections 161 and 165 of the Indian Penal Code We sentence the accused to rigorous imprisonment for four months for having committed each of the offences but order that the sentences shall run concurrantly. Though we take a serious view of the corrupt conduct of a public servant we think this sentence will serve the ends of justice in this particular case inasmuch as the conviction will entail the dismissal of the respondent from public

service.

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