

Dalip Singh Vs. State

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Court : Delhi

Decided On : Dec-07-1973

Reported in : ILR1974Delhi34

Judge : Pritam Singh Safeer, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 4(1)

Appeal No. : Criminal Appeal No. 120 of 1972

Appellant : Dalip Singh

Respondent : State

Advocate for Pet/Ap. : R.L. Mehta and; D.C. Mathur, Advs

Judgement :

Safeer, J.

(1) The appellant having been found guilty by the Special Judge, Delhi under section 5(2) of the [Prevention of Corruption Act, 1947](#) hereafter called 'the Act' and under section 161 of the Indian Penal Code and having been sentenced to rigorous imprisonment for two years on each count, both sentences to run concurrently with the further imposition to pay a fine of Rs. 500.00 because of his conviction under the Act, in default whereof he was to undergo rigorous imprisonment for three months, has come up against the judgment dated the 2nd

of August, 1972.

(2) The case against the appellant is best disclosed by the statement of Shiv Dayal from whom the appellant had allegedly demanded the bribe of Rs. 20.00 for giving an inspection report regarding the scooter which had been involved in an accident.

(3) Public Witness 1 Shiv Dayal alleged that he had been driving a three-wheeler scooter bearing No. DLR-2072 and he had purchased it from one Madan Lal although the actual transfer to him had not taken place. It was on the 5th of July, 1971 that the said scooter was involved in an accident and was taken away from the spot by Sub-inspector Surjit Singh to police station Chanakyapuri. According to Public Witness I he was told by the said Sub-inspector that the appellant was the person who was to inspect the vehicle which would be returned only after the inspection report which the appellant was to make in respect of the said scooter. While alleging that he had gone to police station Tughlaq Road and had met the appellant on the 12th of July, 1971 Public Witness I stated that he had met the appellant once or twice before that date as well. According to his allegation on the 12th of July, 1971 when he requested the appellant to give the inspection report in respect of the scooter the appellant demanded a sum of Rs. 20.00 from him and indicated that only on payment of that amount-the inspection report will be furnished.

(4) According to his allegations on the next day i.e. the 13th of July, 1971 Shiv Dayal Public Witness I went to the Anti-corruption office where he made the statement Ex. Public Witness I/A which was recorded by Public Witness 8 Madan Lal Sawhney. The statement was read over to him and two persons were requisitioned by Public Witness 8 who were to join the raiding party. At the trial Harbans Singh and Ram Lal were identified by P.W. 1. as the persons who had answered the requisition and had come to the office of Public Witness 8 Public Witness 1 alleged that he then handed over three G.C. notes one of Rs. 10.00 and the other two of Rs. 5.00 each to Public Witness 8 who noted their numbers in the raid report in the portion Ex. Public Witness 1/B. Thereafter the notes were treated with a powder and it was explained and demonstrated by Public Witness 8 that the significance of treating the G.C. notes with the, powder was that whosoever and

whatsoever was to come in the contact with those currency notes was to incur a pollution and when dipped in water the hands or the clothes of the person would change the colour of the water to pink. Harbans Singh was made to touch a currency note treated with powder and when his hand was dipped in water it turned pink. Thereafter his hands were washed. The currency notes were allegedly returned to Public Witness I with the direction to pass on the same to the appellant on his demand in the presence of and within the hearing of the two witnesses Harbans Singh and Ram Lal. P.W. I was instructed to waive his hand over his head by way of signal indicating that the bribe had passed. The instructions so given were noted in the raid report. The 'raiding party left the Anticorruption office at 4-45 p.m. in a police van and reached at 5-15 p.m. at a place about a furlong away from Tughlaq Road Police station. The police van was left there. Public Witness I then accompanied by Harbans Singh went inside the police station Tughlaq Road to the room where the accused was present. According to him both of them sat on a bench and after sometime the accused asked him if scooter No. DLR-2072 was his. Some persons present in the room left while others remained there. The appellant then allegedly demanded Rs. 20.00 from Public Witness I who handed over to him two G.C. notes of Rs. 5.00 each on accepting which the appellant further demanded Rs. 10.00 and on that the 'G.C. note of Rs. 10.00 was handed over. After that the appellant is stated to have placed the G.C. notes on his table. He gave inspection report Ex. Public Witness 1/C to Public Witness 1 Shiv Dayal. After taking the inspection report Shiv Dayal and Harbans Singh came out of the room and reaching the varandah Public Witness 1 gave the agreed signal. Thereafter Public Witness 8 Along with other members of the raiding party arrived and secured the appellant. What followed should be noticed in terms of the premise statement made by P.W. 1:-

