

# RAJASTHAN HIGH COURT

State

Vs.

Abhey Singh

Criminal Appeal No. 178 of 1956

(Wanchoo, C.J. and Dave, J.)

15.10.1956

## JUDGMENT

### **Wanchoo, C.J.**

1. This is an appeal by the State against the acquittal of Abhey Singh by the Special Judge, Pali, of offences under Sections 161 and 165 of the Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act (No. II) of 1947.

2. The prosecution case was briefly this. Abhey Singh accused was Sub-Inspector of Police at Sojat in 1953. Abdul Rehman complainant P. W. 7 is a trader and lives in Sojat Road within the jurisdiction of Sojat Police station. The complainant returned from Bombay, and reached Marwar at 6 P.M. on the 22nd of November. He was met by two persons namely Kadar Bux who is his cousin, and Ismail. These persons, according to him, are police touts. They told him that the accused was out to arrest him, and persuaded him to leave by the mail train for fear that the police might come and arrest him. He remained with these persons at Marwar junction for sometime, and left for Sojat Road by the 3 A.M. train. When the three of them reached his house a police man came to call them. The complainant then left for the police station with these two persons and the police man. He then had just over Rs. 500/- with him. He was taken to Thana Sojat where those two persons said something secretly to the Sub-Inspector and then left. He remained at the Thana till about 2 P.M. or 3 P.M. when Kadar Bux and Ismail came back again. He was then threatened and forced to give away the sum of Rs. 500/- which he had with him to Kadar Bux. Thereafter, he was arrested, and put in the lock-up. The complainant says that he was given a beating. He was then sent to the judicial lock-up, and eventually released on bail on the 2nd of December, 1953, after Shri Mohansingh was engaged as a counsel on his behalf.

3. The complainant also stated that during this period, while he was in the police lock-up and jail, the accused had managed to extract a large sum of money from his wife through Kadarbux and Ismail. When he came to know of this extortion of money during his incarceration, he went to Sub-Inspector Abhey Singh to ask about it. The Sub-Inspector then said that he would have to pay Rs. 200/- more. The complainant then consulted a number of people and told them of this demand. He was asked to report the matter to the Inspector General of Police, and he did so on the 1st of January, 1954. He also sent a letter to the Anti-corruption branch at Jodhpur. Consequently, one Babulal Head-Constable came to him on the 3rd of January, 1954, and made enquiries about the demand of the bribe from him. The complainant told him that the Sub-Inspector was making these demands. Thereafter, a sum of Rs. 150/- was arranged, and a report was recorded on the 4th of January 1954.

4. In this report Abdul Rehman said that Sub-Inspector Abhey Singh had kept him in the Thana for 8 days, and he and the Circle Inspector had beaten him and had extorted Rs. 900/- from his wife. He went on to say that they were further demanding Rs. 150/- from him. He had therefore brought one currency note of Rs. 100/- and five currency notes of Rs. 10/- each, and he was prepared to pass this money to the Sub-Inspector for the Circle Inspector on the 9th of January, 1954, at mid-day in the presence of any officer. He therefore prayed that necessary steps be taken in the matter.

5. Thereafter, steps were taken to lay a trap for catching Sub-Inspector Abhey Singh. Sri U. N. Misra, Deputy Superintendent of Police was in charge of this matter. He went to Sojat on the 9th of January, 1954, and marked currency notes, whose numbers had been taken, to the value of Rs. 150/- were given to Abdul Rehman to pass on to the accused. At about mid-day, Abdul Rehman met the accused in the court compound at Sojat, and passed on one note of Rs. 100/- to the accused. The accused put the note in his pocket. Thereafter, Shri Misra, along with Head Constable Babulal and two witnesses, went up to the Sub-Inspector, and asked him whether he had received any currency notes. The Sub-Inspector admitted having received one currency note, and handed over the hundred-rupee note to Shri Misra. This was one of the marked notes given to Abdul Rehman who had passed it to the Sub-Inspector. The other five notes of Rs. 10/- each were, however, not recovered from the possession of the accused. The accused was then suspended, and after necessary sanction prosecuted.

6. The accused denied his guilt. He admitted the receipt of Rs. 100/- from Abdul

Rehman, but he said that this was in payment of the price of a watch which he had sold to Shri Mohansingh advocate sometime before, and that Mohansingh had told him that he would pay the money when he got his fee amounting to Rs. 100/- from Abdul Rehman on the next date of hearing, namely the 9th of January, 1954. On that date, the accused had gone to court, and met Shri Mohansingh and Abdul Rehman, and asked for the money and Abdul Rehman told him that he would pay him the money. Shortly after, Abdul Rehman came to him and gave him one note of Rs. 100/-. Thereafter, the Deputy Superintendent of Police arrived and recovered the note from his possession, while Abdul Rehman disappeared. Sri Mohansingh Advocate had come there afterwards and told the Deputy Superintendent of Police that the money was his, and he had got it paid to the Sub-Inspector. The accused also denied that he had in any way harassed the complainant or extracted any sum between the 22nd of November, 1953, and 2nd of December, 1953, when the complainant was in the police lock-up or in jail. The accused also said that he was not asked to explain after the recovery of the note as to how the money was given to him by the complainant.

