Chelloor Mankkal Narayan Ittiravi ... vs State Of Travancore-Cochin on 10 November, 1952

Equivalent citations: AIR 1953 SUPREME COURT 478

Author: B.K. Mukherjea

Bench: M. Patanjali Sastri, B. K. Mukherjea, V. Bose

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           CASE NO.:
Appeal (crl.)  31 of 1952

PETITIONER:
CHELLOOR MANKKAL NARAYAN ITTIRAVI NAMBUDIRI

RESPONDENT:
STATE OF TRAVANCORE-COCHIN

DATE OF JUDGMENT: 10/11/1952

BENCH:
M. Patanjali Sastri CJI & B. K. Mukherjea & S. R. Das & V. Bose & G. Hassan

JUDGMENT:
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JUDGMENT AIR 1953 SC 478 B.K. Mukherjea, J.

1. This appeal, which has come before us on special leave, is directed against a judgment of the High Court of Travancore-Cochin dated July 16, 1951 passed in Criminal Appeal No. 194 of 1950, by which the learned Judges set aside an order of acquittal, made in favour of the appellant by the Special Magistrate, Trichur, in C. C. No. 1 of 1125 M.E. and converting it into one of conviction under Section 389, indian Penal Code (corresponding to Section 409, Indian Penal Code) sentenced him to undergo rigorous imprisonment for a period of one year and pay a fine of Rs. 1,000; in default of payment of fine, he was to suffer rigorous imprisonment for a further term of four months.

2. It may be mentioned here that the appellant, who has been described as accused No. 1 in the Judgments of both the courts below, was tried along with two other persons as his co-accused by the Special Magistrate of Trichur, who made an order of acquittal in favour of all of them. The State Government preferred an appeal to the High Court challenging the propriety of the entire order. The High Court dismissed the appeal so far as it related to accused Nos. 2 and 3 and reversed the judgment of the original court in regard to accused No. 1, who is the sole appellant before us.

3. The material facts necessary for purposes of the present appeal may be briefly narrated as follows. The appellant and accused No. 2 Ramachandra Iyer were appointed joint receivers of a textile business, known as Sitaram Spinning and Weaving Mills Limited (hereinafter referred to as the

mills), situated at Trichur, under an order of the High Court of Cochin passed in O. S. No. 2 of 1123 M.E. The order of appointment was made on 13-2-1948 and it conferred on the receivers all powers of management according to the Articles of Association of the mills. They were to keep regular accounts and submit monthly statements of receipts and disbursements on the 10th day of every English calendar month. Shortly before the date that this order was passed, the control on textile goods that existed since 1943 was withdrawn by the Government The control of prices however was continued till the end of April 1948 and after that there was, strictly speaking, no fixed rates at which textile goods were to be sold compulsorily by the manufacturers.

But there was, what has been described as a gentleman's agreement, arrived at by the members of the South Indian Mill Owners' Association, according to which different prices were fixed for different kinds of cloth and the old practice of stamping each piece of cloth with the date of its production and also the ex-mill and retail prices still continued. During the control period the distribution was effected through certain quota- holders, each one of whom had a number of bales allotted to him as his quota. It appears that after the control was withdrawn, these quota-holders asserted a sort of legal right to continue as agents for distribution of the mill products so long as the mills remained under Court management.

The High Court, however, passed an order to the effect that the existing contracts had ceased to be in force and the receivers could ignore them altogether and enter into fresh arrangements with other persons which, in their opinion, would best serve the interests of the institution. P. W. 1 Vaidyanath Iyer, upon whose allegations the entire prosecution story rests, was one such quota-holder. He was a share-holder of the company and was running, with other partners, a cloth business under the name and style of 'Swadeshi Piece-Goods Depot' at Trichur. For his Trichur shop he was getting 40 bales of cloth as his quota per month and it is admitted that he got this quantity both for February and" March, 1948. He did not get anything for April and the prosecution story is that he met the first accused and had a talk with him about this matter. It is alleged that the first accused told him:

> "I shall give you 100 bales. You must give me Rs. 10,000 over and above the price as premium. The amount must be. paid at once."

P. W. 1 agreed; and on 24-4-1948 he paid the appellant a sum of Rs. 9,000 and obtained an allotment letter (Ex. A) for 50 bales of cloth signed by the appellant. On the same day P. W. 1 paid to the cashier of the mills Rs. 33,339 annas odd, which was the price for the 50 bales of cloth, computed according to the stamped rates and took delivery of the goods.