'THE Inspector challenged the accused if he had accepted the bribe of Rs. 20.00, but the accused denied.'

(5) On searching the appellant a sum of Rs. 20.00 contained in a purse was recovered from the pocket of his bushirt Along with another sum of Rs. 42.39. The numbers on the G.C. notes were compared and found correct. The recovered G.C. notes of Rs. 20.00 were exhibited at the trial as Exts. P. 1 to P. 3.

(6) The cross-examination of Public Witness 1 disclosed a significant aspect which he had concealed while making the statement during his examination-in-chief. It was stated in his cross-examination that he had sold away the scooter. It was put to him that before that sale he had entered into the transaction for selling the scooter even before the 5th of July, 1971 when it got involved into the accident. He was then examined in respect of document Ex. D/A, the answers given by Public Witness 1, are reproduced :--

'THE writing on encircled red on Ex. D/A is in my hand and bears my signatures at two points 'A' and 'B'. This writing and signatures were obtained from me by Kewal after administering to me liquor at Patel Nagar where he had taken me under the pretext of purchasing a scooter, and I did not know Urdu. (Volunteered) Writing the encircled writing in Hindi thereon. It is wrong to suggest that before my accident I had entered into in a sale transaction with Randhir Singh son of the accused regarding my scooter. In fact I do not know any Randhir Singh (Volunteered). There were other persons present besides Kewal when I was made to write the writing encircled red under the influence of liquor and at that time I was paid a sum of Rs. 100.00 under the influence of liquor. I do not know who had paid me that amount. It is wrong to suggest that the said Randhir Singh had paid me the sum of Rs. 100.00 by way of advance on 2-7-1971 towards the purchase of my scooter. I had put on this encircled writing on the stamp the date as '9-7-71' but it appears to have been altered as '2-7-71'. I do not remember if I was made to do that writing on Ex. D/A. 3 or 4 days prior to my making the report to the Anticorruption police (on 21-7-71) (Later portion volunteered) . The month of July mentioned as '7' in this writing is not altered. This date on this writing is not in my hand. The signatures at point 'B' on Ex. D/A is not mine nor the scooter No. mentioned above that signature in my hand. I had put signatures at point 'A' on Ex. D/A on account of the sale transaction of the scooter.'

IT is significant that for some reason well-known to Public Witness 1 he had made the choice of not disclosing all the facts of the prosecution otherwise his examination-in-chief may have been more comprehensive.

IT stands admitted in the afore-quoted deposition that Public Witness 1 Shiv Dayal had received a sum of Rs. 100.00 by way of advance towards the purchase of his scooter although he was at that time allegedly under the influence of liquor.

(7) There were no other admissions which the Court below should have scrutinized. Public Witness 1 stated that the writing in Urdu in Ex. D/A was in existence when he made the encircled writing in Hindi thereon, He deposed that ' he had made the writing in Hindi and that he had put on the stamp the date '9-7-1971' which appeared to have been tampered with and digit '9' altered to '2'. He was also clear that he had put his signatures at point 'A' on Ex. D/A on account of the sale transaction of the scooter. The significance arising out of each admission deserved to be appreciated.

3. The appellant being a Sub-inspector of Police was put on trial for having committed the offence defined by clause (d) in section 5(1) of the Act as also for having committed the offence covered by section 161 of the Indian Penal Code.

(8) Apart from Public Witness 1, Public Witness 2 Harbans Singh who had accompanied him was examined, who apart from supporting the version given by P.W. 1, affirmed that when Public Witness 8 challenged the appellant as to whether he had received the bribe or not, the appellant asserted that he had not received any bribe. The words in his deposition in that behalf may be noticed :-

'THE Inspector challenged the accused if he had accepted the bribe money, but the accused denied.'

