R. Gopalakrishnan Vs. the State

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Court : Chennai

Decided On : Aug-23-2001

Reported in : 2002CriLJ47

Judge : M. Karpagavinayagam, J.

Acts : Prevention of Corruption Act, 1947 - Sections 4(1), 5(1) and 5(2); Indian Penal Code (IPC) - Sections 120B, 161, 162, 163, 165 and 420; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 561 of 1994

Appellant : R. Gopalakrishnan

Respondent : The State

Advocate for Def. : E. Jacob R. Daniel, Spl. P.P.

Advocate for Pet/Ap. : S.A. Rajan, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. R. Gopalakrishnan was convicted for the offence under Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the

Act') and sentenced to undergo R.I. for one year and to pay a fine of Rs. 5,000/-. Hence, this appeal challenging the same.

2. The short facts leading to the conviction are as follows :

(a) The appellant (A1) was functioning as the Manager of the Perambur Branch of the Syndicate Bank from August 1984 to December 1985. M/s. Jaycee Exports, Mylapore, is A2 and Sri Jagadishlal Kanyalal, the Proprietor of the said Company is A3, A2 and A3 in September 1985 floated several companies and by giving the various names opened the accounts in the Perambur Branch where the appellant was working as the Manager. He allowed A2 and A3 to overdraw from those accounts to the tune of Rs. 11 lakhs. To set right the overdrawn limits, which were permitted by the appellant without permisison from the Head Office, he issued bank guarantee ib 12-9-1985 to Mac Millan and Company in favour of A2 and A3 for a sum of Rs. 24 lakhs even without getting ratification from the Head Office. The said bank guarantee was extended again on 26-12-1985 to be valid till 30-6-1988.

(b) The loan amount of Rs. 24 lakhs, which was given by Mac Millan Company, was utilised by A2 and A3 for crediting the various overdrawn accounts in the Syndicate Bank to the tune of Rs. 11 lakhs and odd and they utilised the balance amount of Rs. 12 lakhs and odd for themselves. When the loan amount was not paid back by A2 and A3, Mac Millan company sent a notice to the Bank requesting to invoke the guarantee. It was only at that time, the Head Office came to know about the existence of the bank gaurantee. On verification, it was found that there is no entry in the guarantee register about the issuance of bank guarantee and subsequent extension. Therefore, the Head Office of the Syndicate Bank gave a complaint to C.B.I, on 6-9-1988. P.W. 2 Ramesh, the C.B.I. Inspector took up investigation of the case registered for the offences under Section 120-B read with 420 IPC and Section 5(2) read with 5(1)(d) of the Act against A1 to A3.

(c) During the course of investigation, P.W. 2 recovered typewriter from the house of the appellant, which was used for typing the bank guarantee Ex. P7 and the letter Ex. P8 issued by the appellant. He also examined P.W. 3 from the Head Office in regard to the rules and regulations for issuing bank guarantee. He further

examined P.W. 4 and P.W. 5, who belong to Mac Millan Company and they stated that on the basis of the bank guarantee issued by the appellant, they sanctioned loan of Rs. 24 lakhs in favour of A2 and A3. Thereafter, he obtained sanction from the competent authority P.W. 1, the Divisional Manager of the Syndicate Bank. The sanction is Ex. P1. On the basis of these materials, he filed the charge sheet for the offences under Section 120-B read with 420 IPC and Section 5(2) read with Section 5(1)(d) of the Act against A1 to A3.

(d) Even though the charge sheet was filed against all the three accused, the case against A1, the appellant was separately tried as a split-up case, since A2 and A3 were not available then.

(e) On conclusion of trial, the appellant was questioned under Section 313, Cr. P.C. with reference to the materials placed by the prosecution. The appellant stated admitting the issuance of bank guarantee even without ratification, that it was only a violation of the rules and regulations of the Bank and since the entire overdrawn amount to the Bank and the loan amount to the Mac Millan Company had been paid back, there was no loss. Though the said bank guarantee was not issued under the written permission, he obtained permission from the Head Office orally and as such, he is not liable to be punished for the offences mentioned above.

