

Kunhi Mohammed Vs. State

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Court : Kerala

Decided On : Jul-22-1958

Reported in : AIR1959Ker88; 1959CriLJ457

Judge : G. Kumara Pillai and; Vaidialingam, JJ.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 4(1); [Evidence Act, 1872](#) - Sections 101 to 104 and 133; Indian Penal Code (IPC) - Sections 161; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342 and 367

Appeal No. : Criminal Appeal No. 234 of 1957

Appellant : Kunhi Mohammed

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K.T. Thomas and; David J. Rodrigues, Advs.

Disposition : Appeal dismissed

Judgement :

G. Kumara Pillai, J.

1. The accused in Criminal Case No. 2 of 1957 of the court of the Special Judge (Sessions Judge), Trivandrum, who has been convicted under Section 161, I. P.

C. and Section 5(i)(d) read with Section 5 (2) of the Prevention of Corruption Act (Central Act 2 of 1947) and sentenced to undergo simple imprisonment for three months and pay a fine of Rs. 50/-in default of payment of which he Js to undergo imprisonment for a further term of two weeks, is the appellant in this case. The charge against him was that, being a public servant, he received, at about 5-30 p.m., on 23-8-1956, an illegal gratification of Rs. 7 from P. W. 2, a forwarding agent at Trichur, for booking 57 bags of wet skins which the latter had to send by railway from Trichur.

2. The prosecution case is as follows: The accused was one of the Assistant Goods Clerks of the Trichur Goods Shed of the Southern Railway. On 31-1-1956 P. W. 2, who used to send goods by railway from Trichur, sent a petition, Ex. P. 12, to the railway authorities complaining that corruption was rampant among the clerks of the Trichur Goods Shed and making specific allegations against one K.A. George who was a Booking Clerk.

Although an officer from Madras came down to Trichur and questioned P. W. 2 about the allegations in the petition, no further action was taken on it; and so, on 11-7-1956 he sent another petition, Ex. P. 13, to the railway authorities -- this time making allegations against both K.A. George and the present appellant, K.A. Kunhi Mohammed (who will hereafter be referred to in this judgment as the accused).

The substance of the complaint was that the two clerks were demanding and receiving bribes from the forwarding agents, and it was also stated in the petition that the forwarding agents were being put to great difficulties and hardships and the situation was so desperate that if the railway authorities still took no action the petitioner would be forced to take action himself against the erring clerks. Copies of this petition were also sent to the Adviser to the Rajpramukh (Travancore-Cochin State) and the General Manager, Southern Railway.

In July 1956 P. W. 2 had to send from the Trichur Railway Station 57 bags of wet skins. Of these he sent 30 bags on the 14th and the remaining 27 bags were to be sent on the 23rd. At the time of the booking of the 30 bags the accused and George demanded a mamool or illegal gratification at the rate of 2 annas per bag.

But as P. W. 2 had then no sufficient money with him he said that he would pay the mamool for the entire 57 bags on the 23rd, when the remaining bags were to be booked. Early in the morning on 23rd August 1956, P. W. 2 went to P. W. 12, the Investigating Officer of the Delhi Special Police Establishment, Madras Branch, who was stationed at that time at Trichur, and gave him a written complaint, Ext. P. 2, alleging that the accused and George were demanding illegal gratification and that he would have to pay the same.

P. W. 12 advised P. W. 2 to go once again to the Goods Shed and ascertain whether the clerks were still insisting upon payment of the bribe and then report to him, and P. W. 2 therefore went again to the Goods Shed at about 10 a.m., on 23-8-1956. George was not there at that time, and the accused who was there insisted on payment of the bribe. P. W. 2 returned and reported this to P. W. 12, and thereupon. P. W. 12 obtained the sanction of the Special First Class Magistrate, Trichur, to investigate the case under Section 5 (A) (c) of the Prevention of Corruption Act and laid a trap for the accused.

