State Of Andhra Pradesh vs V. Vasudeva Rao on 13 November, 2003

Equivalent citations: AIR 2004 SUPREME COURT 960, 2004 (9) SCC 319, 2003 AIR SCW 6555, (2003) 12 ALLINDCAS 6 (SC), (2003) 9 JT 119 (SC), 2004 (1) UJ (SC) 580, 2003 (7) SLT 100, 2004 ALL MR(CRI) 1191, 2004 (1) BLJR 357, 2004 BLJR 1 357, 2004 SCC(CRI) 968, 2003 (9) SCALE 566.2, 2003 (12) ALLINDCAS 6, (2003) 4 KHCACJ 690 (SC), 2003 (9) JT 119, 2004 UJ(SC) 1 580, 2004 (1) SRJ 490, 2004 CHANDLR(CIV&CRI) 270, (2003) 3 CHANDCRIC 420, (2004) 1 KER LT 526, (2004) 27 OCR 1, (2003) 4 RECCRIR 917, (2003) 4 CURCRIR 361, (2003) 8 SUPREME 239, (2004) 2 ALLCRIR 1729, (2003) 9 SCALE 566(2), (2004) 13 INDLD 195, (2004) 48 ALLCRIC 58, (2004) 1 ALLCRILR 267, (2003) 4 CRIMES 519, 2003 (2) ALD(CRL) 1030

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  208 of 1997

PETITIONER:
State of Andhra Pradesh

RESPONDENT:
V. Vasudeva Rao

DATE OF JUDGMENT: 13/11/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT,J It is a strange co-incidence that the Prevention of Corruption Act, 1947 (hereinafter referred to as the 'Act') was enacted in the year of our country's independence.

Corruption is one of the most talked about subjects today in the country since it is believed to have penetrated into every sphere of activity. It is described as wholly widespread and spectacular.

Corruption as such has reached dangerous heights and dangerous potentialities. The word 'corruption' has wide connotation and embraces almost all the spheres of our day to day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced

not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations. Avarice is a common frailty of mankind, and while Robert Walpole's observation that every man has a price, may be a little generalized, yet it cannot be gainsaid that it is not far from truth. Burke cautioned "Among a people generally corrupt, liberty cannot last long".

In this appeal, the State of Andhra Pradesh has questioned legality of judgment rendered by a learned Single Judge of Andhra Pradesh High Court directing acquittal of the respondent-V. Vasudeva Rao (hereinafter referred to as the 'accused') who faced trial for alleged commission of offences punishable under Section 161 of the Indian Penal Code, 1860 (for short the 'IPC') and Section 5(2) read with Section 5 (1)(d) of the Act. He was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- on each count by the trial Judge i.e. the Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad.

Prosecution version which led to the trial of the case is essentially as follows:

> The accused respondent was substantively posted as Assistant Controller, Weights and Measures in the year 1988-89. He was kept in charge of superior post of Deputy Controller, Weights and Measures, Warangal in the year 1988. He was working as such between the period 31.1.1988 to 8.6.1988 and was thus a public servant within the meaning of Section 21 IPC. Complainant-D. Raghunath was working as Inspector of Weights and Measures at Warangal between August 1985 to April 1988. On 3.4.1988, the accused sent for the complainant-Raghunath and hinted that his transfer from Warangal to Karimnagar was on the cards.

Complainant-Raghunath requested him not to transfer him to Karimnagar as he had personal difficulties. It is alleged that the accused thereupon demanded a bribe of Rs.10,000/- for retaining him at Warangal itself. Complainant-Raghunath showed his inability to pay such a large amount. The accused then reacted by saying that in case the said amount was not paid to him, the complainant-Raghunath would be transferred. He next asked Raghunath to give choice of posting in case he was to be transferred from Warangal. Complainant then requested that if at all he was to be transferred he may be posted to Jangaon. For such desired posting the accused made a demand of Rs.2,000/- as a bribe from the complainant. Complainant agreed to pay the said amount. On 13.4.1988 Raghunath received posting orders accordingly. The accused on the very same night made a demand of Rs.2,000/- from the complainant. Complainant-Raghunath requested that he may be allowed to make the payment in instalments and, promised that he would pay Rs.1,000/- in first instalment and the remaining would be paid during the next visit of the complainant to Warangal. In reality, complainant was not willing to make any payment of bribe amount; and therefore went and lodged a complaint on 14.5.1988 with DSP of Anti Corruption Bureau in the matter. The D.S.P. then arranged for a trap for catching the accused and accordingly the usual procedure was adopted, and complainant was asked to bring the amount for being paid to the accused, on the next day in the office of DSP. After the currency notes were produced by the complainant on the next day in office, they were smeared with phenolphthalein powder after selector the mediator's name. Later, complainant accompanied by policy party inclusive of mediator went towards the office of accused. Complainant entered in and passed the amount to the accused, and thereafter gave a pre-planned

signal to the raiding party. The raiding party then entered and the tainted amount was found to be possessed by the accused. After usual panchanama etc. the case was registered against the accused and he was prosecuted before the learned Special Judge for ACB cases at Hyderabad. Thirteen witnesses were examined to substantiate the accusations.

The accused pleaded innocence. His defence was that he had never taken or accepted any amount by way of bribe. The amount of Rs.1,000/- was advanced by way of hand loan to the complainant-Raghunath who died some times around July, 1990. There was no acceptance of any bribe money. Four witnesses were examined to further the plea of innocence. As noted above, the complainant-Raghunath had died and as a result he could not be examined as a witness at the time of trial before the trial Court.

Learned Special Judge on the basis of evidence adduced held that though the complainant-Raghunath could not be examined there was sufficient evidence otherwise to prove that the accused had made demand of the bribe amount as alleged by the prosecution and he in fact received the tainted amount of Rs.1,000/- on the date of trap from the complainant-Raghunath. The plea that he had given a hand loan was held to have not been established. The conviction and sentence were challenged in appeal before the High Court.

The High Court came to hold that there was no material to show that any demand was made for the amount as bribe. It was therefore observed that Section 4 of the Act has no application. The evidence of PW-6, the Panch and that of the concerned D.S.P. (PW-11) was found not sufficient to further the prosecution version. It was noted that as per the evidence of Panch (PW-6) and that of the DSP (PW-11) the signal was given by the deceased-Raghunath at about 9.50 a.m. Both of them had stated in their evidence that they have left the DSP's office at about 9.05 a.m. According to the High Court, the complainant-Raghunath must have been inside the office of the appellant for considerable length of time and there is absolutely no evidence as to what was going on during all this period of more than 15 to 20 minutes. Though it was held that the theory of hand loan as advanced by the accused is not convincing and may not be accepted, yet the prosecution was required to establish by cogent and convincing evidence that the accused had demanded the amount and that towards such demand the decoy-witness had gone and paid the amount and it was accepted as such. Further the High Court observed that though there was no explanation offered for the presence of phenolphthalein powder that was not sufficient to hold the accused guilty.

Finally, it was observed that the prosecution was not relieved of its duty to prove acceptance of money by accused merely because the accused stated in his explanation that the amount seized was towards re- payment of loan. The proof of prosecution case must precede the stage of examination of accused and that there was no evidence to prove acceptance of money by the appellant the presumption available under Section 4 was still born and what was stated in the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (for short the 'Code') does not become evidence. With these findings, the conviction and sentence were set aside.

In appeal, learned counsel for the State submitted that the approach of the High Court is erroneous. The presumption under Section 4 of the Act was clearly available particularly when there was no

denial about recovery of the money. In fact the positive stand of the accused was that the money had been received by him, but as an act of receiving back the money advanced. It was further submitted that even if presumption is not available the Court can presume that in ordinary course most probable inference was supportable by the evidence on record.

In response, learned counsel for the accused submitted that the High Court's conclusions are on terra firma. When the evidence on record does not establish any demand mere recovery would not suffice. The High Court has also analysed the factual position to conclude that presence of the phenolphthalein powder is not an incriminating circumstance. What is important for the purpose of the presumption under Section 4 of the Act is that the amount must have been received as gratification. There is no evidence in that regard.

Reliance was placed on V.K. Sharma v. State (Delhi Admn.) (1975 (1) SCC 784), Sita Ram v. The State of Rajasthan (1975 (2) SCC 227) and Suraj Mal v. State (Delhi Admn.) (1979(4) SCC 725) to contend that mere recovery in the absence of any evidence to show payment of money was not sufficient. Mere recovery without proof of its payment by or on behalf of the complainant would not bring in application of Section 4 of the Act.

For appreciating rival stands it would be proper to quote Section 4(1) of the Act, which reads as follows:

> "4.(1) Presumption where public servant accepts gratification other than legal remuneration.-(1) Where in any trial or an offence punishable under Section 161 or Section 165 of the IPC or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof, 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."

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 presumed" is employed in Section 4(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 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 4 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-`-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 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 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 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.

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 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. 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 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 for giving satisfaction to the public servant who received it".

It is to be noted that decisions relied upon by the learned counsel for the accused were considered in Narsinga Rao's case (supra) and it was held that the principles had no application as the findings recorded depend upon the veracity of the testimony of the witnesses, so far as Suraj Mal's case (supra) is concerned, and the observations in Sita Ram's case (supra), were to be confined to the facts of that case and no legal principle for future application could be discerned therefrom.

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 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 Advanced 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."

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), in following illuminating words:

> "21.-In our opinion, there is merit in the appellant's contention that the High Court has taken an erroneous view of Section 4 of the Prevention of Corruption Act. That section reads:
>
> "4. Presumption where public servant accepts gratification other than legal remuneration.-(1) Where in any trial or an offence punishable under Section 161 or Section 165 of the IPC or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof, 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.
>
> (2) Where in any trial of an offence punishable under Section 165-A of the Indian Penal Code or under clause (ii) of sub-section (3) of Section 5 of this Act, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 161 IPC or as the case may be without consideration or for a consideration which he knows to be inadequate.
>
> (3) Notwithstanding anything contained in sub-sections (1) and (2) the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

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."

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 Act is available. When the 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.

When the factual position is examined in the background of legal principles culled out from various decisions of this Court, the inevitable conclusion is that the High Court's judgment is indefensible. We set aside the judgment and hold that the accused was rightly convicted under Section 161 IPC and Section 5 (2) read with Section 5 (1)(d) of the Act by the trial Court.

Coming to the question of sentence, learned counsel for the accused submitted that the accused is presently aged 75 years. At the relevant point of time, the minimum sentence was one year and for special reasons this sentence could be reduced. In a case involving acceptance of illegal gratification there is no scope for any leniency. The tentacles of corruption are spreading fast in the society corroding the moral fibre and consequentially in most cases the economic structure of the country. It has assumed alarming proportions in recent times. Though the occurrence at hand took place nearly 14 years back, yet as noted at the threshold, the Act was brought into anvil in the year of country's independence. The object appeared to be to nip the propensity for being corrupt in the bud. The growth of corruption has to a great extent frustrated the purpose for which the Act was enacted, and both the Act and its successor Act in 1988 do not appear to have curbed the growth of corruption, and to have achieved the intended results.

As observed in Madhukar's case (supra), there is no such proviso as in Section 5(2) of the earlier Act and no power whatsoever is given to the Court to impose a sentence less than the minimum, even if there are special reasons for doing so. Parliament fixed the minimum sentence of imprisonment of one year even under the Act of 1947 by making an amendment to it in 1958 for which the legislative language is apparently peremptory i.e. "shall not be less than one year". The proviso is in the form of a rare exception by giving power to the Court for reducing the imprisonment period below one year only when there are "special reasons" and the law required that those special reasons must be recorded in writing by the Court.

When corruption was sought to be eliminated from the polity all possible stringent measures are to be adopted within the bounds of law. One such measure is to provide condign punishment. Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals. That was precisely the reason why the sentence was fixed as 7 years and directed that even if the said period of imprisonment need not be given the sentence shall not be less than the imprisonment for one year. Such a legislative insistence is reflection of Parliament's resolve to meet corruption cases with a very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants. All public servants were warned through such a legislative measure that corrupt public servants have to face very serious consequences. If on the other hand any public servant is given the impression that if he succeeds in protracting the proceedings that would help him to have the advantage of getting a very light sentence even if the case ends in conviction, we are afraid its fallout would afford incentive to public servants who are susceptible to corruption to indulge in such nefarious practices with immunity. Increasing the fine after reducing the imprisonment to a nominal period can also defeat the purpose as the corrupt public servant could easily raise the fine amount through the same means.

In the present case, how could the mere fact that this was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions under the Act and it is not a speciality of this particular case. It is the defect inherent in implementation of the system that longevity of the cases tried under the Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by Parliament the legislative exercise would stand defeated.

Considering the age of the accused, we reduce only the sentence to the minimum of one year without touching the fine imposed, but do not find any justifiable reason to reduce it below the minimum. The appeal is allowed to the extent indicated above.