BOMBAY HIGH COURT

Pandurang Laxman Parab

Vs.

State of Bombay

Criminal Appeal No. 1433 of 1957

(Datar and Miabhoy, JJ.)

04.03.1958

JUDGMENT

Datar, J.

1. This is an appeal filed by the accused who has been convicted for an offence under Section 161 of the Indian Penal Code read with Section 4 of the Prevention of Corruption Act and sentenced to undergo six months' rigorous imprisonment.

2. The case of the prosecution was that the accused was at the material time a watchman or a mukaddam in the employ of the Bombay Port Trust. The complainant, one Gulabrao Jagdale, is a driver of a bullock cart which belongs to his master, one Govind Mali. He used to stay in the Lokhandi Jatha, an area which belongs to the Bombay Port Trust. It appears that he has his family which consists of three members at Satara. The complainant used to drive the bullock cart on hire and every day he used to give an account of the earnings which he made by driving the bullock cart. The accused told the complainant not to keep the bullock cart in the Lokhandi Jatha, He told that if the complainant did not give an amount of Rs. 10 per month as bribe, he would make a report to his superior officers and see that he was prevented from keeping his bullock cart in that area. The complainant agreed to pay an amount of Rs. 10 per month and it is stated for the prosecution that h0 made two such payments in the months of June and July. On 21-8-1956, the accused asked for an amount of Rs. 10 as instalment for the month, of August. The complainant, however, had no money with him and he paid only an amount of Re. 1/- to him and promised that he would pay the balance of Rs. 9 in a couple of days thereafter. On 22-8-1957, the complainant approached the Anti Corruption Branch. His complaint was recorded. In the evening at 5 P.M. the complainant went to the accused and told him that he would pay the amount at 5 p.m. on 23-8-1957. On 23-8-1957 the complainant was given an amount of Rs. 9/- in the presence of the panchas. They were marked currency notes. Pandurang Nagu, a panch, was directed by the Police to accompany the complainant and to see and hear what would take place between the complainant and the accused person. The complainant and the panch went and sat on an otla in the Lokhandi Jatha. In the meanwhile, a fountain pen hawker went near them. The panch wanted to purchase a fountain pen from the hawker. The bargain was struck at Re. 1/-. He, however, had a two-rupee currency note and the vendor had no change. So both the vendor and

the panch went away for obtaining change. In the meanwhile, at about 5.15 p.m. the accused came there and demanded the money from the complainant. The complainant gave him Rs. 8/-. The accused put the money in his pocket. Just then the complainant made a signal to the raiding; party and the raiding party came there and asked the accused to produce the notes which had been paid to him by the complainant. Upon this, the investigation started and the case came up before the Special Judge for trial. The accused pleaded not guilty to the charge. He admitted having received the money, but he did not receive it as a bribe or illegal gratification, but it was a loan which was returned by the complainant. He was pressing for the return of the loan and due to his insistence upon the payment of the lean, there were some quarrels and as a result of these quarrels, the complainant had put up this false case against him.

3. The learned trial Judge referred to the fact that at the material time when the panch was expected to see what was taking place between the complainant and the accused, the panch was not at the spot. He remained absent. He had gone out to have a change for the payment of the price of the fountain pen which he purchased from the hawker. The learned Judge was also not inclined to believe the complainant, but the learned trial Judge took into consideration the fact that the money was got produced from the accused and in the view of the learned trial Judge that enabled him to raise a presumption against the accused under Section 4 and so long as that presumption was not rebutted by the accused, the accused must be held guilty for the offence under Section 161 read with Section 4 of the Prevention of Corruption Act. Accordingly, he convicted and sentenced the accused as stated above.