Summoning P. Ws. 3 and 5, two Councillors of the Trichur Municipal Council, he asked P. W. H to produce the money which would have to be paid to the accused in pursuance of his demand. The mamool for the 57 bags at the rate of 2 annas per bag amounted to Rs. 7-2-0. P. W. 2 produced five one-rupee notes and one two-rupee note. After preparing a mahassar attested by P. Ws. 2, 3 and 5, in which the numbers of the currency notes were noted, P. W. 12 returned the money to P, W. 2 and asked him to go to the goods shed and pay it to the accused if the latter again demanded the bribe.

He also sent P. Ws. 3 and 5 to the goods shed telling them that he himself was following them and asking them to give him a signal if the accused received the bribe from P. W. 2. P. W. 12 also contacted the local Tahsildar, P. W. 4, and requested him to be present at the time of the trapping. Accordingly, all these persons went to the railway station and they were there at about 5. 30 p.m. P. W. 4 had also to supervise the unloading of a consignment of milk powder and butter oil which was sent to him for free distribution.

On reaching the railway station P. W. 2 went into the goods shed and P. Ws. 3 and 5 posted themselves near its door. On the completion of the necessary documents for booking the 27 bags which were to be sent on that day the accused demanded the mamool or bribe, and when he stretched his hand P. W. 2 placed the money in his hand. On seeing this, P. W. 5 gave the agreed signal to P. W. 12 and the latter came running to the goods shed followed by his orderly, P. W. 11.

The accused went out of the goods shed on receiving the money from P. W. 2 and was absent from there for two minutes during which time he bought from a person outside the shed a D. B. Charity lottery ticket for Rs. 2; and he was just returning to the shed when P. W. 12 reached the spot. As the accused was just entering the shed by one door P. W. 12 also entered the shed by another door. As he came in, P. W. 12 asked P. W. 2 who Kunhi Mohammed was, and P. W. 2 pointed out the accused to him.

Seeing this the accused hastily went out of the shed and P. W. 12 followed him calling out his name and caught him as he was running round a cart which was on the platform. While he was thus running the accused took some currency notes from his pocket and threw them away, and after he was caught P. W. 12's orderly (P. W. 11) picked them up from the platform on P. W. 12's order.

Four one-rupee currency notes were thus picked up from the ground by P. W. 11 and they core the numbers of four of the notes which P. W. 2 had produced earlier in the evening and which were noted in the mahassar, Ext. P. 7. Taking the accused to the goods shed P. W. 12 searched him in the presence of P. Ws. 2, 3, 4, 5 and 8 and recovered from his left breast pocket the lottery ticket (M. O. 3) and another one-rupee note which also was one of the notes produced by P. W. 2 earlier in the day and noted in Ex. P. 7.

From another pocket P. W. 12 recovered four one-rupee currency notes, some changes, and certain other articles. After preparing mahassars about the search and the articles seized and making an entry in the Railway Station Diary about the incident, P. W. 12 left the place and made a report to his headquarters at Madras. Ext. P. 23 dated 28-8-1956 is the first information report. The charge against the accused was ultimately laid in the Sessions Court on 20-7-1957 by P. W. 13, the

successor-in-office of P. W. 12-

3. The accused pleaded not guilty in the Sessions Court. In his statement under Section 342 of the Code of Criminal Procedure he, however, admitted having received Rs. 5 from P. W. 2 while the latter was in the goods shed in the evening on 23-8-1956. According to him, it was the turn of George to be on duty on 23-8-1956. But as George had taken leave for that day he happened to be deputising for him,

P. W. 2 came to the shed early in the morning and enquired about George. The accused told him that he was on leave. Then P. W. 2 said that he had to return a loan taken from George and asked the accused whether, if he (P. W. 2) gave the money to him, he would give it to George. The accused agreed to this, and P. W. 2 left the place. He returned in the evening and gave him Rs. 5. After he got the money from P. W. 2 the accused left the shed to supervise the loading of goods and, while he was near a cart, he heard someone calling him by name.

