BOMBAY HIGH COURT

State

Vs.

Pundlik Bhikaji Ahire

Criminal Appeal No. 925 of 1958

(Shah and V.S. Desai, JJ.)

04.12.1958

JUDGMENT

Shah, J.

1. Pundlik Bhikaji Ahire, whom we will hereafter refer to as the first accused and Fajitrao Damu Mahale, whom we will hereafter refer to as the second accused, were tried by the Special Judge, Ahmednagar, in Corruption Case No. 1 of 1958 for offences respectively under Sections 161 and 165A of the Indian Penal Code. The learned Special Judge acquitted the two accused and against the order of acquittal this appeal has been preferred by the State of Bombay.

2. The manorial facts which give rise to the prosecution may be briefly stated. Chapter proceedings were started by the Police against one Mohanlal Doshi in the Court of the Executive Magistrate at Sangamner. The proceedings way then transferred to the Court of the Special Executive Magistrate at Ahmednagar. The first accused was the Presiding Officer of the Court of the Special Executive Magistrate at Ahmednagar. The second accused is the son-in-law of the first accused and was employed in the police force as a constable. He was posted in the month of September 1957 at Rahata in the district of Ahmednagar. Before 25-9-1957 three witnesses on behalf of the State had been examined in the case against Mohanlal Doshi and the case stood adjourned till that date. On 25th September Mohanlal Doshi sent a telegram addressed to the Magistrate requesting that an adjournment be granted because his presence was required in another Court in certain other proceedings in which he was concerned. The prosecutor applied for the issue of a warrant for arrest of Mohanlal Doshi in view of the latter's absence from Court on, the date fixed. The first accused granted that application. On 26-9-1957, Mohanlal Doshi appeared before the first accused and requested him to discharge the warrant. The first accused complied with his request and on the undertaking given by Mohanlal to appear before the Court on 16-10-1957, it was directed that no warrant be issued. The case then stood adjourned to 16-10-1957. On 30th September 1957, there was a fair at the village Korhale and he second accused

was pos ed as a constable on duty at the fair. Mohanlal attended that fair. The second accused met Mohanlal at the fair and told him that he had a message from the first accused about the chapter case proceeding. The second accused informed Mohanlal that the first accused had asked him to inform Mohanlal that if the latter desired to be "acquitted" in the Chapter proceedings, he - Mohanlal - should pay Rs. 400/- to the first accused. Mohanlal told the second accused that the demand was excessive and offered to pay Rs 100/-. The second accused told Mohanlal that Rs. 100/- were inadequate and that he was under orders of transfer and that Mohanlal may accompany him to the place of the first accused and settle the amount directly with the first accused. The second accused had received orders of transfer on 30-9-1957 from Rahata to Ahmednagar, He left charge of his duties at Rahata on 6-10-1957 and proceeded to Ahmednagar by the evening motor bus on 13th October 1957 and Joined duty at Ahmednagar on the next day. On 13-10-1957, the second accused before he let Rahata had - met Mohanlal and informed him that he was leaving for Ahmednagar in the evening and asked Mohanlal to accompany him. In the evening of 13th October Mohanlal and the second accused proceeded from Rahata and reached Ahmednagar at about 8 P.M. Mohanlal arranged for putt ins up for the night at the Arya Nivas Hotel and trip second accused left to ascertain whether the first accused was at home. He returned after some time and informed Mohanlal that the first accused and agreed to see Mohanlal. The 2id accused and Mohanlal then proceed to the house of the 1st accused at about 9 P.M. There was then a meeting between the 1st accused and Mohanlal. The first accused told Mohanlal that he had sent word with the second accused demanding Rs. 400/- and should Mohanlal pay him Rs. 400/- order of discharge in the Chapter proceeding will be passed Mohanlal protested that the amount was very large and he was unable to pay the same. The first accused then explained to him that Mohanlal was not likely to succeed in the proceeding and that even if he went in appeal he may have to spend a considerable amount. After some discussion it was agreed that Mohanlal will pay to the first accused Rs. 200/- in consideration of the latter agreeing to discharge Mohanlal in the Chapter proceeding. It was agreed that the amount was to be paid on 16-10-1957.