4. Mr. Kavalekar who appears for the accused has drawn our attention to the fact that the case that has been tried to be made out by the complainant is wholly unworthy of any evidence. The complainant has stated in his evidence that he made, two payments previously before the day of the alleged offence and those payments were for the months of June and July. The complainant had paid in all an amount of Rs. 20 to the accused. It is also admitted by the complainant that every day he used to go to his master to whom the buttock cart belonged and render an account of the earnings that he made in the course of the day. It is surprising if he was1 rendering accounts to his master to whom the bullock cart belonged, how he did not state the fact that he had to make a payment of Rs. 10 in the month of June and of a like amount in the month of July to his master. Further, a remarkable feature of this case appears to be that the panch who had been expressly directed by the Police and the raiding party to accompany the complainant and to witness what would pass between the complainant and the accused conveniently remained absent on the pretext of making the purchase of a fountain pen from a passing hawker. So far as this case is concerned, the evidence of the panch is worthless and does not at all Support the case of the prosecution. We have, therefore, to proceed upon what the complainant himself has stated in his evidence. Reading the evidence as a whole, there is no doubt in our mind that he has not stated the truth at all before the Court. It is unthinkable that if he had been made to pay the bribe twice before the day of occurrence, he would not intimate this fact to his master. He was after all a servant plying the bullock cart on hire and he had to render accounts to his master. Further, he has stated at the trial that he did inform his master about his having paid the accused on two occasions, in all an amount of Rs. 20. This fact was not stated by the complainant in his statement before the Police. On 22-8-1957, he gave a written complaint to the Anti-Corruption Branch. Even in that complaint, he has not clearly stated that he paid an amount of Rs. 20 in all during the months of June and July. If, therefore, there is considerable doubt as to the payment ever having been made by him at any time before the day of the alleged occurrence, it shows that

the case that is tried to be made out, viz. that the complainant was given an amount of Rs. 8 as bribe on 23-8-1957 becomes weaker. The complainant himself is a partisan witness in such cases and it is well settled that it is not safe to rely upon the uncorroborated testimony of such a witness. In this case, the panch has not at all corroborated the statement of the complainant and we think that it is not safe to rely upon the evidence of the complainant alone and hold that the payment which he made over to the accused on 23-8-1957 was made over to him by way of any gratification other than legal remuneration. The learned Judge in paragraph 14 of his judgment has stated :

> "If I depended entirely on the evidence of the complainant to prove these facts, a lot could be said against him by the defence. But in this case I have held these facts proved not only on his evidence. The complainant has said that he did give Rs. 8 to the accused. But in fact at the time of the trap, marked notes of Rs. 8 were found on the person of the accused." Further on, in paragraph 15, the learned Judge says :
> "The prosecution has perforce to rely only on the evidence of the complainant; and had not the presumption arisen under Section 4 of the Prevention of Corruption Act (Act 2 of 1947), I do not know what conclusion I would have reached. But that position does not arise, because, in my opinion, the presumption definitely arises and this fact is not disputed even by the defense."

5. Therefore, the question arises whether the learned Judge was justified in drawing the presumption under Section 4 of the Prevention of Corruption Act. Section 4 of the Prevention of Corruption Act, so far as is material, says :

> "Where in any trial of an offence punishable under Section 161 of the Indian Penal Code, it is proved that an accused person has accepted or has agreed to accept for himself or for any other person, any gratification (other than legal remuneration) ..... it shall be presumed unless the contrary is proved that he accepted or agreed to accept that gratification as a motive or reward such as is mentioned in the said Section 161."

Before a presumption can be raised under Section 4 of the Prevention of Corruption Act, it is necessary for the prosecution to prove that the accused person has accepted or has agreed to accept for himself or for any other person any gratification other than legal remuneration. It is only when the prosecution has proved that the accused has accepted any gratification other than legal remuneration, the Court shall presume that the accused person accepted that gratification as motive or reward. In this case, we are not at all satisfied that the mere payment of money, which was got produced from the accused person on 23-8-1957, could be regarded as a gratification other than legal remuneration. The learned Additional Assistant Government Pleader has strenuously contended that mere sum of money without more if only shown to have been accepted by the accused will be enough to raise a presumption against him that he accepted that sum of money as a motive on reward and the offence under Section 161 of the Indian Penal Code would then be complete. The learned Additional Assistant Government Pleader says that if the prosecution must prove that the sum of money which is accepted by the accused person was not merely a payment of money, but also was gratification other than legal remuneration, then there

would be no necessity of raising a presumption under Section 4 of the Prevention of Corruption Act. We see that there is some force in what the learned Additional Assistant Government Pleader says in this behalf. But for the raising of the presumption under Section 4, it is, in our judgment for the prosecution to that not merely a payment of money or in kind was made over to accused, but it must be further proved by the prosecution, itself that such payment amounted to gratification other than legal remuneration. A mere payment without more would not, in our view, amount to a gratification other than legal remuneration and if it does not amount to gratification other than legal remuneration, there is no scope for raising the presumption under Section 4 of the Prevention of Corruption Act. The learned Assistant Government Pleader relied upon a case which has been reported in *Promod Chandra Shekhar v. Rex*[1], wherein it has been held

