STATE OF ANDHRA PRADESH

v.

C. UMA MAHESWARA RAO AND ANR.

MARCH 31, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Prevention of Corruption Act, 1988—Sections 7, 13 & 20(1)/ Evidence Act, 1872—Sections 4 and 114—Public Servants convicted for taking gratification from complainant for clearance of tender file—High Court acquitting them on ground of non-availability of cogent evidence about demand and acceptance of gratification—Correctness of—Held, Courts can presume the acceptance of gratification from the facts produced unless proved otherwise by accused—On facts and evidence, accused are guilty of accepting gratification—Hence, conviction upheld.

Respondent-public servants were members of a Tender Opening Committee and were associated with the processing of tender files. Respondents demanded money as gratification from complainant for clearing his tender file. The complainant lodged a complaint with police about the demand of the gratification by the respondents. The police laid a trap and caught the respondents red handed while accepting the tainted money from the complainant. Trial Court found the respondents guilty for offences under Section 120B IPC and under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced them to undergo two years rigorous imprisonment with fine. The High Court allowed the appeal of the respondents and acquitted them.

In appeal to the Court, the appellant-State contended that the High Court made out a new case about the discrepancy of the date of complaint which was not taken as a plea by the respondents in their appeal; and that the evidence of PWs 1, 3 and 5 were cogent and credible to show that the respondents demanded and accepted money which were subsequently recovered from them.

The respondents contended that the complainant had close proximity with CBI officials and used it as a tactic to get his work done under the threat of complaint before; that the complainant foisted a false case implicating them;

A and that the question of taking gratification from the complainant does not arise since the tender file of the complainant had already been cleared which is known to the complainant.

Allowing the appeals, the Court

B HELD: 1.1. When Section 20(1) of the Prevention of Corruption Act, 1988 deals with legal presumption, it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the Section is C satisfied. The only condition for drawing such a legal presumption under Section 20 of the Act is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a D fact can be proved. But that is not the only mode envisaged in the Evidence Act. [672-H; 673-A-B]

M. Narsinga Rao v. *State of A.P.*, [2001] 1 SCC 691, referred to.

1.2. Proof of the fact depends upon the degree of probability of its having E existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. In reaching a conclusion, the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks F likely to have happened. Presumption is an inference of a certain fact drawn from other proved facts. While infering the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule G indicating the stage of shifting the burden of proof. From a certain fact or facts, the Court can draw an inference and that would remain until such inference is either disproved or dispelled. For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the Court can treat the H presumption as tantamounting to proof. However, as a caution of prudence

it has to be observed that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. [673-C; 673-E, F-G, H; 674-A]

Suresh Budharmal Kalani v. *State of Maharashtra,* [1998] 7 SCC 337: *Raghubir Singh* v. *State of Punjab,* [1974] 4 SCC 560; *Hazari Lal* v. *State (Delhi Admn.),* [1980] 2 SCC 390; *Madhukar Bhaskarrao Joshi* v. *State of Maharashtra,* [2000] 8 SCC 571; *Mohmoodkhan Mahboobkhan Pathan* v. *State of Maharashtra,* [1997] 10 SCC 600; *The State of Assam* v. *Krishna Rao,* [1973] 3 SCC 227; *C.I. Emden* v. *State of Uttar Pradesh,* AIR (1960) SC 548; *V.D. Jhangan* v. *State of Uttar Pradesh,* [1966] 3 SCR 736 and *State of A.P.* v. *V. Vasudev Rao,* JT (2003) 9 SC 119, referred to.

Hawkins v. *Powells Tillery Steam Coal Co. Ltd.,* [1911] 1 KB 988, referred to.

Black's Law Dictionary; Oxford Advance Learner's Dictionary of Current English, referred to.

1.2. The evidence of PW 1 complainant cannot be ignored on the ground that he had earlier made grievances against some other officials. The Trial Court had carefully analysed the evidence of PW 1 and found the same to be credible. The evidence of PW-1 coupled with those of PWs 3 and 5 is sufficient to bring home the accusations. A bare reading of the contents of the complaint and the date put in the complaint clearly show that the High Court was not correct in saying that the date of the document is incorrect. Additionally, this plea was not raised before the Trial Court. It being essentially a question of fact, the High Court could not have made out a new case regarding correctness of the date. The views of the High Court were also not correct when the document is itself looked at. The question whether a person has authority to do the act for which bribe is accepted is of no consequence. [677-F]

Chaturdas Bhagwandas Patel v. *The State of Gujarat,* [1976] 3 SCC 46, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 468-469 of 1998.