3. At 11 A.M. on 16-10-1957 Mohanlal attended the Court of the first accused. The second accused met him and took him aside and asked him whether he had brought the money agreed to be paid. Mohanlal stated that he had brought some gold but as it was Wednesday and the local bazar was closed it could not be sold but promised to secure the amount on the next day. The second accused then went into the Chamber of the first accused and he came out after some time and told Mohanlal that he may arrange for payment of the amount on the next day. The case was then adjourned to 4-11-1957 as some of the witnesses were not present.

4. After leaving the Court room Mohanlal thought of approaching the Anti-Corruption Police at Ahmednagar. At about 2 p.m. ho met one Patki, Sub-Inspector of Police, Anti-Corruption Branch, Ahmednagar and narrated to him what had transpired, Patki recorded the complaint on Mohanlal and sent up a report to the Deputy Superintendent of Police, Anti-Corruption, Poona. requesting the latter to arrange for a trap. Patki asked Mohanlal to meet him on the next day. On

17-10-1957, the Deputy Superintendent of Police Kakeri arrived at Ahmednagar. He was accompanied by Divekar, Inspector of Police and certain police constables. Mohanlal met Patki at about 3 p.m. and he was taken to Kakeri some time later. The statement of Mohanlal was verified by Kakeri and Patki was requested by Kakeri to secure panchas for the trap. Before the Panchas Mohanlal repeated his story. Mohanlal was then searched and it was found that there was no money on his person. Thereafter currency notes if the value of Rs. 200/- were handed over to Mohanlal. These currency notes were handed over to Mohanlal for being delivered to the 1st accused if a demand for bribe was made by the latter. The signal to be given if the bribe was accepted by the first accused was also settled. A panchanama about the delivery of the currency notes was prepared. Thereafter Mohanlal, three panchas, Kakeri and Divekar proceeded awards he house of the first accused at about 8-45 p.m. Kakeri stood somewhere near the entrance to the street in which was the house of the first accused, while Divekar stood at some distance. Mohanlal t proceeded to the house of the first accused and found both the accused in the front apartment of the house The first accused asked Mohanlal if he had brought the money and Mohanlal replied in the affirmative. Mohanlal then took out the currency notes from his coat and handed over the same to the first accused. The first accused counted the currency notes and put the same in the outer pocket of his bush coat. At that time the second accused was standing in the room. Mohanlal said that the first accused should remember

> "his work" and discharge him in the Chapter case. The first accused replied that Mohanlal need not worry about that. Mohanlal then proceeded to the gallery and lighted cigarette which was the signal originally arranged between him and the police officers to signify that the bribe was given and accepted. Mohanlal then returned to the room and immediately the raiding party consisting of Kakeri, Divekar and the panchas entered the front apartment of the house of the first accused. Kakeri disclosed his identity and asked the first accused to show his hands. They were examined under the ultra violet light and found to be smeared with anthracene powder. Kakeri asked the first accused whether he had received any bribe from Mohanlal, The first accused gave no reply and pointed out with his fingers to the pocket of his bush coat. The pocket of his bush coat was also found smeared with anthracene powder. On being asked, the first accused produced the currency notes and put them on the table. On examination the currency notes were found to be the same which were handed over to Mohanlal for being given as bribe to the first accused. The first accused was then searched and no other amount was found on his person. The person of the second accused was also searched and no incriminating articles were found. A search of the person of Mohanlal was also taken and beside a cigarette and a match box nothing else was found on his person. A panchnama in respect of all the three searches was made. Thereafter Kakeri recorded the statements of several persons and after enquiries submitted the papers to the D.I.G., Anti-Corruption. A complaint was then lodged on 9th November 1957 against the two accused. The requisite sanction for prosecuting the two accused was obtained in March 1958 and the two accused were, arrested and a charge-sheet was submitted charging the first accused for the offence under

Section 161 of the Indian Penal Code and the second accused for the offence under Section 165A of the Indian Penal Code. The accused were tried before the Special Judge at Ahmednagar.

5. Before the Special Judge, the prosecution examined, beside Mohanlal and the panchas, Kakeri, Patki and the other police officers and the Prosecuting Jamadar attached to the Court of the first accused. Mohanlal substantially deposed to the story which we have set out as the prosecution case and his evidence tallied with the story related by him in his complaint, Exhibit 9, recorded by Patki. His story was corroborated by the testimony of the police officers and the panchas.