> "that the word 'gratification' in Section 4 has been used in the section in its primary dictionary meaning as 'satisfaction' and not in the sense of 'reward or recompense'. The presumption referred to in Section 4 arises as soon as the prosecution has proved that the accused person has accepted or obtained, or has agreed to accept or attempted to obtain for himself or for any other person any gratification in the above sense or any valuable thing, from any person provided (however illogical it may be that in the former case it has further proved that such gratification was not accepted or obtained, or agreed to be accepted or attempted to be obtained by way of legal remuneration."

With great respect to the learned Judges, we feel that it is not possible for us to accept the view expressed by them in that case. Their Lordships seem to think that the presumption that arises under Section 4 when there is "acceptance of any valuable thing" is the same as in the case of acceptance of a gratification. We are disposed to think that acceptance of gratification other than legal remuneration gives rise to a presumption that that gratification was accepted as reward or motive, while the obtaining of a valuable thing gives rise to a presumption that it was obtained without consideration or for a consideration which; the accused person knows to be inadequate. Section 4 refers to two offences - one under Section 161 and the other under Section 165 of the Indian Penal Code. The words "any gratification" in the section must be read when we are considering the offence under Section 161 of the Indian Penal Code and the words "any valuable thing" occurring in the section must be read in reference to the offence under Section 165 of the Indian Penal Code. There is a decision reported in ***M.C. Mitra v. The State, 52 Cr LJ 1116 : (AIR 1951 Calcutta 524).*** It is a decision of the Calcutta High Court wherein it has been held :

> "Ordinarily, the prosecution would be liable to prove the motive or reward under Section 161, Penal Code, or absence or inadequacy of consideration under Section 165, Penal Code, because such motive or reward or such absence or inadequacy of consideration is part of the very offence under Section 161 or 165, Penal Code, respectively. But now by reason of Section 4, Prevention of Corruption Act, 1947, that presumption will be made against the accused the moment the prosecution proves that the accused accepted or agreed to accept or obtained or attempted to

[1] AIR 1951 All 546

> obtain any gratification or valuable thing. This does not mean that the burden of proof on

> the prosecution to establish the acceptance or the agreement to accept or the obtaining or the agreement to obtain the gratification or the valuable thing is at all displaced by this section. That burden still remains on the prosecution. This proof must be in accordance with the standard of proof laid down by Section 3, Evidence Act. Any other standard of proof by percentage or plausibility cannot be accepted."

In this case, we are satisfied on the evidence that the prosecution has failed to prove that the amount of Rs. 8 which was got produced from the accused was any gratification other than legal remuneration.

6. It may be pertinent to note, while considering the question as to whether the amount paid by the complainant to the accused was a gratification other than legal remuneration or not, what is the case that has been suggested by the defense ? The accused stated that he insisted upon the repayment of the loan advanced by him to the complainant and it was only the loan that had been repaid to him on 23-8-1957. It is true that when the presumption arises under Section 4, then the probability of the defense may not help the accused at all. If the presumption arises under Section 4, then it is the bounden duty of the accused, on whom the burden of proof is thereafter cast, to show that what was accepted by him as gratification was not as a motive or a reward. But for the purpose of considering whether the amount paid by the complainant to the accused was a gratification or not, the case that is tried to be made out by the accused will have some bearing. In this case, regard being had to the complainant's case that he attempted to make at the trial and also the case that has been suggested by the accused, we are disposed to hold that the amount that was paid by the complainant to the accused could not be regarded as gratification other than legal remuneration.

7. We, therefore, hold that the prosecution has failed to prove that the amount paid by the complainant on 23-8-1957 was in any way a gratification other than legal remuneration; and if that is so, there is no scope for raising any presumption under Section 4 of the Prevention of Corruption Act.

8. Accordingly, we set aside the order of conviction and sentence passed by the learned Special Judge and acquit the accused and direct him to be discharged. Bail bond cancelled.
Accused acquitted.