A T. SUBRAMANIAM

v.

THE STATE OF TAMIL NADU

JANUARY 4, 2006

B [S.B. SINHA AND R.V. RAVEENDRAN, JJ.]

Service Law:

Prevention of Corruption Act, 1947; Section 5(1)(d) r/w Section 5(2)/
C *Penal Code, 1860; Section 161:*

Illegal gratification allegedly accepted by an executive officer of a temple--Complaint against--Acquittal by Trial Court as ingredients of the offence alleged not established--Reversed by High Court--On appeal, Held:
D *The High Court did not consider the explanation given by the accused officer immediately after being caught accepting bribe that the amount so received by him was towards the arrear of rent due--Nor did it hold the decision of the trial Court erroneous by re-appreciating evidence to the effect--The evidence throws out a clear alternative that the accused was falsely implicated at the instance of the complainant and others--Since two views possible from the*
E *very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt acceptance of illegal gratification--Under the circumstances, Trial Court rightly held that the charge against the accused not proved--Thus, High Court was not justified in interfering with the order of the Trial Court--Hence, order of the Trial Court restored.*

F **The complainant-PW1 along with his friend-PW2, when approached the appellant-Executive Officer of the Temple for securing patta in his favour in respect of certain land, the accused allegedly demanded bribe from him. The complainant paid part of the sum demanded to the appellant. In the meantime, he filed a complaint against the officer for**
G **demanding bribe. Officers of Vigilance and Anti-Corruption Department, with the help of Police, caught the appellant red-handed, accepting bribe from PW2 on behalf of the complainant. Trial Court held that the accused employee had given a satisfactory explanation for receiving the amount in question towards lease rent arrears due from him and also the prosecution had failed to establish beyond reasonable doubt three essential**
H

ingredients of illegal gratification, namely, the demand, delivery and acceptance of the amount as illegal gratification against the accused and acquitted him. On appeal, the High Court reversed the order of the trial Court and convicted the accused under Section 5(1)(d) r/w Section 5(2) of the Prevention of Corruption Act. Hence the present appeal. A

Allowing the appeal, the Court B

HELD. 1.1. Mere receipt of a sum of Rs.200/- by the accused-appellant from PW-1 would not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Prevention of Corruption Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification by him. If the amount in question had been paid as lease rent arrears due to the temple or even if it was not so paid, but the appellant was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. [185-G-H; 186-A] C D

Punjabrao v. *State of Maharashtra,* [2002] 10 SCC 371; *Chaturdas Bhagwandas Patel* v. *The State of Gujarat,* AIR (1976) SC 1497 and *State through Inspector of Police, Andhra Pradesh* v. *K. Narasimhachary,* (2005) 8 SCALE 2669, relied on. E

1.2. The High Court did not consider the explanation offered by the appellant for the receipt of the money and the previous enmity harboured by PW-1, PW-2 and PW-6 towards him. Nor did it hold that the decision of the trial Court was erroneous or perverse. High Court by re-appreciating the very evidence on which the Trial Court had reached the conclusion that the payment was not by way of an illegal gratification but was towards lease rent due by PW-6 and paid through PW-1, and relying on the evidence of PW-1, PW-2 and PW-6, it concluded that the payment was by way of illegal gratification. In particular, it relied on the denial by PW-6 that he had sent any amount through PW-1, against the appellant. But the mere denial by PW-6 cannot be a ground to hold the appellant guilty. If PWs.1, 2 and 6 had hatched a conspiracy to involve the appellant in a criminal case, naturally PW-6 would deny having sent the amount through PW-1. The explanation given by the appellant immediately after the incident clearly explains all the circumstances and raises not only a F G H

reasonable but very serious doubt about the amount having been received by him as illegal gratification. The evidence throws out a clear alternative that the accused was falsely implicated at the instance of PWs.1, 2 and 6. [187-C-D-E-F]

1.3. If two views were possible from the very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs. 200/- as illegal gratification. Hence, the trial court was right in holding that the charge against the appellant was not proved and the High Court was not justified in interfering with the same. [188-F-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 186 of 2000.

From the Judgment and Order dated 8.10.1999 of the High Court of Madras in C.A. No. 627 of 1992.

M.A. Krishnamoorthy and M.A. Chinnasamy for the Appellant.

Abhay Kumar and Subramonium Prasad for the State of Tamil Nadu.