6. The first accused in his written statement denied that he had demanded any illegal gratification from Mohanlal. The second accused also denied that in his presence any illegal gratification was given by Mohanlal and contended that he had not carried out any negotiations for receiving illegal gratification from Mohanlal. The first accused admitted that he had received Rs. 200/- from Mohanlal, but he explained that six or seven months ago the second accused had borrowed Rs. 200/-from him promising to return the same within 2 or 4 days, that thereafter the second accused was transferred from Rahata to Ahmednagar and on 14-10-1957 he returned by rail to Ahmednagar to join duty and thereafter when asked about the amount which was borrowed, the second accused told him that he - the second accused - had given the amount to a person at Bahama and that he will get the amount within 2 or 4 days and the person to whom the money was given was Mohanlal and that the second accused told him that if Mohanlal brought the money the same may be accepted. Thereafter, according to the first accused, on 17-10-1957, at about 8-30 p.m. when he was sitting with the second accused in his house a stranger entered has house. The first accused stated that he asked the stranger who he was and why he had come and the stranger stated that he had borrowed Rs. 200/- from the second accused and he had come to return the same, that in the meanwhile the second accused told the stranger that as the amount was taken from the first accused, the same be returned to the first accused and that accordingly the stranger gave the amount to the first accused. He stated that he counted the currency notes of Rs. 200/- and accepted the same and put them in the pocket of his bush coat and thereafter, the stranger went out on the pretext that he wanted to spit but he did not know what he did there and immediately the police? and the panchas arrived and the currency notes of Rs. 200/- were when demanded handed over to them.

7. The 2nd accused also related a similar story. He stated that when he was posted at Rahata Mohanlal had through his cousin Uttam Bhikaji requested him for a loan of Rs. 200/- and that even though he was originally unwilling to advance a loan, on the request of Uttam Bhikaji the amount was advanced. He stated that he gave the amount to Mohanlal at Rahata on Mohanlal promising to return the same within two or three days; that he had borrowed the money from the first accused promising to return the same within 2 or 4 days and as Mohanlal did not pay the same and avoided repayment, he the second accused reprimanded Mohanlal and that thereafter there was "some tension" between him and Mohanlal, that thereafter he was transferred to

Cantonment Police Station and before he gave up charge at Rahata he demanded repayment from Mohanlal. He further stated that because Mohanlal promised to repay the debt at Ahmednagar, he gave Mohanlal the address of the first accused he having no permanent residence at Ahmednagar and told him that if he was not present the money may be handed over to the first accused because he, the second accused, had borrowed the same from the first accused. He further stated that he went to Ahmednagar by the night train on 13-10-1957 and joined duty on 14th October and thereafter Mohanlal came on the night on 17-10-1957 and handed over the money to the first accused at his direction because the amount, which was advanced to Mohanlal, was borrowed from the first accused for payment to Mohanlal.

8. The learned Special Judge was of the view that the story of the two accused that a loan was advanced by the second accused to Mohanlal and that in repayment of that loan that the currency notes of Rs. 200/- were given by Mohanlal to the first accused in the house of the latter on 17-10-1957 could not be accepted. In the view of learned Special Judge that story was 'unnatural,' but he observed that it was not correct to say that because the defense failed to establish the defense case about a loan advanced by the 2nd accused to Mohanlal and repayment thereof that the prosecution case was established. He observed :

> "Such an approach to the question has always been objected to on the ground that it is for the prosecution to prove its case in a criminal trial and it is only while considering whether the prosecution has proved its case that incidentally and where necessary the criminal court would have to consider the case made for the defense. If therefore the prosecution has not established its case beyond reasonable doubt by the evidence led, it would not be permissible to record a conviction merely because the defense theory appears to the court to be unreasonable or does not appear to have been established."

The learned Special Judge then proceeded to consider the prosecution evidence and observing that on several important particulars the story of Mohanlal was not corroborated and further observing that Mohanlal was not a person "who could be said to be of an unimpeachable character whose evidence could be readily accepted." The learned Judge acquitted the accused. Against that order this appeal has been preferred.