(9) 4. Public Witness 3 had also been a member of the raiding party. He was, however, kept back by Madan Lal when Public Witness 1 and Public Witness 2 Harbans Singh were sent to the police station to contact the appellant for passing on the bribe. He affirmed that after taking into possession G.C. notes Ex P. 1 to Ex. P. 3 the appellant was taken to the reporting room by Public Witness 8 and his hands were dipped in the solution of sodium carbonate at which the colourless shade of water turned into pink. The solution was transferred to the bottle Ex. P. 5 which was sealed. Besides Public Witness s. 1 and 2, the prosecution did not examine anydhe in whose presence the talk may have taken place in terms of

which the amount of Rs. 20.00 was accepted by the appellant. Public Witness 8 . Madan Lal reached the place where the accused was only after receiving the signal. He made the recovery of Rs. 20.00, prepared the memorandum in respect thereof, .dipped the hands of the appellant and when water turned pink, transferred it to the bottle Ex. P. 5 and what needs to be noticed is the assertion by him that when challenged as to whether he had accepted the bribe or not the appellant kept silent.

(10) 5. The defense version was put to Public Witness 8 that when he challenged the appellant alleging that he had accepted the bribe the reply given was that he had accepted the balance of the earnest money given to Shiv Dayal in respect of the transaction pertaining to the sale of the scooter. The statement of Public Witness 8 in that behalf, may be noticed :-

'IT is wrong to suggest that when the accused was challenged by me he was accompanied by two persons from the public named Dharam Vir and Mr. Khanna. It is wrong to suggest that on my challenge the accused told me that the complainant had paid back to him the balance of the earnest money in regard to the sale transaction of his scooter between him and his son Randhir Singh, or that it was supported by Mr. Khanna and Dharamvir, or that for the cancellation of that sale transaction the complainant had falsely implicated him in this case.'

(11) The defense attacked the conduct of Public Witness 8 as being that of a person interested in implicating the appellant and he was asked as to why after the raid he had considered it necessary to accompany Shiv Dayal to police station Chanakyapuri for getting the scooter released. The reply given by Public Witness 8, was :-

'IT is correct that I accompanied Shiv Dayal to Chanakyapuri police station and got his scooter released to him by supplying copy of the inspection report after the raid.'

(12) The witness was not left at that and it was put to him as to whether he knew or not that the inspection report had been received by Shiv Dayal from the appellant on the morning of the 13th of July, 1971 much before the carrying out of

the raid in the after-noon. The answer given by the witness, deserves to be reproduced :-

'I do not know if Shiv Dayal complainant had obtained the inspection report from the accused on the morning on 13-7-1971. But, in fact when I handed over to him the treated G.C. notes in Anti-corruption office and searched him, the inspection report was not with him.'

(13) The assertion on behalf of the appellant was that on the morning of the 13th of July, 1971 Shiv Dayal Public Witness I had been given the inspection report after he had paid a fraction of the amount out of the sum of Rs. 100.00 which he had received on account of a transaction which the appellant did not desire to be carried out. After recording the evidence of the prosecution, the appellant was examined under section 342 of the Criminal Procedure Code. That statement has been perused by me. The appellant took up an exceptional stand which demanded a close scrutiny and appropriate adjudication. He admitted that scooter No. DLR-2072 had been involved in an accident on the 5th of July, 1971 and had been seized by Surjit Singh Sub-inspector who had taken the same to the police station Chanakyapuri and that the scooter had not been given back to Shiv Dayal as the same could have been returned only after the inspection report which he was to give. He, however, denied that he had avoided Shiv Dayal on some occasions when he was requested to inspect the scooter and had demanded the sum of Rs. 20.00 for giving the inspection report and had told him to come to the police station Tughlaq Road at 6.00 p.m. to make the payment. While replying to question No. 5 the appellant stated that at about 6.05 p.m. on the date of the alleged raid he had come back from Parliament Street Courts to Tughlaq Road Police station and while coming back he noticed Public Witness 8 as well as constable Shri Niwas outside the police station. The constables whose names he mentioned were with him and he was told that Inspector Madan Lal belonged to the Anti-corruption Department and that while conversation was going on Dharam Vir and Mr. Khanna had come into his room. Within a moment of their entry according to the appellant Shiv Dayal had entered his room, but Harbans Singh had never accompanied him. In answer to question No. 6 he denied that Shiv Dayal and Harbans Singh got seated on a bench in his room and that he asked Shiv Dayal whether scooter No.