(f) On appreciation of the evidence available on record, the trial Court, though acquitted the appellant in respect of the offences under Sections 120-B read with 420 and 420, IPC, convicted him for the offence under Section 5(2) read with 5(1)(d) of the Act and sentenced to undergo R.I. for one year and to pay a fine of Rs. 5,000/-. Feeling aggrieved by the said judgment, the appellant has filed this appeal.

3. Mr. S. A. Rajan, the learned counsel appearing for the appellant, while assailing the judgment impugned, would make the following submissions :

In this case, even though abusing of the position as a public servant had been proved by the prosecution, it was not proved that either the appellant or the customer (A2 and A3) had gained any valuable thing or pecuniary advantage as

contemplated under Section 5(1)(d) of the Act. Mere abusing the position in the absence of the gain of any pecunilary advantage for himself or for another would not constitute the offence alleged. The materials in this case do not indicate that the appellant had any dishonest intention or that he had obtained any pecuniary advantage or allowed any other person to have pecuniary advantage by the act of his negligence or wilful dereliction of duty. The phrase 'Public servant, obtains for himself or any other person any valuable thing or pecuniary advantage' means that a person as a public servant must receive or take into possession of a certain property which may be a valuable thing or pecuniary advantage, for himself or for any other person. In the light of Sections 161, 162, 163 and 165, IPC, it is noticed that the public servant has to receive either for himself or for any other person by passing on the same to him. In this case, there is no material to show that the appellant received any pecuniary advantage for himself or passed on to any other person after receipt of the same. Therefore, the mere dereliction of duty and mere abusing of the position would not constitute the offence. Hence, the appellant is liable to be acquitted.

4. In support of the above plea, the counsel for the appellant would cite the following authorities :

1) State of Kerala v. M. T. Anandan ;

2) S. K. Kale v. State of Maharashtra ;

3) State of Maharashtra v. M. H. George ;

4) State (Delhi Administration) v. Satish Chand 1987 Cri LJ 1205;

5) Union of India v. J. S. Khanna ;

6) Sweet v. Parsley (1969) 1 All ER 347;

7) Crane v. Lawrence (1890) 25 QBD 152;

8) The King v. Chapman 1931 KBD606.

5. In reply to the above submissions, Mr. E. Jacob R. Daniel, the learned Special Public Prosecutor for CBI, would contend that since the materials available on record have not been disputed by the accused in the statement under Section 313, Cr. P.C., it is clear that the prosecution proved that the appellant obtained pecuniary advantage for A2 and A3 by abusing his position as a public servant by issuing bank guarantee without ratification from the Head Office. He mainly placed reliance on the decision of the Supreme Court in M. Narayanan v. State of Kerala .

6. I have given my anxious consideration to the rival contentions.

7. Before delving into the question posed before this Court, it may be relevant, at this juncture, to refer to the materials available on record to prove the case of prosecution.

8. According to the prosecution, the appellant, the Manager of the Syndicate Bank, Perambur, Branch allowed A2 and A3 to overdraw from the accounts in the name of several persons opened by A3 to the tune of Rs. 11,28,539/- and on 12-9-1985, the appellant dishonestly issued bank guarantee for Rs. 24 lakhs in favour of M/s. Mac Millan India Limited without getting sanction from the Head Office and without taking any security or collecting Bank's commission to enable A3 Jegadishlal Kanyalal to avail a loan of Rs. 24 lakhs from the said Company and thereafter, the said amount was deposited into the account of A2 in the Bank and after clearing the outstanding overdrawn amount of Rs. 11,28,539/- allowed him to utilise the balance amount of Rupees 12,71,460/- from that account, thereby obtained pecuniary advantage for Jegadishlal Kanyalal (A3).

9. The materials placed before the Court would indicate that the appellant being the Branch Manager of the Syndicate Bank, Perambur, even though he knew that he was not competent to sanction a loan exceeding the limit of Rs. 5,000/-, allowed A3 to open 8 current accounts and he sanctioned loan to the tune of Rs. 11,28,539/-.

10. The other materials would further indicate through the evidence of P.W. 3 R. Venkataraman that he could issue bank guarantee only up to the limit of Rs. 50,000/ - and any loan is required more than the limit, the customer has to give

application requesting for the amount more than the limit to the Head Office and only after the ratification and after getting the third party security, the required loan would be sanctioned after deducting the commission.