9. There is no dispute that the first accused in the presence of the second accused received Rs. 200/- from Mohanlal. The story that the first accused had given a sum of Rs. 200/- to the second accused and that the second accused had advanced that sum of money to Mohanlal is not supported by any reliable evidence, and, in our judgment, appears to be entirely improbable. There is no evidence on the record to show that before the second accused was posted at Rahata he knew Mohanlal. It is the case of the second accused that he was introduced to the complainant Mohanlal who was a stranger to him by his cousin Uttam Bhikaji. Why the second accused should be willing to advance Rs. 200/- to Mohanlal bas not been attempted to be explained in the evidence or before us. There is not a scrap of paper which supports the case of the defence that a loan was advanced by the second accused to Mohanlal. Evidently the second accused is not a

money-lender and even if he was willing to advance a loan of a sum of money which was not negligible he would at least have taken some writing from Mohanlal acknowledging receipt of the money and agreeing to repay the same. The second accused admits that he could not himself advance the loan of Rs. 200/-. There was no adequate reason why he should borrow Rs. 200/- from his father-in-law without disclosing the reason why he wanted the amount and advance the same to Mohanlal. There is, again, no reason suggested by the first accused as to why on a there request made by the second accused he was prepared to part with Rs. 200/ without even ascertaining the purpose for which the amount was required. The case sought to be made by the defence that the first accused gave Rs. 200/- to the second accused; and the latter advanced it to Mohanlal whose case was pending before the first accused, is not supported by any reliable evidence and strikes us as extremely improbable. Even the date on which the amount was advanced by the second accused to Mohanlal is not disclosed. Again, if the second accused had made an advance of a loan to Mohanlal, there was no reason why he should have asked the first accused to receive the amount from Mohanlal. The first accused must have realised, when Mohanlal entered his house, that the latter was a litigant who was concerned in a case before him and if his story about a loan were true, he would as a prudent man not have accepted the money from Mohanlal, but would have asked the second accused to settle his dealing elsewhere. The cousin of the second accused Uttam has not been examined in the Court below and beyond the bare statement of the two accused there is no evidence on the record to show that in fact Rs. 200/- were advanced by the first accused to the second accused and that the second accused had advanced that amount to Mohanlal and if was in repayment of that loan that Mohanlal paid Rs. 200/- to the first accused on 17-10-1957. On the evidence, we have no doubt that the learned trial Judge was right in holding that the story of the defence that the amount of Rs. 200/- paid by Mohanlal to the first accused was in repayment of the loan alleged to have been given to Mohanlal cannot be accepted.

10. The question which then falls to be determined is whether this payment of Rs. 200/- by Mohanlal was illegal gratification given as reward or motive for rendering service to Mohanlal, i.e. for discharging Mohanlal in the Chapter proceeding pending before the first accused, or whether it was for some innocuous purpose. As we have already observed, Patki detailed a story as to the various meetings and the conversation which he had with the second accused and also a report about the conversation which he had with the first accused on 30-9-1957. This story of Mohanlal is partially corroborated by independent evidence, We have the evidence of the Prosecuting Jamadar Sayyad Mir Akbar who stated that on 16-10-1957 the second accused attended the Court of the first accused. He has also deposed to the circumstances in which the case against Mohanlal was adjourned on 25-9-1957. Again, the record or the Magistrate corroborates the testimony of Mohanlal about the various proceedings in the Chapter ease. The record of the Police Department supports the story of Mohanlal that on the night of 30-9-1957 the second accused was posted on duty at the Korhale fair, that the second accused had been transferred from Korhale and that the second accused joined the duty at Ahmednagar on 14-10-1957. It is difficult to believe that if the movements of the second accused were not known to

Mohanlal and the second accused had not met Mohanlal from time to time, Mohanlal could give in his complaint, the details which he has given.

11. It is true that the antecedents of Mohanlal are not impressive. He has admitted that complaints were filed against him at the Shrirampur Police Station wherein it was alleged that he had received stolen property and that complaints were also filed against him at Rahata Police Station that he had committed offences under the Gambling Act. It also appears that he had been convicted for consuming liquor without a permit; and Chapter proceedings were pending against him wherein it was alleged that he was habitually drinking and gambling and holding out threats to the Police. It is, therefore, necessary to scrutinise the evidence of Mohanlal with some care. But after considering the evidence of Mohanlal, corroborated as it appears to be by the circumstances which we have set out earlier, we see no reason to discard his testimony as the learned Judge in the Court below appears to have done. A person who lends himself to be a tool in the hands of the police in a trap may evidently be regarded as a partisan witness and to that extent his evidence requires corroboration. But if from the record it appears that the payment of the amount by Mohanlal could not on any other reasonable hypothesis be in satisfaction of some, liability of Mohanlal to the first accused, in our judgment, an inference would inevitably arise that the amount was paid to the first accused by way of bribe.

