1959

December 15

SRI C. I. EMDEN

v.

THE STATE OF U. P.

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Prevention of Corruption—Trial on a charge of bribery—Receipt of gratification other than legal remuneration, meaning of—Statutory presumption—Whether offends guarantee of equal protection of laws—Rebuttal of presumption—Constitution of India, Art. 14—Prevention of Corruption Act, 1947 (II of 1947), s. 4.

The appellant, who was working as a Loco Foreman, was found to have accepted a sum of Rs. 375 from a Railway Contractor. The appellant's explanation was that he had borrowed the amount as he was in need of money for meeting the expenses of the clothing of his children who were studying in school. The Special Judge accepted the evidence of the contractor and held that the money had been taken as a bribe, that the defence story was improbable and untrue, that the presumption under s. 4 of the Prevention of Corruption Act had to be raised and that the presumption had not been rebutted by the appellant and accordingly convicted him under s. 161 Indian Penal Code and s. 5 of the Prevention of Corruption Act, 1947. On appeal the High Court held that on the facts of the case the statutory presumption under s. 4 had to be raised, that the explanation offered by the appellant was improbable and palpably unreasonable and that the presumption had not been rebutted, and upheld the conviction. The appellant contended (i) that s. 4 was *ultra vires* as it contravened Art. 14 of the Constitution, (ii) that the presumption under s. 4 could not be raised merely on proof of acceptance of money but it had further to be proved that the money was accepted as a bribe, (iii) and that even if the presumption arose it was rebutted when the appellant offered a reasonably probable explanation.

Held, that s. 4 of the Prevention of Corruption Act did not violate Art. 14 of the Constitution. The classification of public servants who were brought within the mischief of s. 4 was based on intelligible differentia which had a rational relation to the object of the Act, viz., eradicating bribery and corruption amongst public servants.

Ram Krishna Dalmia v. *Shri Justice S. R. Tendolkar*, [1959] S.C.R. 279, followed.

A. S. Krishna v. *The State of Madras*, [1957] S.C.R. 399, referred to.

The presumption under s. 4 arose when it was shown that the accused had received the stated amount and that the said amount was not legal remuneration. The word "gratification '

in s. 4(1) was to be given its literal dictionary meaning of satisfaction of appetite or desire; it could not be construed to mean money paid by way of a bribe. The High Court was justified in raising the presumption against the appellant as it was admitted that he had received the money from the contractor and the amount received was other than legal remuneration.

State v. *Pundlik Bhikaji Ahire*, (1959) 61 Bom. L.R. 837 and *Promod Chander Shekhar* v. *Rex*, I.L.R. 1950 All. 382, approved.

The State v. *Abhey Singh*, A.I.R. 1957 Raj. 138 and *State* v. *Pandurang Laxman Parab*, (1958) 60 Bom. L.R. 811, disapproved.

Even if it be assumed that the presumption arising under s. 4(1) could be rebutted by the accused giving an explanation which was a reasonably probable one the High Court was right in holding that the explanation given by the appellant was wholly unsatisfactory and unreasonable.

Otto George Gfeller v. *The King*, A.I.R. 1943 P.C. 211 and *Rex* v. *Carr Briant*, (1943) I K.B. 607, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 68 of 1958.

Appeal by special leave from the judgment and order dated July 11, 1957, of the Allahabad High Court (Lucknow Bench), Lucknow, in Criminal Appeal No. 515 of 1955, arising out of the judgment and order dated October 31, 1955, of the Special Judge, Anti-corruption, Lucknow, in Criminal Case No. 2/3/32/45 of 1953-55.

Frank Anthony, Udai Pratap Singh and *P. C. Agarwala*, for the appellant.