11. In this case, it is clear from the evidence of P.W. 2 and P.W. 3 and Exs. P7 and P8, the bank security and the bank letter and Exs. P1 7 to P24, Statement of accounts, that the third accused was given loan of Rs. 11,28,539/- in different accounts more than the limits, namely Rs. 5,000/- and also issued bank guarantee to the tune of Rs. 24 lakhs in violation of the circulars Exs. P3 and P4 issued by the Head Office. P.W. 4 and P.W. 5, who belong to Mac Millan Company, who granted loan of Rs. 24 lakhs in favour of A3, would also State that the loan was granted not merely on the basis of the property documents but mainly based upon the bank guarantee issued by the appellant. P.W. 5, the Managing Director of Mac Millan Company, would specifically State in his deposition that the company would not have advanced the loan of Rs. 24 lakhs, if Jegadishlal Kanyalal (A3) had not furnished bank guarantee issued by the appellant on behalf of the Syndicate Bank. These materials in the form of oral and documentary would clearly show that the loan of Rs. 24 lakhs was obtained by A3 from the Mac Millan Company only on the strength of the bank guarantee issued by the appellant (A1).

12. It had been admitted by the appellant himself before the trial Court that he issued bank guarantee and he went to Bangalore and met P.W. 5 at Mac Millan Company along with A3 and requested him to issue loan to A3 and only by using that amount, the loan amount due to the Syndicate Bank was discharged. He would further admit that he did not obtain ratification in writing from the Head Office.

13. For all the questions under Section 313, Cr. P.C. with reference to the oral and documentary evidence adduced by prosecution, the appellant answered in the affirmative. Thus, it is clear that there is no dispute in the fact that bank guarantee was issued by the appellant; the said bank guarantee was extended without the ratification of the Head Office; on the strength of the bank guarantee. A3 was sanctioned a loan of Rs. 24 lakhs; out of the said amount, the loan amount to be paid to the Bank was discharged; and A3 was able to obtain a loan only on the

basis of the bank guarantee issued by the appellant and on the recommendation made by the appellant in person to P.W. 5, the Managing Director of the Mac Millan Company.

14. According to the counsel for the appellant, even though the prosecution proved its case that the position of the appellant as a Manager was used for getting the loan on the issue of bank guarantee without the approval of the Head Office, it cannot be said that it was done with the dishonest intention, especially when the prosecution case itself would admit that the said loan amount was used for discharging loan to be paid to the Bank in which the appellant was working as the Manager. It was further contented that even assuming that the said act would amount to abusing of his position, since the appellant had not obtained any pecuniary advantage and there was no loss to the Bank, the offence under Section 5(1)(d) is not made out, inasmuch as the main ingredient, namely, 'obtain' is absent.

15. Under Section 5(1)(d) of the Act, if a public servant abuses his position as a public servant and obtains for himself or for any other person any pecuniary advantage, for showing favour, he can be punished under Section 5(2) of the Act. Thus, it is made clear that in Section 5(1)(d) of the Act by introduction of the words 'by corrupt or illegal means or by otherwise abusing his position as public servant' that a dishonest element on the part of the public servant while obtaining a valuable thing should be established. The words 'otherwise abusing his position as public servant' do not confine merely to misuse of his position as public servant, but such misuse must be with a dishonest mind. Unless it is established that the public servant obtained pecuniary advantage for himself or for any other person by dishonestly misusing his position as public servant, the offence under Section 5(1)(d) of the Act will not be made out. Therefore, the essential ingredient of the offence is obtaining pecuniary advantage by dishonestly misusing his position as a public servant.

16. The phraseology ('by otherwise abusing the position of a public servant') is very comprehensive. The gist of the offence under this clause is that a public officer abusing his position as public servant obtains for himself or for any other

person any pecuniary advantage. 'Abuse' means misuse i.e., using his position for something for which it is not intended. The element of dishonesty is implicit in the word of abuse. In other words, mere misuse without dishonest intention is not abuse, i.e. misusing the position with dishonest intention would mean abuse. Of course, the dishonest intention can be inferred from various circumstances which would depend upon the facts of each case.