12. But the decision, in our judgment, need not rest merely on the evidence of Mohanlal. Section 4 of the Prevention of Corruption Act, 1947, justifies in the circumstances of the case fee raising, of a presumption which comes to the aid of the prosecution. By Sub-Section (1) of Section 4 of the Prevention of Corruption Act it is provided :

> "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 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 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."

On the plain words of the section, in trials for offences under Section 161 of the Indian Penal Code, from the acceptance or obtaining or from agreeing to accept or attempting to obtain any gratification which is other than legal remuneration or any valuable thing, a presumption arises that the person who received the gratification or agreed to receive or attempted to obtain the same or a valuable thing did it as a motive or reward such as is mentioned in Section 161 of the

Indian Penal Code. The ambit of the presumption was recently set out by their Lordships of the Supreme Court in the *State of Madras v. Vaidyanatha Iyer*[1], In delivering the judgment of the Court, Mr. Justice Kapur observed :

> "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 deals with a branch of law of evidence, e.g., presumptions and therefore 'should have the same meaning ....' 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 presumptions of fact, presumptions of law constitute a branch of jurisprudence."

13. On the findings recorded by us therefore a presumption under Section 4(1) of the Prevention of Corruption Act must arise that the amount received by the first accused was received as a reward or motive for rendering service to the complainant Mohanlal. But Mr. Daundkar, who appears on behalf of the accused, contends that the amount received by the accused could not be said to be "gratification" other than legal remuneration and unless prosecution establishes by evidence that the payment was made and accepted as gratification other than legal remuneration, the presumption does not arise against the first accused. We are unable to accept the contention of Mr. Daundkar. The first accused does

[1]1958 SCR 580 : AIR 1958 SC 61

not even claim that he has rendered any service to Mohanlal for which he was entitled to receive legal remuneration from the latter. The first accused was a public servant employed as an Executive Magistrate at the relevant time and normally the only legal remuneration which he could earn was his salary from the State for performing his official duties. It has not been suggested that the amount of Rs. 200/- received by the first accused was remuneration for the performance of any other duty and to which the first accused was lawfully entitled.

14. Mr. Daundkar, however, contends that even if the payment received is not legal remuneration it is still not "gratification". The expression "gratification" is not defined in the Prevention of Corruption Act and Section 161 of the Indian Penal Code states in the third paragraph that the word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money. That, strictly speaking, is not a definition of the expression '"gratification". In its dictionary meaning, the expression "gratification" is inclusive of all satisfaction of desire or appetite and we agree with the view of the Allahabad High Court in *Promod Chandra Shekhar v. Rex*[2], that the expression is used in Section 161, Indian Penal Code, in the sense of anything

which gives satisfaction to the recipient. Prima facie therefore, voluntary acceptance of an amount of money or a valuable thing by a public servant will amount to acceptance of gratification.

15. Mr. Daundkar on behalf of the accused placed strong reliance upon a judgment of this court in *State v. Pandurang Laxman*[3], in support of his contention that by merely proving that the first accused accepted Rs. 200/- given to him by Mohanlal it is not established that he accepted gratification within the meaning of Section 4(1) of the Prevention of Corruption Act. In that case, it appears that the complainant had given a sum of Rs. 8/- to a public servant in pursuance of some arrangement and the prosecution contended that a presumption under Section 4(1) of the Prevention of Corruption Act that the amount was received by the public servant a gratification arose upon proof of the fact of payment. Mr. Justice Datar in delivering the judgment of the Court observed :

> "......for the raising of the presumption under Section 4, it is, in our judgment, necessary for the prosecution to prove that not merely a payment of money or in kind was made over to the 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 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."
Mr. Justice Datar also observed :

> "We are disposed to think that acceptance of gratification other than legal remuneration gives rise to a presumption that, that gratification was accepted as a 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