He turned back and going round the cart went to the person who was calling him, i.e., P. W. 12. P. W. 12 asked him where was the money he received from P. W. 2 and he thereupon gave P. W. 12 the amount of Rs. 5 which P. W. 2 had given him as well as a further amount of Rs. 4 which he had with him and certain other articles. P. W. 4 asked him whether he had received the amount from P. W. 2 as a bribe and he told P. W. 4 that he had not received it as a bribe. After that they wrote some mahassars and left the place giving him back the articles other than the money and the lottery ticket.

4. The learned Sessions Judge disbelieved the above pica of the accused and found the prosecution case to be true. He therefore convicted the accused under Section 161, I. P. C. and Section 5 (i) (d) read with Section 5 (2) of the Prevention of Corruption Act, and the appeal is against the said conviction and the sentence passed therefor.

5. The main evidence relied upon by the Sessions Judge is that of P. Ws. 2, 3, 4, 5, 8, 11 and 12. He has also relied upon the presumption arising under Section 4(1) of the Prevention of Corruption Act. The contention of the appellant's learned

counsel in this court was that the learned Sessions Judge was wrong in relying upon the evidence of P. Ws. 2, 3, 4, 5, 8, 11 and 12 and that there was no scope in this case for raising the presumption under Section 4(1) of the Prevention of Corruption Act.

It was contended that P. W. 2 was a decoy or partisan witness, that P. Ws. 3, 4, 5 and 12 were also interested or partisan witnesses being persons who had participated in laying the trap for the accused, and that as such their evidence as well as that of P. W. 2 could not be accepted without independent corroboration and there was no such corroboration in this case.

Regarding the presumption under Section 4(1) of the Prevention of Corruption Act the argument was that the presumption could be raised only if there was acceptable evidence to show that the accused had received the money as a gratification and that, as the contention in this case was that he had received Rs. 5 from P. W. 2 only for the purpose of passing it on to George in repayment of the loan which P. W. 2 had taken from him and the prosecution had no evidence to show that this contention was false, there was no scope for raising the presumption. It was further contended on behalf of the accused that the Prosecution had also failed to prove the payment of Rs. 7 by P. W. 2.

6. P. W. 2 has given evidence exactly in terms of the Prosecution case set out in paragraph 2 above; and P. W. 12 also has given evidence regarding the incidents which transpired after P, W. 2 came to him on the morning of 23-8-1956 in the Same terms. P. W. 12 has not, of course, witnessed what transpired within the goods shed after P. W. 2 went into it and before he himself came there on getting the signal from P. W. 5.

P. Ws. 3 and 5 say that they were sent for by P. W. 12 on 23-8-1958, and they also speak to the laying of the trap, the production of the currency notes by P. W. 2, the preparation of Ex. P. 7 mahassar, and the part they had taken in the trapping by stationing them selves at the door of the goods shed and witnessing P. W. 2 giving the money to the accused when he stretched out his hand after preparing the documents in connection with the booking of the goods. The evidence of both of them regarding the subsequent events is alike.

According to both, when P. W. 2 gave the money to the accused he put the notes in his pocket and went outside and was absent from the shed for two minutes or so. Immediately on seeing the accused receiving the money P. W. 5 gave the signal to P. W. 12 and the latter came running to the shed. The accused was then just returning to the shed by the other door, P. W. 12 asked P. W. 2 who was Kunhi Mohammed (for, there was another clerk (P. W. 9) also in the shed.

P. W. 2 pointed out the accused and then the latter hurried out and went behind a cart. P. Ws. 11 and 12 followed, and just as P. W. 12 caught the accused he took some currency notes from his pocket and threw them away. Both P. Ws. 3 and 5 say that they saw the accused actually taking the currency notes from his pocket and throwing them away. They also say that after P. W. 11 picked up these notes at P. W. 12's orders it was found that the currency notes were four of the notes noted in Ex. P, 7.

The facts that the accused was subsequently taken to the goods shed and that another currency note number of which also had been noted in Ex. P. 7 and a lottery ticket were recovered from his left pocket and some more money from another are also spoken to by P. Ws. 3 and 5. P. W. 11 also speaks to the same facts, P. W. 8 is another forwarding agent who happened to be on the platform at the time.