17. At this juncture, it would be wrothwhile to refer to the decisions rendered in M. Narayanan Nambiar v. State of Kerala Major S. K. Kale v. State of Maharashtra and S. P. Bhatnagar v. State of Maharashtra , wherein the word 'abuse' has been interpreted. The following is the extract from the judgment of the Supreme Court reported in 1979 SCC 323 ; 1999 Cri LJ 566 (supra):

Following the decision in M. Narayanan Nambiar v. State of Kerala (supra) (supra), it was held by this Court in Major S. K. Kale v. State of Maharashtra 1977 Cri LJ 604 (supra) that the abuse of position in order to come within the mischief of the section must necessarily be dishonest so that it may be proved that the accused caused deliberate loss to the department. It was further held in this case that it is for the prosecution to prove affirmatively that the accused, by corrupt or illegal means or by abusing his position, obtained any pecuniary advantage for some other person. It would, therefore, be necessary to find out in this case as to whether the accused abused their position and acted dishonestly or with a corrupt or oblique motive in having the contract in question entrusted to A-4.

18. In the light of these principles, it is clear that misuse of the position by the public servant with the dishonest intention while obtaining the pecuniary advantage is the essential ingredient for proving the offence under Section 5(1)(d) of the Act.

19. On that basis, it has been argued by the learned counsel for the appellant that it may be that the accused/appellant would have issued bank guarantee by misusing the position or abusing the position without ratification, but it may not attract Section 5(1)(d), as there is no dishonest intention.

20. At the outset, I shall mention that it may not be appropriate for the counsel for the appellant to submit that there was no dishonest intention on the part of the appellant, while issuing the bank guarantee. As a matter of fact, according to the evidence of P.W. 3, the appellant would pay a loan of Rs. 5,000/- for each account, but in violation of Ex. P3 circular, he allowed A3 to overdraw the amount to the tune of Rs. 15 lakhs. Neither this was intimated to the Bank nor any permission was sought for the overdrawal of the amount.

21. Furthermore, he could issue bank guarantee only for the maximum amount of Rs. 50,000/- as per the circulars marked in this case. But, on 12-9-1985, he went to the Mac Millan Company along with A3 and requested P.W. 4 to issue loan of Rs. 24 lakhs to A3. P.W. 4, in turn, said that the sanctioning authority was the Managing Director at the Head Office at Bangalore. Therefore, both the appellant and A3 went to Bangalore and met P.W. 5, the Managing Director and requested him for the issue of loan in favour of A3. Then, the matter was referred to the Legal Advisor. The Legal Advisor gave opinion that the loan can be granted on the basis of the bank guarantee for the said sum. Accordingly, as per the condition put by P.W. 5, the appellant issued bank guarantee for Rs. 24 lakhs on 12-9-1985. Since the amount was not realised in time, the appellant issued another letter on 26-11-1985 extending the period of bank guarantee up to 21-7-1988. Either on 12-9-1985, while issuing the bank guarantee for a period up to 30-4-1986 or on 26-12-1985, while issuing another letter extending the period of bank guarantee up to 21-7-1988, the appellant never thought it fit even to inform the Head Office by sending the copy of the bank guarantee..

22. It is also an admitted fact that the appellant did not enter the same in the books of accounts of the Bank. As per the rules and circulars, as pointed out by P.W. 3, he cannot issue bank guarantee without taking any third party security or collecting the Bank's commission at the rate of 11/2% per month. Therefore, the fact that A3 was allowed to overdraw the loan more than the limit even without intimation to the Head Office and issuance of bank guarantee on 12-9-1985 and subsequent extension for the period up to 21-7-1988 and the fact that the appellant went along with A3 to P.W. 4, the Chief Accountant of the Mac Millan Company for arranging a loan from the said Company on behalf of A3 and thereafter, he went to

Bangalore and met P.W. 5 along with A3 and requested for the issue of loan assuring bank guarantee and the issue of bank guarantee without any intimation and without any subsequent ratification would clearly show that he abused his position as a Branch Manager of the Syndicate Bank to the core in order to enable A3 to get the loan of Rs. 24 lakhs from the Mac Millan Company.

23. It is now contended that the same was done only for the purpose of getting back the loan which was allowed to be overdrawn. It is noticed that A3 got the loan of Rs. 24 lakhs, but the outstanding loan in the Bank was only Rs. 11 lakhs and odd and the balance amount was utilised by A3 as pecuniary advantage. Therefore, it cannot be said that he did all the acts, though the said acts were in violation of the circulars, were committed only in the interest of the Bank.