G. C. Mathur and *C. P. Lal*, for the respondent.

1959. December 15. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This appeal by special leave has been filed by C. I. Emden (hereinafter called the appellant) who has been convicted under s. 161 of the Indian Penal Code and under s. 5(2) of the Prevention of Corruption Act 2 of 1947 (hereinafter called the Act). The case against him was that he had accepted a bribe of Rs. 375 from Sarat Chandra Shukla on January 8, 1953. The appellant was a Loco Foreman at Alambagh Loco Shed, and Shukla had secured a contract at the same place for the removal of cinders

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from ash pits and for loading coal. This contract had been given to Shukla in June 1952. The prosecution case was that the appellant demanded from Shukla Rs. 400 per month in order that Shukla may be allowed to carry out his contract peacefully without any harassment. Shukla was told by the appellant that he had been receiving a monthly payment from Ram Ratan who had held a similar contract before him and that it would be to his interest to agree to pay the bribe. Shukla, however, refused to accede to this request and that led to many hostile acts on the part of the appellant. On January 3, 1953, the appellant again asked Shukla to pay him the monthly bribe as already suggested; Shukla then requested him to reduce the demand on the ground that the contract given to him was for a much lesser amount than that which had been given to his predecessor Ram Ratan; the appellant thereupon agreed to accept Rs. 375. Shukla had no money at the time and so he asked for time to make the necessary arrangement. The agreement then was that Shukla would pay the money to the appellant on January 8, 1953. Meanwhile Shukla approached the Deputy Superintendent of Police, Corruption Branch, and gave him information about the illegal demand made by the appellant. Shukla's statement was then recorded before a magistrate and it was decided to lay a trap. Accordingly, a party consisting of Shukla, the magistrate, the Deputy Superintendent of Police and some other persons went to the Loco Yard. Shukla and Sada Shiv proceeded inside the Yard while the rest of the party stood at the gate. Shukla then met the appellant and informed him that he had brought the money; he was told that the appellant would go out to the Yard and accept the money. At about 3 p.m. the appellant went out to the Yard and, after making a round, came to the place which was comparatively secluded. He then asked Shukla to pay the money and Shukla gave him a bundle containing the marked currency notes of the value of Rs. 375. A signal was then made by Shukla and the raiding party immediately arrived on the scene. The magistrate disclosed his identity to the

appellant and asked him to produce the amount paid to him by Shukla. The appellant then took out the currency notes from his pocket and handed them over to the magistrate. It is on these facts that charges under s. 161 of the Indian Penal Code and s. 5(2) of the Act were framed against the appellant.

The appellant denied the charge. He admitted that he had received Rs. 375 from Shukla but his case was that at his request Shukla had advanced the said amount to him by way of loan for meeting the expenses of the clothing of his children who were studying in school. The appellant alleged that since he had been in need of money he had requested Kishan Chand to arrange for a loan of Rs. 500; but knowing about his need Shukla offered to advance him the loan, and it was as such loan that Shukla paid him Rs. 375 and the appellant accepted the said amount. Both the prosecution and the defence led evidence to support their respective versions.

The learned special judge who tried the case believed the evidence given by Shukla, held that it was sufficiently corroborated, and found that the defence story was improbable and untrue. The learned judge also held that on the evidence led before him the presumption under s. 4 of the Act had to be raised and that the said presumption had not been rebutted by the evidence led by the defence. Accordingly, the learned judge convicted the appellant of both the offences charged and sentenced him to suffer one year's rigorous imprisonment and to pay a fine of Rs. 500 under s. 161 of the Code and two years' rigorous imprisonment under s. 5 of the Act. Both the sentences were ordered to run concurrently.

The appellant challenged the correctness and propriety of this order by his appeal before the High Court of Allahabad. The High Court saw no reason to interfere with the order under appeal because it held that, on the facts of the case, a statutory presumption under s. 4 had to be raised and that the said presumption had not been rebutted by the appellant. In other words the High Court did not consider the prosecution evidence apart from the presumption since

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it placed its decision on the presumption and the failure of the defence to rebut it. In the result the conviction of the appellant was confirmed, the sentence passed against him under s. 161 was maintained but the sentence under s. 5(2) of the Act was reduced to one year. The sentences thus passed were ordered to run concurrently. It is against this order that the present appeal by special leave has been preferred by the appellant. This appeal has been placed before a Constitution Bench because one of the points which the appellant raises for our decision is that s. 4(1) of the Act which requires a presumption to be raised against an accused person is unconstitutional and *ultra vires* as it violates the fundamental right guaranteed by Art. 14 of the Constitution. We would, therefore, first examine the merits of this point.