He too claims to have witnessed some of these incidents and says that during the two minutes that he had gone away from the shed after receiving the money from P. W. 2 the accused gave a two-rupee note to a stranger on the platform and received from him a paper looking like M. O. 3 which is the lottery ticket. The suggestion of the Prosecution is that during the two minutes the accused went out of the goods shed after receiving the money from P. W. 2 he purchased the lottery ticket with the two-rupee note he had received from P. W. 2 and that it is on account of this purchase of the lottery ticket that it has not been possible to recover the entire sum of Rs. 7 which P.W. 2 had given to the accused but only Rs. 5.

P.W. 4, the Tahsildar, says that while he was supervising the unloading of the milk powder and batter oil he heard P.W. 12 calling the accused's name and running

after him, that he too went to the spot and that he saw P.W. 11 picking up some currency notes from the ground which were later found to be four of the notes entered in Ex. P-7. He also speaks to the fact that when he asked the accused whether he had received the money as bribe from P.W. 2 he denied the allegation. This is the evidence relied upon by the Prosecution.

7. We may say at once that we are not satisfied with the truth of P.W. 8's evidence and of the prosecution suggestion that the lottery ticket was purchased by the accused with part of the money which he got from P.W. 2 although the learned Sessions Judge has accepted both P.W. 8's evidence and the prosecution suggestion regarding the lottery ticket.

According to P.Ws. 3 and 5, P.W. 5 gave the signal to P.W. 12 immediately on seeing the accused receiving the bribe. He was out of the goods shed only for two minutes at the most, for by the time P.W. 12 came running to the shed the accused also had returned to it. The lottery ticket bears the accused's name written in a fine and steady hand in ink at its righthand top corner.

It would have taken more than this short interval of time for the accused to pay the money to the agent of the lottery, for the latter then to write the accused's name on the ticket and to tear it out from the counter-foil and give it to him, and for the accused to return again to the shed. The omission of the Prosecution to trace the seller of the lottery ticket and to put him into the witness box is also very significant.

After all, it was not a very difficult matter to trace out the seller of the ticket. In the first place it must have been very easy for the Police to find out the local agents of the D. B. Charities lottery tickets. Even if it was difficult for them to find out from enquiries at Trichur who could have been the person who sold the ticket to the accused it would have been very easy for them to get the necessary information by making enquiries at the head office of the lottery.

The ticket bears a number, and the lottery head office must undoubtedly be in a position to say who was the agent through whom that ticket was sold. The learned Sessions Judge says that as the ticket bears the date 23-8-1956 there is every

reason to believe that the accused must have purchased the ticket on that day. This conclusion must have been reached with closed eyes, for the date 23-8-1956 bearing on the ticket is not the date on which it was sold but the closing date for the payment of the subscription.

There is also another date printed equally boldly on the ticket and that is the date for the drawing of the lottery. As the accused had admittedly other amounts also with him when he was caught by P.W. 12 he need not have waited for the payment of the bribe by P.W. 2 to purchase the lottery ticket; and considering the fact that 23-3-1956 was the closing date for the lottery, we are inclined to believe that he would not have waited till he got the bribe from P.W. 2, which he could not have been sure of receiving until the amount was paid to him, for purchasing the lottery ticket.

8. Although we do not see our way to accept the prosecution case as regards the lottery and the disappearance of the two-rupee note we are satisfied that the prosecution case in other respects is absolutely true. Probably the two-rupee note was lost when the accused threw away the money while P.W. 12 was pursuing him or he might have destroyed it by swallowing or otherwise, and he was caught by P. W. 12 before he could swallow the entire lot.

As the accused was going away from the goods shed and was for some time hidden from their view by the cart P.Ws. 2, 3, 5, and 12 might not have seen him chewing and swallowing the 2 rupee note while he was hurrying away. Whatever that be, there can be no doubt of the fact that he had received at least Rs. 5 from P.W. 2 on that day.