Dlr 2072 was his.

(14) There was hardly any occasion for the appellant to put that question to Shiv Dayal Public Witness I according to whose testimony he had met the appellant on earlier occasions and had apprised him of his connection with the concerned scooter. It is the answer given to question No. 7 which contains the defense version and it would be appropriate to reproduce the same for the reason that it has to be appreciated in the light of two documents namely Ex. D/A and Public Witness 1/G :-

I did take from Shiv Dayal a sum of Rs. 201- in my room as the last Installment for the refund of the earnest money of Rs. 100.00 which he had taken from my son Randhir Singh on account of the sale transaction about this very three wheeler scooter on 2-7-1971. That sale transaction was of the price of Rs. 3070.00. That sale transaction was cancelled at my instance because on 9-7-1971 I went to P.S. Chanakyapuri for the inspection of scooters about which I had got a message from my duty officer and that was the first day when I was assigned the duty in P. S. Chanakyapuri and on that day I found this very three wheeler scooter present there and awaiting my inspection. On account of the accident I asked my son Randhir Singh to cancel the purchase transaction of the same and to recover the earnest money of Rs. 100.00 from Shiv Dayal. I also learnt that Shiv Dayal was not the owner of this scooter. Randhir Singh then got back the sum of Rs. 50.00 from Shiv Dayal. On the morning of 13-7- 1971 Shiv Dayal came to me in P. S. Tughlaq Road where my son Randhir Singh was also present, when hot words were exchanged between Randhir Singh and myself on the one hand and Shiv Dayal on the other regarding remaining earnest money to be returned, where a sum of Rs. 30.00 was returned to me by Shiv Dayal which I received on behalf of my son. I then insisted on Shiv Dayal to return the remaining sum of Rs. 20.00 on that evening positively and handed over to him the inspection report Ex. Public Witness 1/C of his scooter for handing it over in P. S. Chanakyapuri. Thereafter Shiv Dayal went away in anger. In the evening Shiv Dayal came to me in my room and angrily threw at me the sum of Rs- 20.00 by adding that I should return this amount and that the entire earnest money Rs. 100.00 had been squared off. I thereupon took up that money. Shiv Dayal demanded the record back from me

and I promised to give the record to him through my son, who was not present. All this took place in the presence of the persons named by me already.'

(3.)The appellant examined several witnesses in order to prove his version. D.W. 3 constable Shiv Narain being employed in the same police station after recollecting the instance on 13-7-1971 and after stating that he and Jile Singh had occupied the bench in the room of the accused and that two public men had also come to the same room, deposed :-

'INthe mean time one other person from the public entered the room of the accused and he was all alone and on entering the room he threw a sum of Rs. 20.00 on the table of the accused and told the accused to have that money which squared off the return of the earnest money and also asked for the receipt. The accused told that man that the receipt would be given by his son who would be coming there within 5/7 minutes or he could collect the receipt on the following day by coming to the police station.'

(15) The aforequoted deposition supported the statement made by the appellant under section 342 of the Criminal Procedure Code that the sum of Rs. 20.00 had been given towards the amount due on account of the earnest money which had been received by Public Witness 1. 7. D.W. 4 Kewal Kishan happened to be an important witness. He stated that he was running a repair workshop in respect of accidented cars, scooters and motor cycles. He deposed that in the month of June, 1971 Randhir Singh son of the appellant had come to his workshop and had told him that he had been sent by the appellant for requesting him that if possible, a three-wheeler scooter may be purchased for him. He then proceeded to depose:-