[2] ILR 1950 Allahabad 382 : (AIR 1951 All 546)
[3]60 Bom LR 811 : (AIR 1959 Bom 30)

> 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." If these observations were necessary for the decision in that case, we would have respectfully followed them. But, in our view, the learned Judges in that case have observed that they "were satisfied on the evidence that the prosecution failed to prove that amount of Rs. 8/- which was got produced from the accused was any gratification other than legal remuneration" and on that view the observations do not appear to be strictly necessary. In our view the expressions "gratification" used in Section 161 and "Valuable thing" used in Section 165 of the Indian Penal Code are not mutually exclusive in the

> connotations. Acceptance of a valuable thing by a public servant may amount to acceptance of gratification within the meaning of Section 161. By Section 161 accepting or agreeing to accept or attempting to obtain gratification other than legal remuneration as a motive or reward for doing or forbearing to do an official act is penalised; by Section 165 mere acceptance by a public servant of a valuable thing without consideration or for consideration, which he knows to be inadequate from a person concerned in a proceeding or business transacted by the public servant is penalised - the question of motive or reward being not material. By Section 4 of the Prevention of Corruption Act in a trial of a public servant for an offence under Section 161, when it is proved that the public servant has accepted or agreed to accept any gratification or any valuable thing, it is required that the Court shall raise a presumption that he had accepted or agreed to accept the same as a motive or reward for doing or forbearing to do an official act. It is one of the essential ingredients of the offence under Section 161 of the Indian Penal Code to be established by the prosecution that gratification was accepted or agreed to be accepted or attempted to be obtained as a motive or reward for performing an official act. By enacting Section 4(1) of the Prevention of Corruption Act, the Legislature has not only dispensed with the proof of that ingredient by the prosecution, but has imposed upon the person accused, when it is proved that he has accepted or obtained or agreed to accept or attempted to obtain gratification other than legal remuneration, the burden of proving that it was not as a motive or reward that the gratification was obtained. The Court is required to raise the statutory presumption subject to the limits prescribed by clause (3) of Section 4 when if is proved that the public servant tried for an. offence under Section 161 of the Indian Penal Code has received gratification. If it be granted that the expression "gratification" is used in its primary meaning, we fail to see what, beside voluntary acceptance fey a public servant of a valuable or other thing which satisfied his desire or appetite, the prosecution is required to prove before the presumption under Section 4 may arise.

16. Reliance was also sought to be placed by Mr. Daundkar upon a judgment of Mr. Justice Gajendragadkar and Mr. Justice Gokhale in Criminal Appeal No. 1299 of 1955, D/-4-9-1956 (Bom). In that case, Mr. Justice Gajendragadkar in delivering the judgment of the Court observed :

> "Before asking the Count to draw the statutory presumption under Section 4(2) the prosecution must prove that money has been paid to a public servant in the first instance. A public servant is nevertheless a private individual and money may be paid to him not in his capacity as a public servant but in as capacity as a private individual. It would be unreasonable to assume that whenever money is paid to a person holding a public office it is paid to him as a public servant. In our opinion, the first essential fact which must be proved by the prosecution is that money has been paid to a public servant. It would also be necessary for the prosecution to show that the money which is paid is other than legal remuneration. In other words, the bare fact of the passing of the money from one hand to

> another would not raise the presumption if the receiving hand is the hand of a public servant without prima facie evidence to show that the money which has passed is other than legal remuneration; and in proving this part of the case the prosecution would inevitably in every case have to rely to some extent on evidence other than the payment of the money itself."

In that case, the Court was of the view that the evidence of the witnesses for the prosecution was unreliable and the bare fact established before the Court which, could not be challenged was the "passing of money from a private individual to a public servant," it be former being prosecuted for the offence under Section 165A of the Indian Penal Code. It was in the context of those facts that the observations which are relied upon were made. With respect, we agree with the view that "mere passing of money" from one person to another without snore may not establish giving of gratification to a public servant. We may observe that the Legislature has in framing Section 4(1) cast the net very wide. A charge for accepting or agreeing or attempting to obtain a bribe may lightly be made; but the Court cannot on that account except in cases covered by clause (3) of Section 4 refuse to raise the presumption. The presumption, it is true, is not one which is required to be rebutted by evidence establishing the defence of the accused beyond reasonable doubt. If the person accused shows a reasonable preponderance of probability enough to support a verdict in a civil action, that the gratification way not as a motive or reward for doing or forbearing to do an official act, the burden may be deemed to be discharged.