From the Judgment and Order dated 10.9.97 of the Andhra Pradesh High Court in Crl. A. Nos. 47 and 100 of 1995.

Sanjay Karol, Ajit S. Bhasme, Jogy Scaria and B.V. Balram Das for the Appellant.

A U.R. Lalit, Y. Raja Gopala Rao and Ms. Sasmita Tripathy for the Respondent No. 1

Ms. K. Amareswari and Anil Kumar Tandale for the Respondent No. 2.

B The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. State of Andhra Pradesh questions legality of the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court directing acquittal of the respondents who were accused nos. 1 and 2 respectively before the Trial Court i.e. Special Judge, CBI, Visakhapatnam. C The respondents faced trial for alleged commission of offences punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (in short the 'Act'). The Trial Court found each to be guilty and sentenced to undergo two years RI and to pay a fine of Rs. 1,000 with default stipulation. They were also convicted under Section 120B of the Indian Penal Code, 1860 (for D short the 'IPC'), sentenced to similar custodial punishment and to pay a fine of Rs. 2000. But in appeal the conviction and sentence were set aside.

Factual position as highlighted by the prosecution is as follows:

C. Uma Maheswara Rao (A-1) was working as Deputy Secretary of E Visakhapatnam Port Trust and D. Satyananda Reddy (A-2) was working as Deputy Financial Adviser and Chief Accounts Officer of Visakhapatnam Port Trust. G. Subrahmanyam (PW-1) was the General Power of Attorney holder of M/s Ramesh Chandra & Company. Both the accused were members of Tender Opening Committee and were associated with the processing of tender file No.C1/BG/Sleepers/Risk/91. The file dealt with placement of purchase F order for Assam Salwood Sleepers during the period from September, 1991 to December, 1991. Aforesaid Ramesh Chandra & Company through its power of Attorney holder (PW-1) submitted their quotation at Rs. 828 per sleeper and the total tender value was Rs. 1,33,84,702.80. A-1 phoned to PW-1 on 28.12.1991 at about 11.00 a.m. and asked him to meet him in the G evening at his residence for discussions with regard to tender matter and PW-1 went to his house at 8.30 p.m. on the same day and A-2 was also present there. Both the accused, who were Public Servants, during the discussion informed PW-1 that there were many complications in the tender file and demanded Rs. 20,000 each to be paid as bribe to clear the file in favour of M/s. Ramesh Chandra & Co. They also told him that they would not clear H the file, if he fails to meet the said demand and when PW-1 expressed his

financial constraints, they said that they should be paid Rs. 5,000 each as advance and balance amount was to be paid after release of the purchase order. A-1 had contacted PW-1 over telephone at about 12.00 noon on 30.12.1991 and asked him to keep the demanded amount ready so that he would come along with A-2 and collect the same around 8.30 p.m. on that day at Basant Lodge, Visakhapatnam. Thereafter, PW-1 lodged a complaint with the Superintendent of Police, C.B.I. Visakhapatnam on 30.12.1991 about the demand of bribe by the accused and on the basis of his complaint, investigation was taken up by registering a case i.e. R.C. No. 19(A)/91. Both the accused were caught red handed at about 10.15 p.m. on 30.12.1991 in Room No.208 of Basant Lodge, Visakhapatnam soon after they demanded and accepted bribe amount of Rs.5,000 each from PW-1 as a motive or reward for clearing the tender file in favour of M/s. Ramesh Chandra & Co. The tainted currency notes amounting to Rs.10,000 were recovered immediately from the polythene carry bag which was available with A-1. Both the accused abused their official position as public servants and after obtaining sanction under Section 19(1)(c) of the Act, from the Chairman, Visakhapatnam Port Trust a charge sheet was filed under Section 120B IPC and Sections 7 and 13 (1)(d) read with Section 13 (2) of the Act. The accused denied their guilt. The prosecution in support of its case examined 32 witnesses while the accused to substantiate their plea of innocence examined 5 witnesses. PW-2 who was taken as witness to prove the acceptance and recovery of the money from PW-1 resiled partially from the statement given during investigation.