'ONsecond July, 1971 Randhir Singh again came to me and on that day a sale transaction of the three-wheeler scooter could be effected on that day. The scooter which I had in view was owned by Shiv Dayal. That scooter had come to my workshop for some welding work. Randhir Singh saw that scooter and I told Randhir Singh that that scooter was meant for sale by Shiv Dayal. Shiv Dayal was not present at that time but he came there about an hour later. I then got the sale of that scooter effected at a price of Rs. 3070.00. A sum of Rs. 1.00.00 was paid

by Randhir Singh to Shiv Dayal as earnest money. The remaining amount was agreed to be paid within 15 days. That receipt of Rs. 100.00 is Ex. D/A. It is in view was owned by Shiv Dayal. That scooter had - signatures A and B on receipt Ex. D/A were written in my presence by Shiv Dayal.'

(16) If the quotation reproduced earlier from the statement of Public Witness 1 is read Along with the fore-going deposition, it becomes clear , P.W. 1 Shiv Dayal had admittedly received Rs. 100.00 on account of a sale transaction pertaining to his scooter and that the writing in Hindi encircled red was made by him. D.W. 4 affirmed that he had written the document Ex. D/A and asserted that the signatures including those at points A and B on receipt Ex. D/A were made in his presence by Public Witness 1 Shiv Dayal. He further stated that the receipt was attested by Chanan Singh and Madan Lal in his presence.

(17) The witness was subjected to thorough cross-examination, in the course whsreof he denied the suggestion that after 13-7-1971 at the instance of the appellant he had taken Shiv Dayal on some pretext and had administered liquor and under its influence obtained the writing and signatures on Ex. D/A.

(18) I am unable to appreciate as to why it was put to D.W. 4 that he had taken away Shiv Dayal and administered liquor for obtaining his writing or signatures on Ex. D/A after 13-7-1971 when in his own admission Shiv Dayal had emphasised that he had signed on the stamp in Ex. D/A on 9-7-1971. Where according to Public Witness I he had made the signatures on Ex. D/A several days before the 13th of July, 1971 there was no justification for the Public Prosecutor to suggest to D.W. 4 that Ex. D/A had been brought into existence not on the 9-7-1971 but after the 13th of July, 1971.

(19) D.W. 4 denied that he had interferred with digit '9' anywhere in Ex. D/A so as to change it into '2'. Towards the end of his crossexamination he again asserted that the writing on Ex. D/A was made by him with his own pen and that it was wrong to suggest that the digit on the stamp was altered from '9' to '2'.

(20) The defense version asserting that the sum of Rs. 20.00 was received by the appellant not as bribe but towards the last Installment due on account of the

earnest money which Public Witness 1 had received in terms of Ex. D/A is supported by such a witness as D.W. 4 to whom no suggestion was made that for any reason whatsoever he was inimical to P.W. 1. D.W. 4 remained unshaken in his testimony.

(21) 8. D.W. 5 a constable who had been working in police station Tughlaq Road stated that on entering the room where the appellant was Shiv Dayal threw the sum of Rs. 20.00 on his table saying that he was returning the balance of the earnest money and then demanded the receipt.

(22) He was cross-examined and asked whether he had told any one that the appellant had received the payment towards the earnest money but had been falsely implicated. He replied :-

'INthe evening I told the S.H.O. on the same day that the accused had been falsely implicated in this case and that the accused had simply received the sum of Rs. 20.00 as the remaining earnest money but I did that in writing to the S.H.O.'

(23) A reference to the Urdu record shows that the typed deposition in English, is incorrect. The witness had stated, according to the Urdu record, that he had not given it in writing to the S.H.O. that the amount of Rs. 20.00 had been received by the appellant towards the earnest money but had been implicated in a false case. The witness proceeded to state that he had not given that in writing to any officer.

(24) 9. D.W. 6 another constable posted in police station Tughlaq Road on the date of occurrence corroborated the testimony of D.W. 5. Shri Gulshan Khanna was also produced as D.W. 7 and he also supported the version that the amount had been paid towards the earnest money.