24. The fact remains that A3 got the pecuniary advantage of Rs. 24 lakhs, at least to the tune of Rs. 12 lakhs after discharging the loan, only on the strength of the bank guarantee issued by the appellant without any intimation or ratification or even without making entries in the Bank Ledgers. Thus, it is obvious that the appellant wanted to do the entire transaction by abusing his position without bringing to the record and without the knowledge of the Head Office.

25. This is a clear suppression of facts to the Head Office in order to get the pecuniary advantage for A3 by issuing bank guarantee, since he knew that he may not be able to get ratification from the Head Office, which requires fulfilment of various conditions. This is nothing but dishonesty. Therefore, it can be safely concluded that the appellant abused his position with dishonest intention to the maximum extent possible and thereby, he obtained pecuniary advantage for A3 Jagadishlal Kanyalal.

26. The mere fact that the Bank did not lose any money or the Mac Milan Company was able to recover money from A3 through the Court proceedings, would not absolve the appellant of the criminal liability. Furthermore, the contentioin of the learned Special Public Prosecutor that the Bank sustained loss when bank security was issued without deducting commission which the Bank would be entitled, has to be given due consideration.

27. According to the counsel for the appellant, inasmuch as Section 5(1)(d) of the Act would provide for the offence of criminal misconduct in the discharge of his duty as a public servant by abusing his position obtains pecuniary advantage for himself or for any other person unless it is proved that the public servant has received the pecuniary advantage for himself or for any other person, the said public servant cannot be convicted under Section 5(1)(d) read with 5(2) of the Act. In short, the contention of the counsel for the appellant that since the appellant did not receive any pecuniary advantage either for himself or for any other person, he is not liable to be convicted.

28. By making this submission, the learned counsel for the appellant wants this Court to give the meaning of the word 'obtain' as 'receive'. In this case, as admitted by P.W. 2, there is no material to show that the appellant received any pecuniary advantage for himelf. Similarly, it is not the case ' of prosecution that he received the pecuniary advantage from the Bank directly and passed on to the third accused.

29. In view of the above fact situation, it is contended by the counsel for the appellant that as there is no receipt of the pecuniary advantage by the public servant, the main ingredient, namely 'obtain' is missing. To put it differently, according to the counsel for the appellant, unless there is proof to show that the public servant received pecuniary advantage either for himself or for any other person, the offence under Section 5(1)(d) of the Act is not made out.

30. At the outset, it shall be stated that though this argument is so subtle, on a deeper scrutiny of the provisions and the clear phraseology contained in the said Section, it could be safely stated that the said interpretation is untenable. If the above interpretation is accepted, this Court will be doing violence not only to the language contained in the section but also to the spirit of the enactment.

31. The Act was intended to make effective provision for the prevention of bribe and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act, the Supreme Court in R. S. Nayak v. A. R. Antulay would hold as follows

(para 18 of Cri LJ) :

The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the Court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the Court to give effect to. the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The Court is entitled to ascertain the intention of the Legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the Legislature enacted the Statute. The rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the Court to adopt that construction which would advance the object underlying the Act.

32. In the light of the above principles laid down by the Supreme Court, we should look upon phraseology used in the relevant section.

33. Let us now see the provisions of Section 5(1)(d). Section 5(1)(d) reads thus :

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

(a) to (c)...

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

34. Under this clause, if a public servant by corrupt or illegal means or by otherwise abusing his position as public servant obtains for himself or for any other person pecuniary advantage, he will be guilty of criminal misconduct, punishable

Under Section 5(2) of the Act.

35. Now, we shall consider the question as to whether the word 'obtain' would mean 'receive'.

36. For that purpose, we have to see the other provisions contained in Section 5(1). Let us now see Section (1)(a) and (b) :

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

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code, or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable things without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned.

37. As per Section 5(1)(a) and (b), if a person habitually accepts for himself or for any other person, he is punishable. But, Section 5(1)(d) indicates that if a person by abusing his position as a public servant obtains for himself or for any other person, he is punishable. Thus, the word 'accept' is not used in Section 5(1)(d). This would mean, 'accept' is different from 'obtain'.