The Act was passed in 1947 with the object of effectively preventing bribery and corruption. Section 4(1) provides that where in any trial of an offence punishable under s. 161 or s. 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 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. Mr. Anthony, for the appellant, contends that this section offends against the fundamental requirement of equality before law or the equal protection of laws. It is difficult to appreciate this argument. The scope and effect of the fundamental right guaranteed by Art. 14 has been considered by this Court on several occasions; as a result of the decisions of this Court it is well established that Art. 14 does not forbid reasonable classification for the purposes of legislation; no doubt it forbids class legislation; but if it appears that the

impugned legislation is based on a reasonable classification founded on intelligible differentia and that the said differentia have a rational relation to the object sought to be achieved by it, its validity cannot be successfully challenged under Art. 14 (Vide : *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar* (1). In the present case there can be no doubt that the basis adopted by the Legislature in classifying one class of public servants who are brought within the mischief of s. 4(1) is a perfectly rational basis. It is based on an intelligible differentia and there can be no difficulty in distinguishing the class of persons covered by the impugned section from other classes of persons who are accused of committing other offences. Legislature presumably realised that experience in courts showed how difficult it is to bring home to the accused persons the charge of bribery ; evidence which is and can be generally adduced in such cases in support of the charge is apt to be treated as tainted, and so it is not very easy to establish the charge of bribery beyond a reasonable doubt. Legislature felt that the evil of corruption amongst public servants posed a serious problem and had to be effectively rooted out in the interest of clean and efficient administration. That is why the Legislature decided to enact s. 4(1) with a view to require the raising of the statutory presumption as soon as the condition precedent prescribed by it in that behalf is satisfied. The object which the Legislature thus wanted to achieve is the eradication of corruption from amongst public servants, and between the said object and the intelligible differentia on which the classification is based there is a rational and direct relation. We have, therefore, no hesitation in holding that the challenge to the vires of s. 4(1) on the ground that it violates Art. 14 of the Constitution must fail. Incidentally, we may refer to the decision of this Court in *A. S. Krishna* v. *The State of Madras* (2) in which a similar challenge to the vires of a statutory presumption required to be raised under s. 4(2) of the Madras Prohibition Act, 10 of 1937, has been repelled.

(1) [1959] S.C.R. 279. (2) [1957] S.C.R. 399.

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That takes us to the question of construing s. 4(1). When does the statutory presumption fall to be raised, and what is the content of the said presumption? Mr. Anthony contends that the statutory presumption cannot be raised merely on proof of the fact that the appellant had received Rs. 375 from Shukla; in order to justify the raising of the statutory presumption it must also be shown by the prosecution that the amount was paid and accepted as by way of bribe. This argument involves the construction of the words "any gratification other than legal remuneration" used in s. 4(1). It is also urged by Mr. Anthony that even if the statutory presumption is raised against the appellant, in deciding the question as to whether the contrary is proved within the meaning of s. 4(1) it must be borne in mind that the onus of proof on the appellant is not as heavy as it is on the prosecution in a criminal trial.

Let us first consider when the presumption can be raised under s. 4(1). In dealing with this question it may be relevant to remember that the presumption is drawn in the light of the provisions of s. 161 of the Indian Penal Code. In substance the said section provides *inter alia* that if a public servant accepts any gratification whatever other than legal remuneration as a motive or reward for doing or forbearing to do any official act, he is guilty of accepting illegal gratification. Section 4(1) requires the presumption to be raised whenever it is proved that an accused person has accepted "any illegal gratification (other than legal remuneration) or any valuable thing." This clause does not include the receipt of trivial gratification or thing which is covered by the exception prescribed by sub-s. (3). The argument is that in prescribing the condition precedent for raising a presumption the Legislature has advisedly used the word "gratification" and not money or gift or other consideration. In this connection reliance has been placed on the corresponding provision contained in s. 2 of the English Prevention of Corruption Act, 1916 (6 Geo. 5, c. 64) which uses the words "any money, gift, or other consideration". The use of the

word gratification emphasises that it is not the receipt of any money which justifies the raising of the presumption; something more than the mere receipt of money has to be proved. It must be proved that the money was received by way of bribe. This contention no doubt is supported by the decision of the Rajasthan High Court in *The State* v. *Abhey Singh* (1) as well as the decision of the Bombay High Court in the *State* v. *Pandurang Laxman Parab* (2).