(25) 10. The appellant examined his son Randhir Singh as D.W. 9 and he narrated as to how Ex. D/A had come into existence. He affirmed that he had paid the sum Rs. 100.00 to Public Witness 1 Shiv Dayal as earnest money for the purchase of the scooter and on that account Ex. D/A was written in his presence. He deposed :-

'THIS receipt with all its contents as at present had been scribed at that time. Shiv Dayal signed this receipt and also wrote the writing in Hindi thereon.'

(26) He gave the reason why the intended purchase was not made and Shiv Dayal was asked to refund the earnest money. He stated :-

'ON 9-7-1971 my father had talked to me in the evening in P.S. Tughlaq Road that I have entered into a bargain in respect of an accidental scooter and that Shiv Dayal was not the owner there. I had not seen the papers regarding the ownership of Shiv Dayal regarding that scooter but I had demanded the same and Shiv Dayal had promised to show those papers only when the full price had been paid to him. My father told me to cancel that bargain and to bring back the earnest money of Rs. 100.00. On 10-7-1971 in the evening I went to Shiv Dayal, and I demanded back my earnest money of Rs. 100.00 but he refused to return the earnest money by telling me the bargain once struck could not be revoked and the earnest money could not be returned and thereupon hot words were exchanged between us. I told this to my father who again insisted that I should go to him again and bring back the money. My father further told me that we would launch a prosecution against him for cheating as he was not the owner of the scooter. On 11-7-1971 I again went to Shiv Dayal and after prolonged dispute Shiv Dayal returned to me a sum of Rs. 50.00 and told me that the remaining money was not with him. My father insisted on my bringing back from Shiv Dayal the remaining amount and told me that if Shiv Dayal did not pay the remaining amount, to bring him to the police station. I then went to Shiv Dayal on 12-7-1971 in the evening and asked for the remaining money but he did not give. I then asked him to accompany me to my father in the police station but he told me that he would meet my father in the police station on the next morning. On 13-7-1971 at about 8.00/8.30 a.m. in the morning, he came to P.S. Tughlaq Road in my presence. My father also arrived there from the side of the canteen and on my telling that Shiv Dayal had not paid back the remaining amount, my father reproached Shiv Dayal severely and also threatened him whereupon Shiv Dayal paid a sum of Rs. 30.00 to my father. My father also demanded from him the balance of Rs. 20.00 to square up the bargain but Shiv Dayal told him that he did not have that money. My father told Shiv Dayal that the remaining amount of Rs. 20.00 must be paid back by the evening

positively whereupon Shiv Dayal promised to bring the rest of the money that evening.'

(27) Randhir Singh was not present at the time when the remaining amount of Rs. 20.00 was paid on the date of the alleged occurrence. His statement, however, gave a narration of the events preceding the payment of the alleged amount of Rs. 20.00. The possibility cannot be ruled out that on discovering that the scooter had been involved in an accident and may be required in the course of the proceedings in a trial which could have taken place and finding further that although allegedly purchased by him the vehicle had not been transferred to the name of Shiv Dayal Public Witness 1 the appellant decided that his son should cancel the bargain. In cross-examination D.W. 9 gave the truthful answer that he did not know how to drive a scooter and did not know about its machinery either. It is commonly known that people purchase three-wheeler scooter and employ driver who are given their salary. The earnings are collected by the owners.

(28) In the cross-examination regarding Ex. D/A the witness stated :-

'I myself did not scribe the receipt because I have never done before. This receipt I kept myself in my bag Along with other papers. This receipt I had in my hand bag along- with me on all the days I visited Shiv Dayal for the return of money and also on the morning of 13-7-1971 in the police station.'

(29) The depositions by D.W. 9 supported D.W. 4's testimony that he had scribed the receipt. D.W. 10 had attested the receipt Ex. D/A. He stated that a sum of Rs. 100.00 had been paid in his presence towards earnest money and the receipt was scribed by Kewal Kishan as far as he could remember. Then he stated :-

'MY signatures on Ex. D/A appears at point 'D'. I had gone there on that day for getting the chassis of an ambassador car repaired.'

(30) A perusal of Ex. D/A shows that Chanan Singh while signing the same used the words 'Bakalam Khud' and put the date '2/7/71'. He was thoroughly cross-examined and effort was made to dislodge his stand that he had attested the document. It is however, significant that no question was put to him regarding the

date '2/7/71' which he also had scribed Along with his signatures.