17. Reliance was also sought to be placed upon another judgment of this Court in Criminal Appeal No. 1034 of 1958 D/-18-11-1958 (Bom) by Mr. Justice Gokhale and Mr. Justice Miabhoy. In that case also the learned Judges were not satisfied on the evidence of the prosecution witnesses that it was proved that the accused had accepted any gratification. In that case even on the evidence of the main prosecution witnesses, the accused, who was charged for offences under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, had some enforceable claim against the complainant. Mr. Justice Gokhale in delivering the judgment of the Court referred to the case in 60 Bom LR 811 : (AIR 1959 Bombay 30) and also the judgment of Mr. Justice Gajendragadkar and Mr. Justice Gokhale in Criminal Appeal No. 1299 of 1955 (Bom) and observed that the complainants' evidence was relied upon by the prosecution for showing that a ten rupee currency note was given to the accused by way of gratification, but that was not reliable evidence. The Count in that case appears to have taken the view that there was no reliable evidence other than the mere payment of money on which reliance could be placed. In our view, however, that case is also distinguishable from the present case.

18. On the view we take, there is the evidence of payment of Rs. 200/- by Mohanlal to the first accused on the night of 17-10-1957. That payment is, in our judgment, gratification; and even if the testimony of Mohanlal as to the previous negotiations and the agreement to pay the amount as consideration for discharging Mohanlal in the Chapter proceeding be regarded as somewhat weak, in our judgment, the prosecution is entitled to rely upon the presumption under Section

4(1) of the Prevention of Corruption Act to reinforce that evidence. The first accused has not led any evidence to rebut that statutory presumption and he must, therefore, be regarded as clearly guilty of the offence under Section 161 of the Indian Penal Code.

19. Turning to the case of the second accused, it is time that he has not received the monies; but his participation on the previous negotiations is amply established by the testimony of Mohanlal which is corroborated by the record of the police department as well as by the evidence of the prosecuting Jamadar. The second accused was present at the lime when the amount of Rs. 200/- was paid by Mohanlal to the first accused. It is the case of the second accused, that he had asked Mohanlal to go to his father-in-law's house and to pay the amount of Rs. 200/-. It is true that it was the case of the second accused that that payment was intended to be in repayment of the loan advanced by him to Mohanlal. The presence of the second accused when payment was made and his full knowledge about the circumstances in which the amount was received by the relation subsisting between the first accused and the second accused are sufficient evidence, in our judgment, to justify the conclusion that the second accused was privy to the demand for bribe by the first accused and the giving of bribe by Mohanlal to the first accused and that the second accused assisted in the giving of the bribe. We are, therefore, of the view that the second accused is guilty of the offence under Section 165A of the Indian Penal Code.

20. It is true that this is an appeal against an order of acquittal and there must be strong and compelling reasons which would justify this Court in interfering with the order of acquittal passed by the learned trial Judge. It appears, however, to us that the learned trial Judge ignored the presumption which arises under Section 4(1) of the Prevention of Corruption Act and expressed the view that merely because the defence story was unreliable, even if gratification was proved to be given by Mohanlal to the first accused the prosecution case must fail. That view expressed by the learned Special Judge cannot be sustained. As we have already observed, the point of dispute in this case is extremely limited. The prosecution case is that the amount of Rs. 200/- was paid by Mohanlal to the first accused by way of bribe in pursuance of an arrangement previously made, whereas it was the case of the first accused and the second accused that the amount paid was repayment of a loan given to Mohanlal. There was no dispute about the payment actually made and it the learned Special Judge did not examine the facts proved in the context of the statutory presumption, we are unable to sustain that judgment.

21. We, therefore, set aside the order of acquittal passed by the learned Special Judge and convict the first accused of the offence under Section 161 of the Indian Penal Code and sentence him to suffer rigorous imprisonment for 9 months and to pay a fine of Rs. 500/- and in default of payment of fine to suffer rigorous imprisonment for six months in addition. We also convict the second accuse for the offence under Section 165A of the Indian Penal Code and sentence him to suffer rigorous imprisonment for six months. Warrants to issue for the arrest of the two accused. Appeal allowed.