The Judgment of the Court was delivered by

RAVEENDRAN, J. This appeal by the accused is against the judgment dated 8.10.1999 of the Madras High Court in C.A. No.627 of 1992, convicting him under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (for short 'the Act'). By the said judgment, the High Court reversed the judgment dated 29.7.1991 passed by the Special Judge, Thanjavur District at Kumbakonam in Special Case No.2/1988 acquitting the accused.

2. The case of the prosecution was as follows

(2.1.) The appellant was working as the Executive Officer of Sri Swarnathaneswar Temple, Chithaimoor, Tamil Nadu from September, 1985.

(2.2.) That one Shivashanmugam (PW-1) was in occupation of six cents of temple land (situated behind his house). PW-1 approached the appellant in June, 1987 for securing a patta in his favour in respect of the said land. The appellant told him to apply to the concerned authorities, namely, the Deputy Commissioner and the

Assistant Commissioner (Endowments) and that he would help him in securing the patta. On 2.7.1987, the appellant sent word to PW-1 to meet him. PW-1 along with his friend (PW-2) went and met the appellant. The appellant then demanded Rs.450 to help PW-1. Subsequently, the appellant reduced the demand to Rs.300 and enquired as to how much money he was having. PW-1 stated that he was having Rs.100/- and paid the said sum of Rs.100/- to the appellant. The appellant told PW-1 that only if he (PW-1) paid the balance amount, he would make arrangements for transfer of patta. He reiterated the demand on 9.7.1997 when PW-1 and PW-2 again met him and paid Rs.250/- towards lease arrears due by PW-1.

(2.3.) As PW-1 was not willing to pay the bribe, he gave a complaint (Ex. P-1) to the Inspector-Vigilance and Anti-Corruption, Thanjavoor (PW-13) on 10.7.1987. At that time, PW-2 accompanied PW-1. PW-13 prepared the FIR (Ex.P-20). Thereafter, PW-13 introduced the complainant to two witnesses, namely, Kulandaivelu (PW-3), an Engineer, and Santhanagopalan, a Clerk. PW-1 handed-over Rs.200/- (that in 4 currency notes of Rs.50 each) to PW-13. Their numbers were noted and after explaining the procedure, the currency notes were coated with a chemical and returned to PW-1. Thereafter, PW-1, PW-2 and PW-3 were instructed as to how they should act when they went to meet the appellant.

(2.4.) Thereafter, PW-1, PW-2, PW-3, PW-13, the Deputy Superintendent of Police and Santhanagopalan went to Chithamoor. They reached at about 8.15 p.m., parked the vehicles near the temple and PWs.1 to 3 were sent inside. PW-1 and PW-2 went inside and PW-3 stood near the door. PW-1 stated that he had brought Rs.200/- demanded by the appellant and gave the chemically treated currency notes to him. On receiving the same, the appellant stated that he has received PW-1's petition and he would finish the work. PW-2, who accompanied PW-1, also requested the appellant to do the needful. Then they came out and gave the agreed signal. The Inspector of Police and Deputy Superintendent of Police, who were standing outside came inside. On the appellant being identified by PW-1, he was asked whether he had received the amount. The appellant was holding the amount in his right hand, shifted it to his left hand and thereafter kept it on the table. Necessary chemical test was conducted and the amount was recovered. On query from the Inspector, the accused explained

A that PW-1 had paid the amount as due by Thyagarajan (PW-6) to the temple by way of lease arrears. Mahazar, sketch and search list were drawn up.

3. On behalf of the prosecution, 13 witnesses were examined in Ex. P-1 to P-21 marked, apart from MO 1 to 3. On behalf of the defence, DW-1 B and DW-2 were examined and Ex. D-1 to D-10 were exhibited.

4. The case of the defence was as follows :

(4.1.) On 10.7.1987, PW-1 came along with PW-2 and stated that one Thyagarajan (PW-6) who was due in lease amount to the temple, had C requested him (PW-1) to hand-over Rs.200 towards his lease rent arrears. The complainant received it and offered to give the receipt. But PW-1 told that Thyagarajan would himself come and collect the receipt the next day. He offered the said explanation when the Police Inspector sought his explanation immediately after the incident.

D (4.2.) According to the appellant, the complaint by PW-1 and the subsequent trap was an act of vengeance by PW-1 (in connivance with PW-2 and PW-6) in view of their nurturing enmity towards him. First reason for the enmity was the dismissal of one Dhanapal, PW-1's cousin, who was an employee of the temple on account of E certain misconduct committed by him, (vide Ex. D-7 dated 16.1.1986) in pursuance of action taken by the appellant. Eversince then, PW-1 and PW-2 were nurturing a grudge against the appellant, thinking that he was responsible for the dismissal of Dhanpal. The second reason is that PWs.1, 2 and 6 had committed trespass/encroachment on the temple land and the appellant as the Executive Officer had F filed a case being O.S. No.309/87 and obtained an order of injunction against them. As their attempts to illegally occupy the temple land were frustrated by the appellant, in order to wreak vengeance, the trio had hatched a conspiracy to involve him in a criminal case. The enmity is also proved by the complaints (Ex. D-6 dated 3.10.1985 and Ex. D-1 dated 18.10.1985) which had been given by PWs.1, 2 G and 6 against the appellant to the Deputy Commissioner, Religious & Charitable Endowments, and to the Revenue Tehsildar, Mannargudi, with a demand to transfer the appellant.

5. The Special Judge considered the evidence in detail. He held that the H appellant had given a reasonable and satisfactory explanation for receiving

Rs.200 from PW-1 in the presence of PW-2, by stating that the amount had been tendered by PW-1 as having been sent by PW-6 towards his lease rent arrears. He also held that the prosecution had failed to establish beyond reasonable doubt the three essential ingredients, namely, the demand, delivery and acceptance of the sum of Rs.200/- by the appellant as illegal gratification. Consequently, by judgment dated 13.7.1991 the appellant was acquitted.

6. The State preferred an appeal. The High Court allowed the appeal by its judgment dated 8.10.1999. The High Court held : (a) that the prosecution had proved that the accused has received the sum of Rs.200 (MO-1 series) from PW-1; (b) that the evidence of PWs.1, 2, 3 and 13 established that the said amount was received as illegal gratification in connection with grant of patta in favour of PW-1 in respect of 6 guntas of temple land; and though the appellant was not authorized to grant patta, he had to initiate a note recommending the grant as the Executive Officer of the temple and, therefore, there was a reason for the demand, and acceptance was established; (c) the defence case that PW-6 had sent the said amount through PW-1 towards lease rent cannot be accepted in view of PW-6 in his evidence denying that he had sent any lease rent through PW-1, though he admitted that at that time he was in arrears of lease rent in a sum of Rs.200/- to Rs.500/-.

Consequently, the High Court convicted the appellant under Section 5(1)(d) read with Section 5(2) of the Act. As the appellant alleged that he was already 67 years of age, and had retired nearly 9 years ago, that he had a daughter of marriageable age, that he did not own any property and was residing in a rented house and that he and his wife were not keeping good health, the High Court took a lenient view and awarded the sentence of imprisonment till the rising of the court and payment of Rs.1000/- as fine; and in default to undergo RI for one month. As the accused was present in court, he underwent the sentence also. The said conviction and sentence is challenged by the appellant in this appeal.

7. Mere receipt of Rs.200/- by the appellant from PW-1 on 10.7.1987 (admitted by the appellant) will not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is

A probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. In *Punjabrao* v. *State of Maharashtra,* [2002] 10 SCC 371, the accused, a patwari, was on a campaign to collect loan amounts due to Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. This Court accepted such explanation (though such explanation B was not immediately offered as in this case, but was given only in the statement under Section 313) holding thus :-

> "It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises C for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

D In *Chaturdas Bhagwandas Patel* v. *The State of Gujarat,* AIR (1976) SC 1497, this Court held that the burden that rests on an accused to displace the statutory presumption that is raised under Section 4(1) of the Act, is not onerous as that cast on the prosecution to prove its case. But such burden has to be discharged, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was E accepted by him, other than as a motive or reward as is referred to in Section 161 IPC.

In *State through Inspector of Police, Andhra Pradesh* v. *K. Narasimhachary,* (2005) 8 SCALE 266, we have reiterated the well recognized principle that if two views are possible, the appellate court should not interfere F with the acquittal by the lower court; and that only where the material-on-record leads to a sole and inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court.