7. The prosecution examined ten witnesses in this case, while the accused has examined one witness in defense namely Shri Mohansingh advocate. The main prosecution witness is of course Abdul Rehman. His statement, however, as to his being harassed by the Sub-Inspector and being forced to give money as bribe has not been corroborated by any other witness. The other witnesses prove the passing of a note of Rs. 100/- from Abdul Rehman to the accused, and other steps that were taken to set the trap and catch Sub-Inspector Abhey Singh.

8-12. We have given our earnest consideration to the statement of Abdul Rehman, and we must say that we are not impressed by his evidence. (His Lordship then discussed the evidence of Abdul Rehman in detail and also the evidence of the Deputy Superintendent as to what happened after the money was recovered from the accused. He then stated:) All that the prosecution evidence, therefore, proves is that a sum of Rs. 100/- was passed on to the accused by Abdul Rehman. The story of Abdul Rehman that the money was passed on as a bribe cannot be believed. We have, therefore, to see whether on this evidence of mere passing of Rs. 100/- to the accused, it can be said that he is guilty of accepting illegal gratification.

13. This brings us to the contention on behalf of the State that as it has been proved that a sum of Rs. 100/- was passed on by Abdul Rehman to the accused, the

presumption of section 4 of the Prevention of Corruption Act, 1947, applies, and it must be held, under the circumstances, that the money was passed on as a bribe. Section 4(1), with which we are concerned in this connection, is as follows.

"Where in any trial of an offence punishable under section 161, or section 165 of the Indian Penal Code (XLV of 1860), it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

Under the later part of this sub-section, a presumption arises unless the contrary is proved that the gratification or valuable thing was accepted as a motive or reward such as is mentioned in section 161, or, as the case may be, without consideration, or for a consideration which he knows to be inadequate. The presumption, therefore, under section 4 (1) is only as to the motive with which the money was obtained. There is no presumption as to the money being itself a bribe. Further the presumption in section 4(1) arises only when it is proved that the accused had accepted etc.....any gratification (other than legal remuneration) or valuable thing. This section was examined by Modi, J., in *Ramprasad v. The State*,<sup>1</sup> He then pointed out that the language of section 161 Indian Penal Code clearly shows that in order to bring home the charge of bribery against a public servant, it is essential to prove that there is (1) acceptance of or attempt to obtain a gratification and (2) as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show any favor or disfavor in the exercise of his official functions. He has further pointed out that so far as the first part is concerned namely acceptance of or attempt to obtain a gratification, that has still to be proved under section 4(1).

Once that has been proved, the presumption arises as to the second part of section 161, and it would then be for the accused to prove that he did not receive the gratification as a motive or reward for exercising any official favor or disfavor. We respectfully agree with the view taken in this case. We cannot accept the contention on behalf of the State that as soon as it is proved that some money or valuable thing has passed from some one to a public servant, it must be presumed that the money or valuable

thing was given as a gratification for showing favor unless the public servant proves to the contrary. It is clear, if one looks at section 4(1), that it has first to be proved that the public servant has received any gratification that is something in the nature of a bribe.

If the intention was to make mere payment of money etc. to a public servant as proof of bribery, and then the burden shifted on him to prove that he did not receive the money etc. as bribery, there was no reason why the word 'gratification' should have been used in the first part of section 4(1). In that case, if the presumption was as wide as is being pressed on behalf of the State, we should have found the word 'money' in place of the word 'gratification' in the earlier part of section 4(1). We may in this connection refer to a similar provision in an English Statute namely section 2 of the Prevention of Corruption Act, 1916 (6 and 7 Geo 5, C. 64). The provision is to be found quoted in *Rex v. Carr-Briant*,<sup>2</sup> The words there are:

"Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906 ..... it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any government department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from His Majesty or any government department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs or business of that person's principal, or showing or forbearing to show favour or disfavor in relation to his principal's affairs or business, unless the contrary is proved."

This section shows that the word 'gratification' has not been used. Instead we find the words 'money, gift or other consideration'. If the intention of section 4(1) was that the mere passing of money from any person to a public servant would raise a presumption of bribery, the first part of the sub-section should not have said that the prosecution has to prove the acceptance of gratification. It should have only said that the prosecution has to prove, the acceptance of money. It is true that the words 'or any valuable thing' also appear in the first part of section 4(1), but those words must be read along with the word 'gratification' and must be given the same character as gratification namely payment as a sort of bribe.