Placing reliance on the evidence of PW-1, PW-3 and PW-5, the Trial Court held that there was cogent and credible evidence to show not only demand, acceptance but also recovery of the money. PW-3 was at the relevant time working as Preventive Officer, Customs and worked as the mediator. PW-5 was the investigating officer who received the complaint, and monitored the trap operation. In appeal, before the High Court the stand taken by the accused persons was that there was no cogent evidence regarding demand. PW-1 complainant was not reliable. The so-called complaint before the CBI is dated 20.12.1991. Specific stand of the prosecution was that the complaint was made on 30.12.1991 as per Exts. P-3 and P-3A. PW-2 who was one of the mediators did not support the prosecution version completely. It was not possible to accept that high ranked officers would take and accept money in the presence of an unknown party. There is no consistent evidence as regards the first and the subsequent demands. Since A-1 was not competent to finalise

A the tenders, it was not possible that he would demand money. Further the evidence on record clearly establishes that by the time of alleged demand files had been cleared by A-1 and, therefore, it is not believable that the demand was made. PW-1 in the guise of arranging a dinner took revenge on the accused persons for seeking legal advice before acceptance of the tender. With these observations, the High Court set aside the conviction and sentence as noted above.

B

In support of the appeals, learned counsel appearing for the appellant-State submitted that the order of the High Court is clearly erroneous. The correct position in law regarding presumptions was not kept in view. The C High Court made out a third case which was not even urged by the accused persons before the Trial Court regarding the alleged discrepancy of the date of the complaint. It was pointed out that nowhere any such plea was raised by the accused persons that the complaint is dated 20.12.1991. Documents clearly show that it is dated 30.12.1991. It is not known as to why the High D Court made out a new case which was not even pleaded. Evidence of PW-1 clearly establishes the demand and the recovery of money. The High Court came to a conclusion that third party was present and high placed officers would not normally make a demand in the presence of such a person. In fact, PW-2 was introduced to be Group Finance Manager of M/s. Ramesh Chandra & Co. by PW-1. No direct evidence is necessary to show regarding acceptance E of money. The Trial Court has analysed in great detail the factual position and the High Court without even considering those reasons and indicating any reason as to why a different view was to be taken has directed acquittal.

Accused took the stand pleading that a telephonic message was given F in his house that there was a dinner in the Basant Lodge. A-5 took the stand that he had gone to purchase sweets. At the time of search apart from the tainted money Re.0.45 was found with him. It is unbelievable that somebody would go to buy sweets with 45 paise in pocket. There was no variation and discrepancy in the evidence. The mediator report and the evidence of the witnesses clearly establish the accusations.

G

The High Court has observed that the accused persons being only members of the tender committee possibility of making a demand was not there.

In response. Mr. U.R. Lalit, learned counsel for respondent no.1 (A-1) H submitted that probabilities of the case have to be looked into and no strait

jacket formula can be adopted for deciding a case of this nature. He referred to evidence regarding the accepted position that the complainant had made grievance not only against the accused persons, but also on the same date against another officer of the Port Trust. Earlier also he had made certain grievances against others. This is a clear tactic to get his work done under the threat of complaint. Taking advantage of the proximity with the CBI officials false case has been foisted. In this background, the complainant (PW-1)'s version required strong corroboration which is absent. PW-2's evidence does not show any demand. The manner of collecting sample is also totally not above board. Since the file had already been cleared the question of making a demand of bribe would not arise. Further the complainant had been visiting the office and it is not improbable that he had knowledge about accused persons having cleared the file earlier to the date of demand. The clout enjoyed by PW-1 in the office and the favour shown to him by some members of the Port Trust is clearly established by the evidence on record. The evidence of PW-1 clearly shows that he had not informed accused persons about the booking of room at Basant Lodge. It is improbable that the accused persons would choose the lodge for accepting the bribe, when the prosecution case itself is that PW-1 had gone to the house of A-1 earlier when PW-2 was present there. The plea of accused persons that PW-1 called them to the Basant Lodge on the pretext of dinner is also corroborated by the evidence of PW-11. Since view taken by the High Court is reasonable one, no interference is called for. Suggestion was given that the documents were not prepared at the time claimed. The statutory presumption under the Act can be applied under Section 7 and not 13. Since PW-2 was examined on the panch witnesses, his evidence assumes importance and since the High Court held that his evidence on certain aspects is discrepant and contradictory, PW-1's evidence becomes suspect. In this background no interference is called for.