The further case of the prosecution is that on being informed that the remaining 50 bales were ready at the mills, he met the first accused at his house on the night of 11-5-1948. There he was told that the extra amount, which he was to pay to accused No. 1, would be Rs. 23,100 in all, the calculation being made on the basis of 26 per cent. of the price for the first allotment of 50 bales and 50 per cent. for the second. Deducting the sum of Rs. 9,000 already paid by P. W. 1, he was asked to pay the balance amounting to Rs. 14,100. P. W. 1 prayed for a little time, but as the accused refused to give him any, he eventually executed a promissory note for a sum of Rs. 15,000 in favour of one P. Namboodiri, a nominee of the appellant who has been examined as prosecution witness No. 8 in this

case. As the amount payable by P. W. 1 was Rs. 14,100 whereas the handnote was executed for Rs. 15,000, the appellant paid to P. W. 1 a sum of Rs. 900 in cash. P. W. 1 then went to the mills accompanied by the first accused and arranged to take delivery of the goods. As 49 bales were only available, an invoice was obtained for the same, bearing date 11-5-48. P. W. 1, it is said, found later on that the amount, which he was compelled to pay, was much larger than what the appellant had obtained from other merchants. On 14-7-1948 he addressed two letters (Exs. H and J), one to the first accused and the other to P. W. 8 in whose favour the handnote was executed and sent these letters to the Anchal (Post) Master, Arimboor for despatch by registered post.

The addressees were told by these letters that P. W. 1 had learnt on enquiry that the first accused had received profits at different rates from other people, and that while he was prepared to pay him a sum of Rs. 10,000 in all, that is to say a further sum of Rs. 1,000 in addition to Rs. 9,000 already paid, he should, in all fairness, get back the promissory note (Ex. C) for Rs. 15,000 that he was made to execute in favour of P. W. 8. On the day following, that is to say on 15-7-1948, he wrote a letter (Ex. K) to the Anchal Master, Arimboor, requesting the latter to keep the two letters with him till the writer met him in the afternoon and had talks with him regarding the matter. On or about 17-4-1948, the Commissioner of Police, Trichur, received an anonymous petition stating that the first accused was giving bales of cloth only to those who paid him large sums of money by way of illegal gratification and P. W. 1 was stated to be a person who had paid a cash sum of Rs. 10,000 and executed a promissory note in favour of P. W.

8. The Commissioner of Police sent this petition to the Deputy Commissioner for confidential enquiries. The Deputy Commissioner examined P. W. 1 on 18-7-1948 and the statement made by the latter is Ex. II in the case. P. W. 1 made a further statement before the said officer on the 1st of August 1948 which has been marked Ex. III.

4. On 2-8-1948 the Deputy Commissioner of Police Submitted a report to the District Magistrate, wherein it was stated 'inter alia' that the first accused received "large sums of money by way of illegal gratification as a motive and reward for allotting cloth bales produced in the mills" and he prayed under Section 136, Cochin Criminal P. C. (corresponding to Section 155, Indian Criminal P. C.) for sanction to investigate the non-cognisable offence committed by the accused. Sanction was given by the District Magistrate on the same day. On 11-2-1949 a charge-sheet was filed by the Divisional Inspector of Police before the District Magistrate against the three accused, the first two, as stated already, being the two joint receivers of the mills and the third a nephew of the first accused, who was alleged to have aided and abetted the other two in the commission of the offence.

The charges were under the sections of the Cochin Penal Code relating to acceptance of illegal gratification (Section 147 corresponding to Section 161, Indian Penal Code) and criminal breach of trust (Section 389 corresponding to Section 409, Indian Penal Code) and also for abetment of and entering into conspiracy for commission of these offences.

5. The trial commenced in the court of the District Magistrate, Trichur; but after P. W. 1 was examined in part, the case was transferred for disposal to the First Class Special Magistrate of that place. Altogether 37 witnesses were examined by the prosecution. It appears that the Special Public

Prosecutor, who represented the State Government, gave up, at the time of trial, the case of receipt of illegal gratification by the accused as public servants, and the charge that was framed by the trying Magistrate at his instance was only for criminal breach of trust. It recites all the material facts upon which the prosecution based its case. It starts by saying that the accused Nos. 1 and 2 being appointed joint receivers of the company assumed management of its affairs and were in custody, as public servants, of all its belongings.

It is next stated that the first accused with the knowledge of accused No. 2 and with the help and co-operation of accused No. 3 his nephew, agreed to sell to P. W. 1 100 bales of piece-goods produced by the mills on condition of the latter's paying him a sum of Rs. 23,100 over and above the sale price, as premium. 50 bales were sold on 24th April 1948 to P. W. 1 on receiving a premium of Rs. 9,000 from him. Another 49 bales were sold later on receiving a further sum of Rs. 14,100 and these bales were fraudulently and mischievously sealed by the accused partly with the seal of April and partly with that of May, knowing fully well the loss that the company was sustaining thereby. It is then said that as regards the second sum of Rs. 14,100, the first accused got it adjusted in the amounts due from him to P. W. 8 and caused a promissory note to be executed in favour of the latter by P. W. 1 and kept the note to himself.