That fact is admitted by the accused himself in his evidence. The accused would say that he received it only because he was made to believe that P.W. 2 had taken a loan from George and that P.W. 2 was repaying that loan through him. According to the appellant's counsel, if the explanation given by the accused is true he is not guilty of any offences and it is for the prosecution to prove that the explanation which the accused has given, which is fully consistent with the proved facts of the case, is untrue. Before dealing with the question whether it was for the Prosecution to disprove this explanation or not, we desire to advert to certain

circumstances.

The evidence of P.Ws. 3 and 5 is clear that the accused hurried away from the shed as soon as P.W. 12 asked P.W. 2 who Kunhi Mohammed was and that while P.W. 12 was seizing him the accused threw away some currency notes from his pockets which were picked up by P.W. 11 and found to be four of the notes noted in Ex. P-7. If this evidence is true the accused's explanation must be false. For, if he had received the amount from P. W. 2 only as repayment of the loan which he had taken from George and for the purpose of paying it to George he need not have hurried away or thrown away the notes when P.W. 12 caught him.

According to P.Ws. 2 to 5 and 12 the fifth marked note was also taken from the accused's pocket after he was taken to the goods shed. According to the accused, all these five notes which had been given to him by P.W. 2 he had voluntarily given to P.W. 12 after the latter caught him. There can therefore be no doubt of the fact that the accused had received Rs. 5 from P.W. 2. Now, the question is whether the evidence of P.Ws. 2, 3, 4, 5, 11 and 12 regarding the manner of the recovery of the five one rupee notes can be believed.

9. There can be no doubt that P.W. 2, was highly interested in the Prosecution and had a grudge against the accused. That is clear from Exs. P-12 and P-13, the petitions he sent to the railway authorities and the Adviser to the Raj Pramukh His evidence cannot, therefore, be accepted without material corroboration.

Likewise, P.W. 12, is interested in the Prosecution being the Investigating Officer and the person who laid the trap for the accused. His evidence also therefore requires material corroboration before it can be acted upon. Although it was with the knowledge and with the assistance of P.Ws. 3 and 5 that the trap was laid and P.W. 4, also had knowledge of it before he came to the railway station, we are not able to accept the contention that they are partisan witnesses.

P.Ws. 3 and 5 are Councillors of the Trichur Municipal Council, and it has not been shown that they are in any way interested either in P.W. 2 or P.W. 12 or in the activities of the police department generally. It has also not been shown that they had Any grudge against the accused. They took part in the trap not with the object

of bringing the accused to book at any cost but only out of a sense of public duty, and we do not believe that, if the facts spoken to by them were not true, they would have given evidence in Court in the manner that they have done, likewise, P.W. 4 also appears to us to be a disinterested witness. He did not take part in the actual laying of the trap.

He was not present when the currency notes were produced by P.W. 2 and Ex. P-7 mahassar prepared.

He was only informed of the trap by P.W. 12 when he was invited by the latter to go to the railway station and see whether it was working successfully or not. The principles to be kept in view in appreciating oral evidence in cases like this have been stated by the Supreme Court in the following passage extracted from Their Lordships' judgment in *State of Bihar v. Baswan Singh*, AIR 1958 SC 500 :

'In some of the cases which have been cited at the bar a distinction has been drawn between two kinds of 'traps'--legitimate and illegitimate--as In re, M.S. Mohiddin, 1952 Cr LJ 1245: (AIR 1952 Mad 561) and in some other cases a distinction has been made between tainted evidence of an accomplice and interested testimony of a partisan witness and it has been said that the degree of corroboration necessary is higher in respect of tainted evidence than for partisan evidence (see *Ram Chand Tolaram Khatri v. The State*, (S) AIR 1956 Bom 287. We think that for deciding the questions before us, such distinctions are somewhat artificial, and in the matter of assessment of the value of evidence and the degree of corroboration necessary to inspire confidence, no rigid formula can or should be laid down.'

For the aforesaid reasons, we think that the learned Judge of the High Court did not correctly appreciate the effect of the decision in *Shiv Bahadur Singh v. State of Vindh-P.*, 1954 SCR 1098 : (AIR 1954 SC 322) and he was in error in thinking that that decision laid down any inflexible rule that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration. The correct rule is this : if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are

partisans or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness.'

10. Applying the above principles to the facts of the present case, we have no doubt that the evidence of P.Ws. 3, 4 and 5 can be accepted without any reservation. It was contended by the appellant's learned counsel that as P.W. 4 has said that he had not seen the accused taking the money from his pocket and throwing it away his evidence would not establish that the accused threw away the four currency notes and that to that extent the evidence of PWs. 3 and 5 on the one hand and that of P.W. 4 on the other are contradictory. As P.W. 4 was at a distance and came to the spot only on hearing P. W. 12 calling out the accused's name it is quite possible that he might not have seen the accused taking the money from his pocket and throwing it away.

But his evidence is clear that he saw P.W. 11 picking up the notes from the platform. There is, therefore, no contradiction between his evidence and that of P. Ws. 3 and 5. P Ws, 3 and 5 were near by & were following P, W. 12. They could, therefore, see the accused actually taking the money from his pocket and throwing it away. This conduct on the part of the accused is rather inconsistent with the explanation he has given in the Sessions Court for bis receipt of the money from P.W. 2.

11. Another contention which the appellant's counsel put forward is that the evidence of P.Ws. 3 and 5 does not show that the accused had demanded a bribe and that, according to them, they have not actually heard the conversation between the accused and P.W. 2 inside the shed. P.W. 9, a fellow clerk of the accused who was also in the goods shed, says that he has not heard the conversation between the accused and P.W. 2 or seen the passing of the money.

The evidence of P.W. 9 is obviously false, for the accused himself admits that he has received Rs. 5 from P.W. 2 inside the shed. P.Ws. 3 and 5 could not have heard any conversation as they were outside the shed. Regarding the demand for bribe in the evening, there is, of course, only the evidence of P.W. 2, But his evidence is fully corroborated by the circumstances proved through the evidence of P.Ws. 3 to 5 and the accused's conduct in throwing away the money when P.W. 12 caught him. In these circumstances, we consider that the lower Court acted rightly in believing the evidence of P. Ws. 2 to 5, 11 and 12.

12. Apart from P.W. 2's evidence that the accused demanded a bribe and the payment was made by him as bribe to the accused, the Prosecution is also entitled to rely upon the presumption under Section 4(1) of the Prevention of Corruption Act. Section 4(1) of that Act reads :

'4 (1) Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, XLV of 1860, 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.'

The presumption under this section arises not only when the accused has accepted or obtained for himself or for any other person any gratification but also when ho has accepted or obtained for himself or for any other person any valuable thing from any person. Currency notes, it cannot be denied, are valuable things; and even according to the accused, he had obtained Rs. 5 from P.W. 2. Our finding is that he has received Rs. 7. Whether the amount he received was Rs. 5 or Rs. 7 and whether he received it for himself or on behalf of George, he had undoubtedly received a valuable thing from P.W. 2, and he was also admittedly a public servant.

A presumption under Section 4(1) of the Prevention of Corruption Act therefore arises on these facts against him; and it was for him to rebut that presumption. How and in what circumstances the presumption would arise and what is its nature are explained in the following passage from the judgment of the Supreme Court in *State of Madras v. Vaidyanatha Iyer*, AIR 1958 SC 61 :

'The findings of the High Court in the present case are, to say the least, halting, and the approach to the whole question has been such that it falls within what Mr. Justice Mahajan in *State Govt., Madhya Pradesh v. Ramakrishna Ganapatrao*, AIR 1954 SC 20 described as 'acting perversely or otherwise improperly'.