Learned counsel for respondent no.2 (A-2) adopted the stand of A-1. In addition she submitted that there was no evidence of making a demand and his presence at the house of A-1 as claimed is also not established. The High Court has rightly observed that PW-1 is not a reliable witness and come to the right conclusion. The view is not in any way perverse to warrant interference.

The evidence of PWs 1 and 5 are discrepant as to where the copy of Ext.P-3 was prepared. While it was PW-1's case that it was made in his office, PW-3 said it is prepared in the office of CBI.

A By way of reply, learned counsel for the State submitted that the plea that CBI officials had conspired to falsely implicate A-1 and A-2 is clearly unbelievable and looks absurd on the facts of the case. No reason has been indicated as to why the CBI officials would falsely implicate the accused persons in the case. It has been recorded that there was no restaurant facility at Basant Lodge and the plea that there was a telephone call regarding the B official dinner at Basant Lodge is clearly without any substance. Further, on 2.12.1991 the Chairman had asked for certain clarifications. A bare look at the complaint shows that it refers to the occurrence of the same date i.e. 30.12.1991. This basic factor has been overlooked by the High Court in making out a new case.

C

For appreciating rival stands it would be proper to quote Section 20(1) of the Act, which reads as follows:

> "20(1): *Presumption where public servant accepts gratification other than legal remuneration.*-(1) Where in any trial or an offence D punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 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 E 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 Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

F Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be G presumed" is employed in Section 20(1) of the Act, it must have the same import of compulsion.

When the sub-section deals with legal presumption, it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing H to do any official act etc., if the condition envisaged in the former part of the

section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. (See *M. Narsinga Rao* v. *State of A.P.*, [2001] 1 SCC 691).

Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. *Fletcher Moulton L.J. in Hawkins* v. *Powells Tillery Steam Coal Co. Ltd.*, (1911 (1) KB 988) observed as follows:

> "Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court may have regard to common course of natural events, human conduct, public or private business *vis-a-vis* the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.

For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or

A rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in *Suresh Budharmal Kalani* v. *State of Maharashtra,* [1998] 7 SCC 337: "A presumption can be drawn only from facts and not from other presumptions by a process
B of probable and logical reasoning".

Illustration (a) to Section 114 of the Evidence Act says that the Court may presume that "a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be
C stolen, unless he can account for his possession". That illustration can profitably be used in the present context as well when prosecution brought reliable materials that there was recovery of money from the accused. In fact the receipt and recovery is accepted. The other factor is the acceptability of the plea of loan, which the High Court itself has not held cogent or credible.

D We may note that a three-Judge Bench in *Raghubir Singh* v. *State of Punjab,* [1974] 4 SCC 560 held that the very fact that the accused was in possession of the marked currency notes against an allegation that he demanded and received the amount is "*res ipsa loquitur*".

In *Hazari Lal* v. *State (Delhi Admn.),* [1980] 2 SCC 390) it was observed
E that there is no requirement to prove passing of money by direct evidence. It may also be proved by circumstantial evidence. In *Madhukar Bhaskarrao Joshi* v. *State of Maharashtra,* [2000] 8 SCC 571 it was observed thus:

> "The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification.
F Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that
G there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment
H for giving satisfaction to the public servant who received it".

In Black's Law Dictionary, "gratification" is defined as "a recompense or reward for services or benefits, given voluntarily, without solicitation or promise". But in Oxford Advance Learner's Dictionary of Current English the said word is given the meaning "to give pleasure or satisfaction to". Among the above two descriptions for the word "gratification" with slightly differing nuances as between the two, what is more appropriate for the context has to be found out. The context in which the word is used in Section 4(1) of the Act is, hence, important.

In *Mohmoodkhan Mahboobkhan Pathan* v. *State of Maharashtra,* [1997] 10 SCC 600 this Court has taken the same meaning for the word "gratification" appearing in Section 4(1) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the old Act'). We quote the following observations:

> "7. The primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what the accused received was gratification. The word 'gratification' is not defined in the Act. Hence, it must be understood in its literal meaning. In the Oxford Advance Learner's Dictionary of Current English, the word 'gratification' is shown to have the meaning 'to give pleasure or satisfaction to'. The word 'gratification' is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient."

The provisions of Section 4(1) of the old Act and Section 20(1) of the Act are almost identically worded.

What is the concept of gratification has been succinctly stated by this Court in *The State of Assam* v. *Krishna Rao,* [1973] 3 SCC 227, through illuminating words, after quoting Section 4 of the Act.