38. Let us now see the meaning of the word 'accept' :

(i) In 'Concise Oxford Dictionary', it is stated that 'accept' would mean, 'consent to receive, receive as suitable'.

(ii) In 'Law Lexicon', it is mentioned that the word 'accept' may mean 'to take or receive what is offered'; 'to take or receive as adequate'; 'to take or receive with a consenting mind'.

(iii) In 'Webster's Third New International Dictionary', the word 'accept' means, take, receive, perceive, explain, undertake.

(iv) In 'Black's Law Dictionary', 'accept' means, to receive with approval or satisfaction; to receive with intent to retain.

So, the word 'accept' clearly conveys the meaning as 'the receipt of a thing'.

39. Let us now see the meaning of 'obtain' as contained in various dictionaries :

(i) In 'Law Lexicon' (Encyclopaedic Law Dictionary), 'obtain' means, to acquire, get. The expression 'obtaining' connotes an element of effort on the part of the suitor or applicant.

(ii) In 'Words and Phrases', the word 'obtain' is explained by declaring that any person who by any false pretense obtains from another any money, etc. is not limited in its meaning to an obtaining in person by the accused, but money paid to another at his request is obtained, within the meaning of the statute.

(iii) In 'Law Lexicon' (By Justice T.P. Mukherjee), the word 'obtaining' connotes an element of effort on the part of the applicant. The word 'obtains' does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver.

(iv) In 'Stroud's Judicial Dictionary', the word 'obtain' means, to procure or gain as the result of purpose and effort, hence generally to acquire or get.

40. In the light of the above meanings, we have to consider the meaning of the word 'obtain' contained in Section 5(1)(d) in the context with which it has been used. The phraseology as found in Section 5(1)(a) and (b) would incorporate both the words, namely, 'accept' or 'obtain'. But, Section 5(1)(d) would provide the word 'obtain' by omitting the word 'accept'. The meaning of the word 'accept' contained in the various dictionaries as mentioned above would show that accept means

'receive'. But, the word 'obtain' is a wide and comprehensive term.

41. On a plain reading of the express words used in the clause, there cannot be any doubt that every benefit obtained by a public servant for himself, or for any other person by abusing his position as a public servant falls within the mischief of the said clause.

42. The words 'to obtain pecuniary advantage for any other person' would clearly mean that by abusing his position, he got the other person to obtain the pecuniary advantage. The words 'obtain for himself' would mean that obtaining the pecuniary advantage either by himself or through somebody else for himself. Similarly, the words 'to obtain for any other person' would; mean, to take an effort to enable any other person to obtain the pecuniary advantage. It definitely does not mean that the public servant must receive the pecuniary advantage from third party and pass it on to the other person for his benefit.

43. The ingredient of the words 'to obtain for any other person' is very much available in his case because the materials placed before the Court would clearly show that the appellant took efforts and acted dishonestly by issuing bank guarantee without the knowledge of and the permission from the Head Office to enable A3 to receive pecuniary advantage. In other words, 'to obtain for any other person the pecuniary advantage' would clearly mean that he has acted abusing his position as a public servant to enable any other person to obtain the pecuniary advantage or to get him obtained the same.

44. The Supreme Court in the judgment reported in (supra) had an occasion to deal with the question whether Section 5(1)(d) would get attracted in the case where the accused being a public servant by abusing his position as a Sub Revenue Inspector assigned in the name of his brother-in-law without revealing the fact that he was his bother-in-law and by making false entries showing that the said land contained only 97 trees, whereas the land had actually 150 trees. On these facts, it was held by the Supreme Court as follows :

We therefore hold that the accused in order to assign the land to his brother-in-law underestimated the value of the said land to conform with the rules and thereby

abused his position as a public servant and obtained for him a valuable thing or a pecuniary advantage within the meaning of the said clause and therefore is guilty of an offence under Sub-section (2) thereof.

This observation, in my considered opinion, would apply in all fours to the facts of the present case.

45. The decision reported in cited by the learned counsel for the appellant would not apply to the present case, as in that case, it was found that the issuance of the Essentiality certificate would not amount to abuse of the official position.

46. In , it was held on facts that the purchase order looked without making any enquiry from the local market was without any dishonest intention and therefore, there was no abuse of position. Hence, this decision also would not help the appellant.