(31) 11. It has been strenuously urged on behalf of the State that the Court below had correctly depended on the presumption raised under section 4(1) of the Act and the appellant had not been able to establish that he had received the controversial amount of Rs. 20.00 as the last Installment towards the earnest money. Section 4(1) of the Act, is:-

'S.4(L).Where in 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-Section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted 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.'

(32) The provision covers sections 161 and 165 of the Indian Penal Code as well as the offences referred to in clauses (a) and (b) of subsection (1) of section 5 of the Act.

(33) It is urged that the presumption did arise for the purpose of section 161 of the Indian Penal Code although it did not ensure for sustaining any conviction under section 5(2) of the Act because the crime .committed fell within clause (d) of section 5(1) thereof.

(34) It was correctly concluded by the trial Court that the presumption allowed by section 4(1) did apparently arise on account of the receipt of the sum of Rs. 20.00 by the appellant. What it had to decide was whether the appellant had established his innocence inspire of the said presumption or not. A well-established principle has been repeated by the Supreme Court in many judgments that while the prosecution has to prove its case beyond any shadow of doubt in order to bring

home the guilt to the accused the presumption permitted by section 4(1) can be displayed by proving by preponderance of probability that the innocence pleaded is genuine. The law laid down in V. D. Jhingan v. State of Uttar Pradesh : [1966]3SCR736 , was affirmed by the observations contained in Dhanvantrai Balwantrai Desai v. State of Maharashtra. : 1964 CriLJ437 and Sailendranath Bose v. The State of Bihar, Air 1968 Supreme Court 1292(3). It was laid down that the plea by which the presumption is sought to be repelled must be shown to be truthful. Considering the scope of the presumption under section 4(1) of the Act in its judgment in State of Assam v. Krishna Rao and another, : 1973 CriLJ169 the view expressed was that the proof for dislodging the presumption is not to be such as is expected for sustaining the conviction and 'the accused is only to establish a high degree of probability.

(35) The examination of section 4(1) reveals that the provision has been purposefully enacted and where an accused person covered by it admits the receipt of any gratification other than legal remuneration or of any valuable thing or the prosecution establishes such receipt the Court will be left with no alternative and it will have to raise the presumption of guilt for which the provision contains a mandate. That presumption will ensure for a conviction unless the contrary is proved.

(36) Where the accused faces such a presumption he has to prove to the contrary and that proof will be there if he establishes the plea proving his innocence.

(37) 11. The evidence adduced in this case discussed as above discloses in its clear pattern that it consists not only of oral testimony but has such a document as Ex. D/A which demands consideration. After the appellant had been apprehended sometimes after the 19th of August, 1971 the Investigating Officer received Ex. Public Witness 1/G. I considered it appropriate that in order to secure the ends of justice I should examine him for discovering whether the said document was received by him after the closing of investigation or before it. He has deposed that he had remitted the entire record pertaining to the investigation to the appropriate authority for according the sanction for prosecution and it-was thereafter that the document Ex. Public Witness 1/G was received. He explained that he submitted it

Along with the challan so that the Court trying the accused may also peruse the same. The document was exhibited in the course of the examination of P.W.I on oath before the trial Court. He admitted that he had sent the document and it is to be concluded on evidence that every averment contained in Ex. Public Witness I/G is by Public Witness I. The document may be reproduced with advantage:-

'ON21-7-1971 at 5.00 p.m. one workshop owner of Mandirwali Gali, West Patel Nagar come to my scooter owner's shop at Arakashan Road, Paharganj New Delhi and they might have talked about the purchase of the scooter which I was driving. When I reached at Arakashan Road office, I was told by my scooter owner to reach at the place of the above workshop owner at West Patel Nagar. I reached there at Patel Nagar at about 6.30 p.m. After my reaching there, I contacted the workshop owner and talked about the scooter. In the meantime at about 7.00 p.m. one Sardarji came there with two bottles of wine. The workshop owner opened the bottle and offered to drink. I refused to take it but they told to take one dose only. I then took it in good faith. They again requested me to take more. In the meantime two another persons also came there and they all pressed me to share in it. I thus became over load by taking much drink. This was their pre-plan. I remember that they took my signatures while we were drinking. I don't know what was written in that paper. I then at about 9.00 p.m. has to sleep there due to over drinking. At about 5.00 a.m. when I awoke, I found me in my scooter at Pusa Road on the Patri side, near Petrol Pump. Although I was not feeling well but I reached to my home somehow. Because I was not feeling well, hence I could not give the report of this incident.