8. We may briefly refer to the evidence keeping the said principles in G view. The evidence no doubt established that PW-1 accompanied by PW-2 went to PW-13 and gave a complaint, that a trap was arranged, the currency notes were chemically treated, that PW-1 delivered the chemically treated currency notes (Rs.200/-) to the appellant in the presence of PW-2, that the appellant received the said amount, that the same was recovered by the raiding party from the appellant, and that the appellant's hands turned pink when H dipped in the chemical solution. The above evidence no doubt proves that a

sum of Rs.200/- was paid by PW-1 to the appellant. But the crucial question is whether the appellant had demanded the said amount as illegal gratification to show any official favour to PW-1 and whether the said amount was paid by PW-1 and received by the appellant as consideration for showing such official favour. The evidence clearly shows the contrary as will be evident from the following :

(a) One Dhanapal, cousin of the complainant - PW-1, was dismissed from service of the temple on 16.1.1986 by an order of dismissal (Ex. D7) issued by the appellant in his capacity as Executive Officer of the temple, for misconduct, on action initiated by the appellant. This is established by documentary evidence as well as oral evidence of DW-2 (one of the trustees of the temple);

(b) The appellant as Executive Officer of the temple, has taken several steps to prevent encroachment and collect the arrears due to the temple. He had initiated legal action against PWs.1, 2 and others when they attempted to encroach upon the temple land and, therefore, they were inimical towards the appellant. This is clear from the evidence of DW-2.

(c) PWs.1, 2 and 6 were signatories to the complaints (Ex. D-1 and D-6) given in year 1985 to the Revenue Officer and to the Deputy Commissioner of Religious & Charitable Endowment seeking transfer of the appellant. This is established by evidence of DW-2.

(d) PW-6 was in fact due in a sum of Rs.400 to Rs.500 towards lease rent to the temple (admitted by PW-6). Within 15 minutes to half an hour of the alleged payment of illegal gratification (trap), when asked to explain the possession of the said sum, the appellant explained that it was paid by PW-1 on behalf of PW-6 towards the arrears of lease rent with a request that the appellant should issue a receipt to PW-6 the next day.

(e) PW-2 is a close friend and confidante of PW-1 and PWs.1, 2 and 6 had a common grievance against the appellant in view of the action taken by him to protect the temple land from encroachment.

(f) Neither PW-1 nor PW-2 nor PW-3 say that the appellant demanded any money as illegal gratification on 10.7.1986. The evidence is that PW-1 went in along with PW-2 and handed over the sum of Rs.200/- to the appellant saying that he had brought

A the amount. There is nothing about the payment being made or received as illegal gratification. On the other hand, DW-1, a clerk in the temple has stated that on 9.7.1987 at about 11 a.m., PW-1 came to the temple office and informed the appellant that PW-6 had given him money for paying lease rent, that he had spent the amount and he will come and pay it the next day. This shows that the payment on 10.7.1986 was towards the arrears due by PW-6.

9. The High Court did not consider the explanation offered by the appellant for the receipt of the money nor the previous enmity harboured by PW-1, PW-2 and PW-6 towards the appellant. Nor did it hold that the decision of the trial court was erroneous or perverse. Re-appreciating the very evidence (on which the trial court had reached the conclusion that the payment was not by way of an illegal gratification but was towards lease rent due by PW-6 and paid through PW-1), the High Court relying on the evidence of PW-1, PW-2 and PW-6 concluded that the payment was by way of illegal gratification. In particular, it relied on the denial by PW-6 that he had sent any amount through PW-1, against the appellant. But the mere denial by PW-6 that he had sent the money through PW-1 cannot be a ground to hold the appellant guilty. If PWs.1, 2 and 6 had hatched a conspiracy to involve the appellant in a criminal case, naturally PW-6 would deny having sent the amount through PW-1. The explanation given by the appellant immediately after the incident clearly explains all the circumstances and raises not only a reasonable but very serious doubt about the amount having been received by him as illegal gratification.

10. The evidence throws out a clear alternative that the accused was falsely implicated at the instance of PWs.1, 2 and 6. If two views were possible from the very same evidence, it cannot be said that the prosecution had proved beyond reasonable doubt that the appellant had received the sum of Rs. 200/- as illegal gratification. We are, therefore, of the considered view that the trial court was right in holding that the charge against the appellant was not proved and the High Court was not justified in interfering with the same.

11. We, therefore, allow this appeal, set aside the order of the High Court and restore the order of the trial court, acquitting the appellant of the charge.

S.K.S. Appeal allowed.