> "22.-*In State of Madras* v. *A. Vaidiaratha Iyer,* [1958] SCR 580 after reproducing the relevant provisions of Section 4 of the Act this Court observed that where it is proved that a gratification has been accepted the presumption under Section 4 of the Act shall at once arise. It is a presumption of law and it is obligatory on the Court to raise it in every case brought under Section 4. In the reported case this Court allowed the appeal of the State of Madras and setting aside the impugned order of acquittal passed by the High Court restored that of the Special Judge convicting the respondent there. In *C.I. Emden* v. *The State of U.P.,* AIR (1960) SC 548 the appellant who was

working as a local 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 Section 4 of the Act had to be raised and that the presumption had not been rebutted by the appellant and accordingly convicted him under Section 161 IPC and Section 5 of the Act. On appeal the High Court held that on the facts of that case the statutory presumption under Section 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, on appeal in this Court, *inter alia*: (i) that the presumption under Section 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, (ii) that even if the presumption arose it was rebutted when the appellant offered a reasonably probable explanation. This Court, dealing with the presumption under Section 4, observed that such presumption 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 Section 4(1) was to be given its literal dictionary meaning of satisfaction or 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. On the facts the explanation given by the accused, in agreement with the opinion of the High Court was held to be wholly unsatisfactory and unreasonable. In *Dhanvantrai* v. *State of Maharashtra,* AIR (1964) SC 575 it was observed that in order to raise the presumption under Section 4(1) of the Act what the prosecution has to prove is that the accused person has received 'gratification other than legal remuneration' and when it is shown that he has received a certain sum of money which was not a legal remuneration, then, the condition prescribed by this section is satisfied and the presumption thereunder must be raised. In *Jhangan* v. *State of U.P.*, [1968] 3 SCR 766 the above decisions were approved and it is observed that mere receipt of money is sufficient to raise the

presumption under Section 4(1) of the Act." A

In *C.I. Emden* v. *State of Uttar Pradesh*, AIR (1960) SC 548 and *V.D. Jhangan* v. *State of Uttar Pradesh*, [1966] 3 SCR 736 it was observed that if any money is received and no convincing, credible and acceptable explanation is offered by the accused as to how it came to be received by him, the presumption under Section 4 of the old Act is available. When the B receipt is admitted it is for the accused to prove as to how the presumption is not available as perforce the presumption arises and becomes operative.

These aspects were highlighted recently in *State of Andhra Pradesh* v. *V. Vasudev Rao*, JT (2003) 9 SC 119.

C

The evidence of PW-1 cannot be ignored on the ground that he had earlier made grievances against some other officials. The Trial Court had carefully analysed his evidence and found the same to be credible. Even if PW-2 did not support the prosecution version on some aspects yet his evidence also proves giving of money. The evidence of PW-1 coupled with those of D PWs 3 and 5 is sufficient to bring home the accusations. Further, the High Court seems to have made out a new case about the alleged date of complaint. A bare reading of the contents of the complaint and the date put in the complaint as evident from Exts. P-3 and P-3A clearly show that the High Court was not correct in saying that the date of the document is 20.12.1991. Additionally, this plea was not raised before the Trial Court. There was even E no suggestion about that aspect. Learned counsel for A-1 and A-2 submitted that suggestions were there, which is not so. What was suggested was the documents were not prepared at the time they were claimed to be. There is a gulf of difference between "time" and "date". In any event such a plea has not been taken before the courts below. It being essentially a question of fact, F the High Court could not have made out a new case regarding correctness of the date. As noted above, the views of the High Court were also not correct when the document is itself looked at. Much stress was laid on the accused persons not being the final authority in the tender matter. As noted in *Chaturdas Bhagwandas Patel* v. *The State of Gujarat*, [1976] 3 SCC 46 the question whether a person has authority to do the act for which bribe is accepted is G of no consequence.

Keeping in view the legal principles as can be culled out from decisions referred to above, applying the fact situation to them the inevitable conclusion is that the High Court was not justified in directing acquittal. Not only the correct legal position was not kept in view but the analysis of the factual H

A position is also found to be erroneous. That being so, the judgment of the High Court is set aside. Custodial sentence of one year for each of the proved offence would meet the ends of justice, with the fine and default stipulation stipulated by the Trial Court.

The appeals are allowed to the extent indicated. The accused persons
B are directed to surrender to custody to serve remainder of sentence, if any.

B.S. Appeals allowed.