47. The learned counsel for the appellant would cite 1987 Cri LJ 1205 (Delhi High Court) with reference to the presumption under Section 4(1) of the Act. It is not the case of prosecution that Section 4(1) would apply in this case, since the appellant has been charged only for the offence under Section 5(1)(d) read with 5(2) of the Act. Therefore, this decision also would not be useful to the appellant.

48. In , Supreme Court would hold that the mere gross negligence in making local purchase from military purpose not in accordance with the rules prescribed for purchases would not lead to the inference of dishonest intention. But, in this case, as found earlier, the appellant has acted dishonestly by issuing bank guarantee in order to obtain pecuniary advantage for A3. Therefore, this decision would be of no avail.

49. The learned counsel for the appellant would cite 1931 King's Bench Division 606, in which it is held that the language of the section being ambiguous, the accused was entitled to the benefit of doubt. In this case, as discussed earlier, the meaning of the phraseology is so unambiguous. As held in the said decision, the words contained in the said section are to be taken in their primacy. Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning

which the canons of interpretation fail to solve, the benefit of doubt should be given to the subject and against the Legislature which has failed to explain itself.

50. In cited by the counsel for the appellant, the Allahabad High Court held that the offence under Section 5(1)(d) was not made out, since there is no material to show that the position of the accused as a public servant was abused, since his recommendation in favour of the supplier was approved by the superior officers. Therefore, the facts of that case are entirely different from the facts of the present case. As such, there is no merit in this appeal.

51. To sum up :

(1) The appellant dishonestly in violation of the circulars and Rules and Regulations, had allowed A3 to overdraw the loan amount to the tune of Rs. 15 lakhs without any permission nor gave intimation to the Head Office. In order to get the loan of Rs. 24 lakhs for A3, he went and met P.W. 4 and P.W. 5, the office-bearers of the Mac Millan Company, and requested them for the issue of loan in favour of A3 and for the said amount, he also issued bank guarantee, even though he knew that he is not competent to issue such a guarantee, on the same day i.e. on 12-9-1985. This was further extended on 30-4-1986 up to 21-7-1988. Even for the extension there is no ratification. The issuance of bank guarantee to the tune of Rs. 24 lakhs or its extension on different period had not even been intimated to the ' Head Office. Admittedly, these things ha1 not been entered into the books of accounts maintained in the Bank by the appellant. Admittedly, the bank guarantee was issued without taking any third party security or collecting the bank commission as provided in the Rules and Regulations. These acts have all been done by the appellant in order to help A3 to get the loan of Rs. 24 lakhs by abusing his position as a public servant with dishonest intention. Therefore, the main ingredient 'obtaining the pecuniary advantage by abusing the position with dishonest intention' is clearly made out.

(2) The words 'obtains for himself or for any other person any pecuniary advantage' would mean that the public servant has acted abusing his position by obtaining the pecuniary advantage for himself or to help any other person to obtain the same. It does not mean that the public servant shall receive the pecuniary

advantage from third party and pass it on to any other person for his benefit. In this case, the appellant acted in utter violation of the Rules and Regulations by abusing his position as public servant, thereby he obtained the pecuniary advantage for A3 by procuring the loan of Rs. 24 lakhs by furnishing bank guarantee even without deducting the bank commission.

52. Thus, both the ingredients, namely, 'abuse' as well as 'obtain' are explicitly present in this case and as such, the conviction for the offence under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 imposed upon the appellant by the trial Court is perfectly justified.

53. With regard to the sentence, it is pointed out that the appellant was already dismissed from service in pursuance of the order passed in the departmental enquiry. It is seen that the accused/appellant has been facing the trial from 1990 up to 20-9-1994, the date of judgment. The appeal filed by him also is pending before this Court from 1994 onwards. The appellant has been convicted and sentenced to undergo R.I. for one year under Section 5(1)(d). Though the one year imprisonment is minimum, it is provided in the proviso that the sentence of one year can be reduced further on any special reasons to be recorded in writing.

54. In view of the reasons quoted above, it would be appropriate to modify the sentence of one year into a period of six months and accordingly, the sentence of imprisonment is modified. As regards the sentence of fine, the same is confirmed. In other words, the appeal is dismissed. The trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence.