

The State of Rajasthan Vs. Mohammad Habib

The State of Rajasthan Vs. Mohammad Habib

SooperKanoon Citation : sooperkanoon.com/755917

Court : Rajasthan

Decided On : May-10-1972

Reported in : 1973CriLJ703; 1972()WLN350

Judge : C.M. Lodha and; M.L. Joshi, JJ.

Appellant : The State of Rajasthan

Respondent : Mohammad Habib

Judgement :

C.M. Lodha, J.

1. This is an appeal by the State from the judgment of Shri Mohammad Yaqub. Special Judge. Banswara dated 29.11.1968 by which the learned Judge acquitted the respondent Mohammed Habib for offences under Section 161, I.P.C. and Section 5(1)(d) read with Section 5 Sub-section (2) of the Prevention of Corruption Act. 1947 (which will hereinafter be called 'the Act').

2. The respondent was a Head Constable in the Police Department. At the relevant point of time he was posted at Check post. Nathupura. District Banswara. On 29.1.1965 he recovered opium from P.W. 2 Noorgul Khan and arrested him under the Opium Act. Noorgul Khan was prosecuted under Section 4 read with Section 9 of the Opium Act in the Court of Sub-divisional Magistrate. Banswara. The prosecution case is that the respondent demanded illegal gratification from

Noorsul Khan on the representation that he would set him acquitted. The amount of bribe was settled at Rs. 50/- out of which Rs. 15/- were paid on 21.6.1965 and Rs. 20/- were agreed to be Paid on 23.6.1965. Noorgul Khan, however, wanted to bring the respondent to book for demanding illegal gratification from him and with this end in view he submitted an application Ex. P. 4 to the Dy. Superintendent of Police. Anti Corruption. Shri Santosh Kumar (P.W. 7). Noorgul Khan also produced two notes of Rs. 10/- each before the Dy. S.P., who put his initials on them. The Dy. S.P. then arranged a trap, and asked the complainant Noorgul Khan to hand over the bribe money to the respondent in Gujarat Lodge, situated in Banswara. He also sent P.W. 4 Ganeshi Lal. Sub-Inspector, Anti Corruption Department and two Motbirs P.W. 3 Sokat Ali and P.W. 5 Ratanlal to witness the payment. The Dy. S.P. also followed them and parked his jeep at short distance from the Gujarat Lodge.

3. As previously arranged the accused respondent Mohammad Habib came to the Gujarat Lodge and asked the complainant whether he had brought the amount of Rs. 20/- and thereupon the complainant gave two currency notes of Rs. 10/- each initialled by the Dy. S.P. to the accused who put the same in the pocket of his pant. At that time P.W. 3 Sokat Ali is alleged to have told the accused that since he had accepted the money, he would now get Noorsul Khan acquitted. The Dy. S.P. Shri Santosh Kumar disclosed his identity and asked the accused to produce the money which he had taken from the complainant as illegal gratification. On seeing the Dy. S.P. accused became pale and nervous and after some hesitation took out the notes in question from the pocket of his pant and gave them to the Dy. S.P. who compared the numbers of the notes which he had noted down and found that they bore his initials. The memo of recovery of the notes was prepared and the same is marked Ex. P. 3. Since the accused had also mentioned his talk with Ganeshi Lal about having taken a knife from the complainant, the Dy. S.P. asked the accused about the knife and thereupon the accused produced a knife, a recovery memo of which was also prepared and the same is marked Ex. P. 6. The Dy. S.P. then arrested the accused, who was in due course prosecuted for the aforesaid offences in the Court of Special Judge, Banswara.

4. In support of its case the Prosecution examined nine witnesses. The accused in his statement under Section 342. Cr.P.C. denied having taken any money, from the complainant. He even denied to have met the complainant in the Gujarat Lodge. As regards the knife he stated that it belonged to him and that the same had been recovered from him in the police office at about 4 p.m.. Towards the end of his statement he stated that he had arrested the complainant Noorgul Khan with opium along with the other co-accused Babu Khan on 29.1.1965 at the Check Post. Nathupura and had produced both of them at the Police Station. He has further stated that thereafter he was transferred and the complainant Noorgul Khan was challaned by Sub Inspector Sachidanand and that a false case had been brought against him. However, he did not produce any evidence in defence. The learned Special Judge found that the accused was a public servant and that the sanction for his prosecution. Ex. P. 1 accorded by P.W. 9, Shri D.S. Sahi D.I.G. was proper. He also found that the two currency notes of Rs. 10/- each in Question were handed over by the complainant Noorgul Khan to the accused in Gujarat Lodge on 23.6.1965 between 12 noon and 1 P.M., and the same were recovered from the possession of the accused by Shri Santosh Kumar. Dy. Superintendent of Police. Anti Corruption Department. In spite of having recorded his finding in favour of the prosecution on the aforesaid points, the learned Judge, however, acquitted the accused on the ground that the prosecution has utterly failed in proving that the currency notes in Question were accepted by the accused by way of bribe or gratification which was not a legal remuneration due to the accused.

5. Learned Counsel for the state has strenuously urged that the order of acquittal is based on an erroneous view of the law and that the conclusion arrived at by the lower Court that the accused is not proved to have accepted the illegal gratification nor he had committed the offence of criminal misconduct in the discharge of his duties are palpably wrong. On the other hand the learned Counsel for the accused respondent has contended that since the present is an appeal from acquittal this Court should not interfere with conclusions of the lower Court. He has also tried to justify the order of acquittal on the ground that the sanction for prosecution Ex. P. 1 is not proper.

6. We may first decide the objection regarding the sanction Ex. P. 1. The argument of the learned Counsel is that in the sanction Ex. P. 1 it has been mentioned that the accused had accepted the amount in question as a motive or reward for deposing in favour of Shri Noorgul Khan in the case under the Opium Act launched against Noorpul Khan, and since during the trial Noorgul Khan had not specifically stated that the amount in question had been accepted by the accused as motive or reward for deposing in his favour, the sanction is bad. We do not see any substance in this contention. It has been specifically mentioned in the sanction Ex. P. 1 that from the perusal of the facts of the case placed before him by the Anti Corruption Department, the sanctioning authority was satisfied that Shri Habib Khan had committed an offence under Section 161, I.P.C. and Section 5(1)(d) read with Sub-section (2) of the Prevention of Corruption Act P. W. 9 Shri D.S. Sahi has stated that the whole file of the case against the accused was placed before him and after going through all the papers and satisfying himself hp had accorded sanction to prosecute the accused. It has been stated inter alia in the report Ex. P. 4 made by the complainant to the Dy. Superintendent of Police that the accused had promised to depose in his favour and this is how this fact came to be mentioned in the order of sanction also. The sanction cannot become bad merely because a particular fact mentioned therein is not deposed to by the witness in the course of trial. The order of sanction Exj P. 1 shows on the face of it what were the facts constituting the offence charged and that a prima facie case was made out against the appellant. We are. therefore, satisfied that the order of sanction in the present case fulfils the requirements of Section 6 of the Prevention of Corruption Act and accordingly we reject the argument of the learned Counsel for the accused on this aspect of the case.

7. We shall now proceed to consider the evidence against the accused. It is not disputed that the accused was a public servant. So far as the evidence relating to the trap is concerned we have the evidence of P.W. 2 Nooreul Khan. P.W. 3 Sokat Ali. P.W. 4 Ganeshilal, P.W. 5 Ratanlal and P.W. 7 Shri Santosh Kumar Chowdhari. Dy. Superintendent of Police. Anti Corruption Department. No doubt P.W. 5 Ratanlal, one of the Motbirs to the recovery memo of the notes (Ex. P. 3) has turned hostile to the prosecution and has tried to help the accused by stating that hp does not know how the notes in question came into possession of the

accused, that he did not know the accused and that he also does not know whether Noorgul Khan was alone in the hotel or there was somebody with him. He has further stated that his signatures were obtained on the notes in the Dak Bungalow even though the recovery memo Ex. P. 3 was written at the hotel. He further states that he does not remember whether the contents of Ex. P. 3 were read over to him. This witness is obviously a liar. The evidence of the rest of the witnesses relating to the trap and the recovery of the notes in question from the possession of the accused has been believed by the trial Court. The finding arrived at by trial Court that the notes in question were handed over to the accused by the complainant in Gujarat Lodge and the same were recovered from his possession has not been challenged even by the learned Counsel for the respondent. In his statement during the trial the accused has of course denied his presence at the Gujarat Lodge as well as the factum of the trap. However in our opinion, this denial of the accused is false. In this connection it may be noticed that in the recovery memo Ex. P. 3. it is mentioned that on being asked as to why he had taken the notes in question, the accused replied that he had given a loan of Rs. 20/- to the complainant Noorgul Khan and the same had been returned to him. But as already stated above the accused did not stick to this explanation and denied the trap altogether in the course of the trial. However, we do not find any substance in the denial of the accused and hold in agreement with the Court below that the notes in question were handed over to the accused by the complainant in the course of the trap, and the same were recovered from the possession of the accused by the Dy. S.P. P.W. 7 Shri Santosh Kumar (vide the recovery memo Ex. P. 3).

8. Learned Counsel for the State has argued that under Section 4 of the Prevention of Corruption Act of 1947 a presumption ought to have been raised that the accused accepted the gratification in question as a motive or reward such as mentioned in Section 161 Indian Penal Code.

9. In order to appreciate the contention advanced on behalf of the State we may reproduce here the relevant portion of Section 4 of the Act.

4. Presumption where Public Servant Accepts Gratification other than Legal Remuneration:

(1) Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, 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 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.' In this connection we may also examine the necessary ingredients of an offence under Section 161 I.P.C. Before an offence is held to fall under Section 161 the following requirements have to be satisfied:

(1) That the accused at the time of the offence was. or expected to be. a public servant.

(2) that he accepted, or obtained or agreed to accept, or attempted to obtain from some person a gratification.

(3) that such gratification was not a legal remuneration due to him, and

(4) that he accepted the gratification in question as a motive or reward, for

(a) doing or forbearing to do an official act; or

(b) showing, or forbearing to show favour or disfavour to some one in the exercise of his official functions: or

(c) rendering, or attempting to render any service or disservice to some one. with the Central or any State Government or Parliament or the legislature of any State or with any public servant.

10. As mentioned earlier, admittedly the accused was a public servant. It is further clear that he obtained from the complainant the amount in question. namely two

currency notes of Rs. 10 each. At this stage it is necessary to point out that in the course of the trial the accused has offered no explanation for having accepted the amount in dispute, though it appears that at the time of the recovery of the notes in question from him he stated to the Dy. S.P. that the amount of Rs. 20/- accepted by him from the complainant was in lieu of repayment of the loan advanced by him to the complainant. It is so mentioned in Ex. P. 3 but the accused has not relied on such a defence in the course of the trial. It is clear that the sum of Rs. 20/- received by the accused was not due to him as a legal remuneration and it was open to him to show that though that money was not due to him as a legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful, but the burden would be on the accused in such a case, and it would be for him to show that the explanation is a true one. In the present case far from doing that the accused has offered no explanation. The statement in the recovery memo Ex. P. 3 that the accused told the Dy. S.P. that he had advanced a loan of Rs. 20/- to the complainant could have been of some assistance to the accused if he had taken up this defence in the trial. But that he did not do. We are therefore, surprised how the learned Special Judge has come to the conclusion that the defence of the accused that he had accepted the money in question not as a bribe but by way of repayment of the loan advanced by him to the complainant is true? In this connection it may be interesting to note the following observations of the learned Special Judge:

It is true that in the case before the Court the accused has made a total denial of accepting the money as bribe and has also denied the fact that the money was recovered from his possession. But the defence of the accused is that this money was not accepted as bribe but it was an amount of loan advanced to the complainant and the same was returned at that particular time as already has been disclosed in Ex. P. 3 the memo of recovery. It was at the earlier opportunity that the accused had told the Police that a sum of Rs. 20/- was advanced as loan by him to complainant Noorgul Khan who in return has pledged a knife Ex. P. 3 with him by way of security. That amount of loan was returned by the complainant in the hotel by adopting deceitful means about which the accused was taken unawares. I think the prosecution cannot fall back from this position that the

defence of the accused was disclosed before it at the earliest opportunity when there was no room to concoct the story or to introduce any after-thought material. It is true that the accused has not given this explanation in his statement Under Section 342 Cr.P.C. but his failure to do so cannot implicate him into a guilt, when his defence was already before the prosecution and which is now placed on record before the Court and about which the Dy. S.P. Shri Santosh Kumar has also given his statement on oath. When I take that explanation of the accused into consideration. I find sufficient truth in it in presence of various other factors such as the enmity of the accused with the complainant and the way and manner in which the approach was made to trap him.

11. It is sufficient to point out that the finding arrived at by the learned Special Judge is Palpably wrong and cannot be justified. In fact learned Counsel for the accused did not make any effort to show that the accused had succeeded in proving that the money in question had been accepted by him by way of repayment of the loan advanced by him to the complainant.

12. In this connection we would like to refer to the following observations of their Lordships of the Supreme Court in *Dhanvantrai v. State of Maharashtra* : 1964 CriLJ437 .

In the case before us. however, the presumption arises not under Section 114 of the Evidence Act but under Section 4(1) of the Prevention of Corruption Act. It is well to bear in mind that whereas under Section 114 of the Evidence Act it is open to the Court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the Court to draw such presumption under Sub-section (1) of Section 4, however if a certain fact is proved, that is, where any gratification (other than legal gratification) or any valuable thing is proved to have been received by an accused person the Court is required to draw a presumption that the person received that thing as a motive or reward such as is mentioned in Section 161, I.P.C. Therefore, the Court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course it is open to that person to show that though that money was not due to him as legal

remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words unless the contrary is proved which occur in this provision make it clear that the presumption has to be rebutted by 'proof', and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

13. The contention of the learned Counsel for the respondent, however, is that it is not proved in the present case that the accused had accepted the gratification in question as a motive or reward for doing or forbearing to do an official act or showing or forbearing to show favour or disfavour to some one in the exercise of his official functions or rendering or attempting to render any service or disservice to some one, with the Central or any State Government or Parliament or the Legislature of any State or with any public servant. In this connection it has been argued that it was none of the official functions of the accused to get the complainant acquitted in the opium case when the case had been brought before the Court. In support of his contention learned Counsel has relied on *State of Aimer v. Shivji Lal* : 1959 CriLJ1127 . In *re Pulipati Venkiah* AIR 1924 Mad 851 : 26 Cri LJ 396. *Bachev Lal v. State* : AIR1952 All667 and *K.L. Anand v. State* : AIR1956 All673 .

14. On the other hand it has been argued by the learned Counsel for the State that a public servant accepting or obtaining illegal gratification need not actually have the power or be in a position to perform the act or to show favour or disfavour and all that is required is that act or omission for which gratification is obtained must be in connection with the official functions of the public servant. To support his contention the learned Counsel has relied upon *Indur Davaldas v. State of*

Bombay : AIR1952 Bom58 , Pritam Singh v. State Bhim Singh v. State AIR 1955 Raj 108 : 1955 Cri LJ 992, Mahadev v. State of Bombay : AIR 1953 SC179 and Mahesh Prasad v. State of Uttar Pradesh : 1955 CriLJ249 .

15. In : AIR1952 Bom58 , it was held that Section 161, I.P.C. requires that the gratification must be received by a public servant as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show favour or disfavour in the exercise of his official functions. It does not require that the public servant must himself be in a Position to Perform the act or show favour or disfavour, for doing or showing which the bribe has been paid to him. This Bombay ruling alone with a few other rulings bearing on the point as also AIR 1924 Mad 851 : 26 Cri LJ 376 relied on by the learned Counsel for the accused were noticed by their Lordships of the Supreme Court in : AIR 1953 SC179 and it was observed that the Points of law appear to have been more fully discussed in : AIR1952 Bom58 and other cases taking the same view and that the reasonings set out therein appear to be more convincing than those set out in AIR 1924 Mad 851 : 26 Cri LJ 396.

16. In the State v. Sadhu Charan : AIR1952 Ori73 it was held that:

The fact that the public servant is functus officio when money is offered to him as a bribe would not as a matter of law, be sufficient to negative the offence under Section 161.' It was further observed that:

The gist of the offence is not that there was at the time an official act to be procured capable of being performed by the taker of the bribe or by another Public servant with whom he is intended to exercise his influence but that the extra legal gratification is obtained as a motive or reward for doing official acts, that is for doing what may be or is believed or held out to be official conduct. The stress in the section is not so much on the performance of the official act itself, or in its being capable of performance but on the nature of the act as being official. This is meant to exclude from its purview acts which were totally unconnected with any official conduct and which may be attributable purely to the private capacity of the bribe taker or the other public servant. The emphasis is on the gratification offered being a motive or reward for official conduct (inclusive of that which is believed or

held out to be so).

This Orissa case was also referred to by their Lordships of the Supreme Court in : AIR 1953 SC179 and the reasonings contained therein were approved.

17. In this connection reference may also be made to the last explanation to Section 161 I.P.C. which reads as under:

A motive or reward for doing: A person who receives a gratification as a motive for doing what he does not intend to do. or as a reward for doing what he has not done, comes within these words.' Illustration (c) to the section is as follows:

A. a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give money as a reward for this service. A has committed the offence defined in this section.

18. From the explanation and the illustration referred to above it appears to us that it is not necessary in order to constitute an offence under Section 161 that the act for doing which the bribe is given should actually be performed or that the public servant should be capable and competent of performing it. It is sufficient if a representation is made that it will be performed and a Public servant obtaining a bribe by making such representation will be guilty of the offence punishable under this section even if he had no intention to perform that act. It can be argued with plausibility that a representation by a person that he will do an act impliedly includes a representation that it is within his power to do that act and it is immaterial whether the act which is the consideration for the bribe is or is not within the Power of the public servant.

19. Now looking to the facts of the present case admittedly the accused had recovered opium from the possession of the complainant Noorgul Khan and had registered a case against him under the Opium Act and had also arrested Noorgul Khan. The accused was, therefore, connected with the prosecution of the case against Noorgul Khan in exercise of his official functions. We have it in the evidence of P.W. 2 Noorgul Khan that the accused used to come on each date of hearing in the opium case and used to have talk with the complainant. He also told

him that he would get the complainant acquitted if something was Paid to him. The witness further states that a sum of Rs. 50/- was settled to be paid in addition to Rs. 10/- to be paid to the witnesses out of which the complainant had paid Rs. 15/- to the accused on 21.6.1965 and Rs. 20/- were agreed to be paid two days later. We also have it from the statements of P.W. 2 Noorgul Khan, P.W. 3 Sokat Ali and P. W. 4 Ganeshilal. Sub Inspector of Police that after the complainant had handed over the notes in question to the accused in the course of the trap Sokat Ali told the accused that since he had accepted the money, he would now get the complainant acquitted and thereupon the accused replied that it was his responsibility to set Noorgul Khan acquitted. but that they should talk in a low voice lest somebody would overhear them.

20. Learned Counsel for the accused has criticised the testimony of Noorgul Khan and Sokat Ali on the ground that Sokat Ali is a cousin of Nooraul Khan on the maternal side, a fact which has been admitted by Sokat Ali but Noorgul Khan has not disclosed this fact and has described Sokat Ali as one Mohemmadan gentleman as if he was not known to him. We are not impressed by this argument. No specific question has been Put to Noorgul Khan as to whether Sokat Ali was related to him, and, therefore. Noorgul Khan cannot be dubbed as a liar on this point. But apart from that, we have independent evidence of P.W. 4 Ganeshi Lal Sub-Inspector of Police. Ganeshi Lal states that in his presence and hearing after accepting the notes in Question the accused said that he would get the complainant Noorgul Khan acquitted in the opium case. Learned Counsel has also criticised the evidence on this Point on the ground that in the report Ex. 4 submitted by the complainant to the Dy. S.P. Anti Corruption the details as to how the accused would set the complainant acquitted in the opium case are mentioned, but those details do not find place in the statement of Noorgul Khan in the court. It is true that in the application Ex. P. 4 Noorgul Khan has mentioned the details as to how the accused would get him acquitted. It is stated therein that the accused, told him that he would win over the witnesses and change his own statement and would tell the Court that the complainant was not the person from whom the opium had been recovered and since the whole investigation in the case had been done by him, he would get him acquitted, and that if no money was Paid to the accused he would get him convicted. It appears to. us that the details as to

how the accused would get the complainant acquitted in the opium case were not elicited from Noorgul Khan in his statement, but in our opinion, that is immaterial because Nooraul Khan has stated in unequivocal terms that the accused told him that he would set him acquitted. Indisputably the accused had arrested the complainant in the case. He had recovered opium from his Possession and had also registered a case under the Opium Act against the complainant. In these circumstances it must be held that for the purpose of extorting illegal gratification from the complainant the accused induced a belief in the mind of the complainant that the accused who was an investigating officer in the case would Bet him acquitted, and the achievement contemplated was. in our opinion, an act of official character and cannot be said to be totally unconnected with the official conduct of the accused. We see no substance in the argument of the learned Counsel for the accused that the inducement given by the accused to the complainant was attributable purely to his private capacity. The essence of the offence, in our opinion consists in making a representation that an official act would be performed or a favour or disfavour would be shown and not in actually performing that act or actually showing favour or disfavour and consequently when the complainant agreed to give bribe to the accused the latter in the present circumstances will be said to have received it as a motive or reward for doing an official act or showing favour in the exercise of his official functions, within the meaning of these words as used in the section. Learned Counsel has also argued in this connection that P.W. 2 Noorgul Khan has deposed that he was not confident whether the accused would really get him acquitted and that he knew that after the case has been challaned in the Court, it is only the Court which can grant acquittal. In our opinion this part of the statement of Noorgul Khan does not in any way detract from the nature of the transaction that took place between the complainant and the accused. Besides that, it may be Pointed out that Section 161 of the Code does not require that the public servant must in fact be in a position to do the official act, favour or service at the time nor the state of the mind of the person, who offers gratification has any thing to do with the public servant to whom the illegal gratification is offered would be in a position to do that act for doing which the amount is offered to him.

21. In view of the foregoing discussion we are of the opinion that it is proved that the accused had accepted gratification as envisaged under Section, 161 I.P.C. and under Section 4(1) of the Act, it shall be presumed unless the contrary is proved that he accepted the gratification as a motive or reward such as is mentioned in the said Section 161, I.P.C. As already discussed in the earlier part of this judgment the accused has failed to rebut the presumption and far from substantiating the explanation which he is alleged to have given at the time of the recovery of the notes from him, he has not even stuck to it but has, on the other hand, denied the trap altogether and so also the acceptance of the amount in question from the complainant. In this view of the matter there is no escape from the conclusion that the accused is guilty under Section 161 I.P.C.