Although the learned High Court Judge has in the beginning of the judgment mentioned the presumption which arises under Section 4 of the Prevention of Corruption Act (II of 1947) the following passage in the judgment :

'in any case, the evidence is not enough to show that the explanation offered by the accused cannot reasonably be true, and so, the benefit of doubt must go to him'

is indicative of a disregard of the presumption which the law requires to be raised under Section 4. The relevant words of this section are :

'Where in any trial of an offence punishable under Section 161 it is proved that an accused person has accepted.....any gratification ;other than legal remuneration).... .from any person, it shall be presumed unless the contrary is proved that he accepted..... .that gratification as a motive or reward such as is mentioned in the said Section 161'.

'Therefore where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words 'shall presume' and not 'may presume' the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but Section 4 of the Prevention of Corruption Act

is in pari materia with the Evidence Act because it dealt with a branch of law of evidence e.g., presumptions, and therefore should have the same meaning. 'Shall presume' has been defined in the Evidence Act as follows :

'Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved'.

It is a presumption of law and therefore it is obligatory on the Court to raise this presumption in every case brought under Section 4 of the Prevention of Corruption Act because unlike the case of presumption of fact presumptions of law constitute a branch of jurisprudence. While giving the finding quoted above the learned Judge seems to have disregarded the special rule of burden of proof under Section 4 and therefore his approach in this case has been on erroneous lines'.

This being a presumption of law, when the facts necessary for raising the presumption are either proved or admitted, the Court has to proceed on the basis that the gratification obtained by the accused was accepted by him as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code until the contrary is proved by the accused.

We, therefore, hold that, when the prosecution has proved that the accused public servant has received money from any person which is not legally due to him or that fact is admitted by the accused himself, the burden is on him to disprove the presumption arising under Section 4(1) of the Prevention of Corruption Act and that in such a case it is not necessary for the prosecution to affirmatively prove anything more to show that the amount was received by him as a bribe or illegal gratification.

13. The degree of proof required to rebut the presumption must, of course, depend upon the facts and circumstances of each case. But in view of the imperative provision in Section 4(1) that it shall be presumed until the contrary is proved that the accused accepted the gratification or valuable thing as a motive or reward such as is mentioned in Section 161, Indian Penal Code, the presumption cannot be held to have been rebutted without sufficient material before the Court which would ordinarily carry conviction to a judicial mind. As the contrary has to be

proved it will not be sufficient for the accused merely to create a doubt. Under Section 3(2) of the Evidence Act

'a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'.

While, no doubt, the statement made by the accused under Section 342 of the Code of Criminal Procedure is part of the matter before the Court and therefore that statement also has to be taken into consideration in considering whether the presumption has been disproved, ordinarily it will not be prudent to act upon his statement alone. The statement of the accused, it cannot be denied, is the statement of a highly interested person, and ordinarily it will be unsafe or imprudent to act upon the statement of an interested person without corroboration,

A mere explanation by the accused, which is not inconsistent with the proved or admitted fact that he had received money from a person with whom he had dealings officially which was not legally due to him, would not therefore be sufficient, without corroboration by other evidence -- either direct or circumstantial --, to rebut the presumption under Section 4(1)

14. Except his own statement, the accused has absolutely no evidence to prove his explanation that P.W. 2 gave him the money for giving it over to George in repayment of the loan he (P.W. 2) had taken from him. No attempt has been made to call and examine George, and even when P.W. 2 was in the witness box there was no suggestion that he had given the money to the accused for payment to George or that he had taken a loan from the latter.

No such explanation seems to have been given by the accused at the time of his apprehension even though he then denied to P.W. 4 the charge of bribery. In the circumstances, we hold that the learned Sessions Judge was right in considering that the presumption under Section 4(1) of the Prevention of Corruption Act has not been rebutted in this case and convicting the accused under Section 161, Indian Penal Code, and Section 5(i)(d) read with Section 5 (2) of the Prevention of

Corruption Act.

15. Nothing has been urged in this Court against the sentence, and we do not also consider the sentence to be severe by any means.

16. In the result, the conviction of the accused and the sentence passed upon him are confirmed and the Criminal Appeal is dismissed. His bail bonds are cancelled and he is directed to be taken into custody.

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