(38) On the 26th July, 1971, when I became cured, I reached Patel Nagar workshop to enquire that how I reached on the night of 21-7-1971 at Pusa Road Petrol Pump, when I drunked with them, and what paper they got signed by me. The chowkidar on duty met me there, I asked him about the matter. He pointed me out that the same person is after me to harm me, to whom you have made police action on 13-7-1971-

(39) Sir, Shri Dalip Singh, ex-.S.L, P. S. Tughlaq Road was arrested by my statements on 13-7-1971, is the same person who had made this dark and danger

plan to involve me in some false case. I have much fear of my life from this person. He may harm me at any time. I may kindly be given protection of life enquiring into the case incident of 21-7-1971 at Patel Nagar workshop.

Thanking you, Yours faithfully, sd/- Shiv Dayal, Scooter driver, Scooter No. DLR-2072, S/o Shri Dolat Ram, R/o 106 Bagichi Allauddin, Pahar Ganj, Multani Dhandra, New Delhi.' Delhi Dated : August 19, 1971.

(40) The allegations made were that on the 21st of July, 1971 a workshop owner in West Patel Nagar had come to Public Witness 1's shop in Pahar Ganj and left a message on account of which he reached West Patel Nagar at about 6.30 p.m.

(41) It may be observed that the date 21-7-1971 is material. Public Witness 1 admitted in his statement in Court that he had made the signatures of Ex. D/A. Even if his plea is taken into consideration that the date 9-7-1971 was altered to 2-7-1971, the document Ex. D/A was signed by him many days before the 21st of July, 1971. It is unacceptable that the effect of drinking liquor continued to prevail till the 19th of August, 1971 when Shiv Dayal Public Witness I considered it necessary to sign and send the communication Ex. Public Witness 1/G to the Superintendent of Police, Anti-corruption, Tis Hazari. Delhi. In the ultimate paragraph of that document Public Witness I designedly stated:-

'SIR, Shri Dalip Singh, ex.S.L, P. S. Tughlak Road was arrested by my statements on 13-7-1971, is the same person who had made this dark and danger plan to involve me in some false case.'

(42) In the earlier part of the document he had stated:-

'I remember that they took my signatures while we were drinking. I don't know what was written in that paper.'

(43) Even if everything stated in that document is accepted then P.W.1 had admittedly made the signatures on a document while he was drinking on the 21st of July, 1971. Ex. Public Witness 1/G came into being on the 19th of August, 1971. There are enough of admissions in the document which support that Shiv Dayal Public Witness 1 had signed some document. He was the person who had

admitted in his cross-examination that he had received a sum of Rs. 100.00 at the time of subscribing his signatures. If he was under the influence of liquor at the time when he made the signatures and received the amount then as soon as he became normal there was no justification for him to retain the money with him and he should have made efforts to discover the person or persons who had paid the same to him. He never made any attempt to pay back the sum of Rs. 100.00 admittedly received by him after making his signatures. The evidence recorded by the trial Court taken together with Ex.D/A and Ex. PW.1/G establishes beyond any probability of doubt that Shiv Dayal paid the money to the appellant towards the last Installment of the earnest money and it was because of some altercation on account of the cancellation of the bargain contained in Ex.D/A that Shiv Dayal thought of making a statement before the Inspector of Police, Anti-corruption which led to the raid. The presumption raised under section 4(1) of the Act was completely repelled by the appellant who successfully established his innocence. I conclude that the prosecution failed to establish any case against the appellant. His convictions are set aside and he is acquitted.

(44) With these observations, the appeal is allowed