On the other hand Mr. Mathur, for the State, argues that the word "gratification" should be construed in its literal dictionary meaning and as such it means satisfaction of appetite or desire; that is to say the presumption can be raised whenever it is shown that the accused has received satisfaction either of his desire or appetite. No doubt it is conceded by now that in most of the cases it would be the payment of money which would cause gratification to the accused; but he contests the suggestion that the word "gratification" must be confined only to the payment of money coupled with the right that the money should have been paid by way of a bribe. This view has been accepted by the Bombay High Court in a subsequent decision in *State* v. *Pundlik Bhikaji Ahire* (3) and by the Allahabad High Court in *Promod Chander Shekhar* v. *Rex* (4).

Paragraph 3 of s. 161 of the Code provides that the word "gratification" is not restricted to pecuniary gratification or to gratifications estimable in money. Therefore "gratification" mentioned in s. 4(1) cannot be confined only to payment of money. What the prosecution has to prove before asking the court to raise a presumption against an accused person is that the accused person has received a "gratification other than legal remuneration"; if it is shown, as in the present case it has been shown, that the accused received the stated amount and that the said amount was not legal remuneration then the condition prescribed by the section is satisfied. In the context of the remuneration legally payable to, and receivable by, a

(1) A.I.R. [1957] Rajasthan 138.
(2) (1958) 60 B.L.R. 811.
(3) (1959) 61 B.L.R. 837.
(4) I.L.R. 1950 All. 382.

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public servant, there is no difficulty in holding that where money is shown to have been paid to, and accepted by, such public servant and that the said money does not constitute his legal remuneration, the presumption has to be raised as required by the section. If the word "gratification" is construed to mean money paid by way of a bribe then it would be futile or superfluous to prescribe for the raising of the presumption. Technically it may no doubt be suggested that the object which the statutory presumption serves on this construction is that the court may then presume that the money was paid by way of a bribe as a motive or reward as required by s. 161 of the Code. In our opinion this could not have been the intention of the Legislature in prescribing the statutory presumption under s. 4(1). In the context we see no justification for not giving the word "gratification" its literal dictionary meaning.

There is another consideration which supports this construction. The presumption has also to be raised when it is shown that the accused person has received any valuable thing. This clause has reference to the offence punishable under s. 165 of the Code; and there is no doubt that one of the essential ingredients of the said offence is that the valuable thing should have been received by the accused without consideration or for a consideration which he knows to be inadequate. It cannot be suggested that the relevant clause in s. 4(1) which deals with the acceptance of any valuable thing should be interpreted to impose upon the prosecution an obligation to prove not only that the valuable thing has been received by the accused but that it has been received by him without consideration or for a consideration which he knows to be inadequate. The plain meaning of this clause undoubtedly requires the presumption to be raised whenever it is shown that the valuable thing has been received by the accused without anything more. If that is the true position in respect of the construction of this part of s. 4(1) it would be unreasonable to hold that the word "gratification" in the same clause imports the necessity to prove not only the payment

of money but the incriminating character of the said payment. It is true that the Legislature might have used the word "money" or "consideration" as has been done by the relevant section of the English statute; but if the dictionary meaning of the word "gratification" fits in with the scheme of the section and leads to the same result as the meaning of the word "valuable thing" mentioned in the same clause, we see no justification for adding any clause to qualify the word "gratification"; the view for which the appellant contends in effect amounts to adding a qualifying clause to describe gratification. We would accordingly hold that in the present appeal the High Court was justified in raising the presumption against the appellant because it is admitted by him that he received Rs. 375 from Shukla and that the amount thus received by him was other than legal remuneration.

What then is the content of the presumption which is raised against the appellant? Mr. Anthony argues that in a criminal case the onus of proof which the accused is called upon to discharge can never be as heavy as that of the prosecution, and that the High Court should have accepted the explanation given by the appellant because it is a reasonably probable explanation. He contends that the test which can be legitimately applied in deciding whether or not the defence explanation should be accepted cannot be as rigorous as can be and must be applied in deciding the merits of the prosecution case. This question has been considered by courts in India and in England on several occasions. We may briefly indicate some of the relevant decisions on this point.