22. In the second Place the charge against the accused respondent is also under Section 5(1)(d) read with Sub-section (2) of the Act, Section 5(1)(d) and Sub-section (2) read as under:

5(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty.

(d) If he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

Section 5(2) states:

Any Public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

23. Upon the facts which we have found to be admitted and/or proved there can be no doubt that the respondent was guilty of abusing his position as public servant within the meaning of Section 5(1)(d) of the Prevention of Corruption Act, and thereby obtained for himself a pecuniary advantage. The lower Court has not dealt with this aspect of the case separately and has mixed up this charge with that under Section 161 I.P.C. At one place it has observed that the amount of Rs.

20/- paid by the complainant to the accused was by way of repayment of loan advanced by the accused to the complainant. At another Place it has said regarding the explanation offered by the accused at the time of the recovery of the notes from him by the Dy. Superintendent of police (vide Ex. P. 3) that although it may not be true but it is worth giving credence in view and circumstances of the case. Then again the learned Judge has said 'that it appears highly improbable that the accused may have accepted the bribe from the complainant in a hotel in broad daylight where so many other persons were also present. He had also Minted out certain discrepancies, on the question how the complainant approached the Dy. Superintendent of Police. Anti Corruption Department and whether he wrote out the application Ex. P. 4 after meeting the Dy. S.P. or kept it ready before meeting him. The lengthy discussion by the learned Special Judge on these unsubstantial and immaterial points is in our opinion, of no consequence. The facts that the accused had demanded illegal gratification from the complainant on the representation that he would set him acquitted in the opium case and that in the course of trap the complainant had paid Rs. 20/- in two currency notes of Rs. 10/- each duly initialled by the Deputy Superintendent of Police Anti Corruption and the same were recovered from the possession of the accused have been established beyond all manner of reasonable doubt. Consequently, it must be held that the charge against the accused under Section 5(1)(d) read with Sub-section (2) of the Act is established and Mr. Hastimal, learned Counsel for the accused is unable to make good his argument on this aspect of the case also.

24. Lastly, it was urged by the learned Counsel for the accused that the lower court has found the accused not guilty and the conclusions reached by it cannot be said to be unreasonable. It is submitted that the mere fact that this Court may be inclined to take a different view of the evidence on the record is not sufficient to interfere with the order of acquittal. In support of his contention learned Counsel has relied upon *Khedu Mohton v. State of Bihar* : 1971 CriLJ20 . However, we find it difficult to accede to this submission. As we have held above the conclusions reached by the Special Judge are palpably wrong and are based on erroneous view of the law. As observed by their Lordships of the Supreme Court in : 1971 CriLJ20 the Powers of the High Court in considering the evidence on record in appeals under Section 417 are as extensive as its powers in appeals against

convictions. Their Lordships have further observed that unless the conclusions reached by the lower court are palpably wrong or based on erroneous view of the law or that its decision is likely to result in grave injustice the High Court should be reluctant to interfere with its conclusions. However, as we have come to the conclusion that the conclusions reached by the lower court are palpably wrong and are based on erroneous view of the law an interference with the order of acquittal by the lower court is necessary.

25. The result is that we allow this appeal, set aside the order of acquittal passed by the Special Judge. Banshwara and convict the respondent Mohammad Habib under Section 161, I.P.C. and sentence him to rigorous imprisonment for one year and a fine of Rs. 200/-. In default of payment of fine he shall undergo two months' further rigorous imprisonment. He is also convicted under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and sentenced to rigorous imprisonment for one year. The sentences under both the counts are made to run concurrently. The accused respondent shall be arrested and sent to jail to undergo the sentence awarded to him.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com