14. A, comparison of section 4(1) with section 2 of the English Act would show the difference between the two provisions. There the mere passing of money raises the presumption, but the circumstances in which the money passes are carefully defined. In section 4 (1) the circumstances, in which money passes, have unfortunately not been defined, and that is why it seems to us that the first part of section 4(1) provides that the prosecution has to prove passing of gratification and not merely money. We are, therefore, of opinion that mere passing of money cannot raise the presumption under section 4(1), and it is only when the prosecution has proved the passing of gratification, i. e. giving the money as a bribe or as a recompense for some service that the presumption will arise that the money was passed as a recompense for services rendered in an official capacity.

15. Our attention was also drawn to *M. C. Mitra v. The State*,<sup>3</sup> That case is unfortunately of no help, for though it deals with the presumption under section 4(1), no attempt was made to give meaning to the word 'gratification' used in the first part of section 4(1), and the learned Judges have throughout used the word 'gratification' or any valuable thing without explaining what these words mean in the context in which they have been used. Section 4(1) requires proof of acceptance of gratification, namely acceptance of money as bribe or as a recompense for some service rendered, and it is only then that presumption arises as to the purpose for which the money was accepted, namely for showing favor or disfavor in the official capacity of the person accepting the money.

This is, in our opinion, clearly borne out if we compare the language of the English Act of 1916 with section 4(1) of our Act.

16. The mere fact therefore that Rs. 100/- passed from Abdul Rehman to the accused would not raise the presumption that the money passed as a bribe. That will have to be proved by evidence oral or circumstantial. That proof, in our opinion, is lacking in this case inasmuch as the evidence of Abdul Rehman is utterly unreliable, and the circumstances are not such that we can draw the inference that this money must have been paid as a bribe. We have dealt with these circumstances already in the earlier part of this judgment. It is therefore not proved that the accused received the sum of Rs. 100/- as gratification.

17. Further there is the evidence of the accused as to the purpose for which this money was given to him. Assuming that a presumption can be raised against him, then arises

the question as to what is the amount of proof which the accused has to adduce. This matter came up for consideration in *Rex. v. Carr-Briant*. There also the statute provided that a certain presumption should be made unless the contrary is proved. The learned Judges observed as follows in that connection.

"Where, either by statute or at common law, some matter is presumed against an accused person "unless the contrary is proved", the jury should be directed that the burden of proof on the accused is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that this burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called on to establish."

We are of opinion that this is also the standard which has to be applied to the burden which is laid on an accused person under section 4(1) of proving the contrary. We are further of opinion that on the evidence in this case the accused has discharged that burden. The explanation of the accused is that Sri Mohansingh owned him Rs. 100/- for a second-hand watch, and that it was that amount which was paid by Shri Mohansingh through Abdul Rehman. It may not have been very wise on the part of the accused to have received money from Abdul Rehman at a time when Abdul Rehman was an accused in a case prosecuted by the accused. But the fact remains that the accused as well as Shri Mohan Singh immediately told the Deputy Superintendent of Police that this money was paid to the accused by Shri Mohansingh through Abdul Rehman. The purpose, for which this money was paid to the accused, was perhaps not made clear then and there, but that may be because the Deputy Superintendent of Police did not care to take the explanation of the accused. That purpose has been given by the accused in his statement in court. If one has to weigh the evidence of Shri Mohansingh on the one side and the evidence of Abdul Rehman on the other, one can only come to the conclusion that the evidence of Shri Mohansingh is much better than the evidence of Abdul Rehman. Abdul Rehman had even the hardihood to deny that Shri Mohansingh was his counsel on the 9th of January, 1954, though Rehman Bux P. W. 4, who stood as a surety for Abdul Rehman, admitted that it was Mohan Singh who arranged for the bail of the accused on that day.

18. On a careful consideration therefore of the evidence of Shri Mohansingh, we find that the story that he has given is not improbable, and in these circumstances even if there was any burden on the accused it has been discharged by him, and the

probability is that Rs. 100/- were passed on by Abdul Rehman to Sub-Inspector Abhey Singh at the request of Shri Mohansingh, and that is why the remaining Rs. 50/- could not be passed on by Abdul Rehman to Sub-Inspector Abheysingh. We therefore come to the conclusion that the prosecution has completely failed to prove its case against the accused, and that in all probability the story put forward by Abdul Rehman as to the demand of a bribe from him by Sub-Inspector Abdul Rehman was a false story made up by him to do harm to Sub-Inspector Abhey Singh who had already put him in prison and had prosecuted him for abduction.

19. We, therefore, dismiss the appeal.

Appeal dismissed.

Cases Referred.

1. 1955 Raj LW 51
2. 1943-1 KB 607
3. AIR 1951 Cal 524