In *Otto George Gfeller* v. *The King* (1) the Privy Council was dealing with the case where the prosecution had established that the accused were in possession of goods recently stolen and the point which arose for decision was how the explanation given by the accused about his possession of the said goods would or should be considered by the jury. In that connection Sir George Rankin observed that the appellant did not

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have to prove his story, but if his story broke down the jury might convict. In other words, the jury might think that the explanation given was one which could not be reasonably true, attributing a reticence or an incuriosity or a guilelessness to him beyond anything that could fairly be supposed. The same view was taken in *Rex* v. *Carr Briant* (1) where it has been observed that in any case where either by statute or at common law some matter is presumed against an accused, "unless the contrary is proved the jury should be directed that it is for them to decide whether the contrary is proved, that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish" (p. 612). In other words, the effect of these observations appears to be to relax to some extent the rigour of "the elementary proposition that in civil cases the preponderance of probability may constitute sufficient ground for a verdict" (p. 611). (Also vide: *Regina* v. *Dunbar* (2)). It is on the strength of these decisions that Mr. Anthony contends that in deciding whether the contrary has been proved or not under s. 4(1) the High Court should not have applied the same test as has to be applied in dealing with the prosecution case. The High Court should have inquired not whether the explanation given by the appellant is wholly satisfactory but whether it is a reasonably possible explanation or not. On behalf of the State it is urged by Mr. Mathur that in construing the effect of the clause "unless the contrary is proved" we must necessarily refer to the definition of the word "proved" prescribed by s. 3 of the Evidence Act. A fact is said to be proved when, after considering the matter before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act on the supposition that it exists. He has also relied on s. 4 which provides that whenever it is directed that the

(1) (1943) 1 K.B. 607. (2) (1958) 1 Q.B. 1 at p. 11.

court shall presume a fact it shall record such fact as proved unless and until it is disproved. The argument is that there is not much room for relaxing the onus of proof where the accused is called upon to prove the contrary under s. 4(1). We do not think it necessary to decide this point in the present appeal. We are prepared to assume in favour of the appellant that even if the explanation given by him is a reasonably probable one the presumption raised against him can be said to be rebutted. But is the explanation given by him reasonably probable? That is the question which must now be considered.

What is his explanation? He admits that he received Rs. 375 from Shukla but urges that Shukla gave him this amount as a loan in order to enable him to meet the expenses of the clothes for his school-going children. In support of this the appellant gave evidence himself, and examined other witnesses, Kishan Chand and Ram Ratan being the principal ones amongst them. The High Court has examined this evidence and has disbelieved it. It has found that Kishan Chand is an interested witness and that the story deposed to by him is highly improbable. Apart from this conclusion reached by the High Court on appreciating oral evidence adduced in support of the defence plea, the High Court has also examined the probabilities in the case. It has found that at the material time the appellant was in possession of a bank balance of Rs. 1,600 and that his salary was about Rs. 600 per month. Besides his children for whose clothing he claims to have borrowed money had to go to school in March and there was no immediate pressure for preparing their clothes. The appellant sought to overcome this infirmity in his explanation by suggesting that he wanted to reserve his bank balance for the purpose of his daughter's marriage which he was intending to perform in the near future. The High Court was not impressed by this story; and so it thought that the purpose for which the amount was alleged to have been borrowed could not be a true purpose. Besides the High Court has also considered whether it would have been probable that Shukla

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should have advanced money to the appellant. Having regard to the relations between the appellant and Shukla it was held by the High Court that it was extremely unlikely that Shukla would have offered to advance any loan to the appellant. It is on a consideration of these facts that the High Court came to the conclusion that the explanation given by the accused was improbable and palpably unreasonable.

It is true that in considering the explanation given by the appellant the High Court has incidentally referred to the statement made by him on January 8, 1953, before the magistrate, and Mr. Anthony has strongly objected to this part of the judgment. It is urged that the statement made by the appellant before the magistrate after the investigation into the offence had commenced is inadmissible. We are prepared to assume that this criticism is wellfounded and that the appellant's statement in question should not have been taken into account in considering the probability of his explanation; but, in our opinion, the judgment of the High Court shows that not much importance was attached to this statement, and that the final conclusion of the High Court was substantially based on its appreciation of the oral evidence led by the defence and on considerations of probability to which we have already referred. Therefore, we are satisfied that the High Court was right in discarding the explanation given by the appellant as wholly unsatisfactory and unreasonable. That being so it is really not necessary in the present appeal to decide the question about the nature of the onus of proof cast upon the accused by s. 4(1) after the statutory presumption is raised against him.

In the result the appeal fails, the order of conviction and sentence passed against the appellant is confirmed and his bail bond cancelled.

Appeal dismissed.