After this comes the material part of the charge which is worded as follows:

> "That A 1 and A 2- functioning as Public servants, neither remitted this amount of Rs. 23,100 to the credit of the company nor brought it to the company's accounts, but dishonestly misappropriated the same with the intention of causing illegal loss to the company and illegal gain to themselves violating thereby the rules and conditions laid down in the appointment order dated 4-7-1123.
>
> It has been established by the prosecution evidence that A 1 and A 2 have thus committed the offence of criminal breach of trust by a public servant and A 3 the abetment of the commission thereof, punishable under Sections 389 and 109, Cochin Criminal P. C. and within the cognizance of this court."

6. The trying Magistrate on a consideration of the evidence adduced at the trial came to the conclusion that it was not established by reliable evidence that P. W. 1 actually paid Rs. 9,000 to the first accused on 24-4-1948, or that the promissory note (Ex. C) was executed by him without consideration and under the circumstances mentioned by him in his evidence. It was more probable, according to the Magistrate, that the handnote was executed by P. W. 1 as he was put in possession of funds by the first accused with a view to enable him to purchase the goods as per invoice (Ex. D). In the opinion of the Magistrate, there was no substance in the case of the prosecution that the mills suffered any wrongful loss by reason of stamping cloth produced in May with April prices.

Lastly, the Magistrate held that even assuming that Rs. 23,100 was paid by P. W. 1, such payment might amount to an offence of taking illegal gratification but not to one of criminal breach of trust. The result was that by his judgment dated 26-5-1949 the trying Magistrate acquitted all the accused.

7. An appeal was taken against this decision by the State Government to the High Court of Travancore-Cochin. The learned Judges of the High Court while confirming the acquittal of the second and the third accused, reversed the judgment of the trial court so far as it related to the first accused. In the view taken by the High Court, as the receivers had absolute and unfettered discretion regarding the quantity of goods which they might allot to particular persons and the price that they could charge in respect thereof, there was nothing 'per se' wrongful in their demanding an extra price for the goods that were allotted to P. W. 1. But it was incumbent upon the receivers to enter these extra amounts in the accounts of the mills and their failure to do so did amount to criminal breach of trust, within the meaning of Section 385 of the Cochin Penal Code.

On the evidence adduced in this case the learned Judges held that the story of payment of Rs. 9,000 by P. W. 1 to the first accused on 24-4-1948 was true; and the promissory note had also been executed under the circumstances alleged by this witness. It was not satisfactorily established in their opinion that the accused had with him the funds of P. W. 8 and these were advanced as loan to P. W. 1. The story of P. W. 1 received support according to the learned Judges from the language of the pro-note itself and the evidence of the Anchal (Post) Master (P. W. 10). Lastly, the High Court found that the stamping of 25 bales of May cloth with the April price resulted in loss to the mills and accused No. 1 was guilty of criminal breach of trust on that account also.

In view of these findings, the High Court convicted accused No. 1 under Section 389 of the Cochin Penal Code and sentenced him to rigorous imprisonment and fine as mentioned above. It is the correctness of this judgment that has been challenged before us on behalf of the appellant.

8. The contentions raised by Mr. Nambiar, who appeared in support of the appeal, come under two heads. His first contention relates to the manner in which the High Court dealt with the evidence in the case and came to its own findings on the questions of fact upon which the conviction of the appellant was based. It has been argued by the learned counsel that the High Court's approach to the case was not at all proper and that the learned Judges reversed the order of acquittal made by the trial court without adverting to or displacing the main grounds upon which the decision of the trial Judge rested. It is pointed out further that some of the facts relied upon by the High Courts are mere conjectures or surmises and in respect to others, which apparently are prejudicial to the accused, no question was put to him when he was examined under Section 259, Cochin Criminal P. C. (which corresponds to Section 342, Indian Criminal P. C).

The other contention of Mr. Nambiar is that even if the story told by P. W. 1 is accepted in its entirety, the offence committed by the appellant could not constitute criminal breach of trust, as defined in Section 385, Cochin Penal Code, though it might amount to taking of illegal gratification--an offence punishable under Section 147 of the said Code.

9. As regards the first point, it will be seen that there are really three questions of fact which require determination in this case, and with regard to all of them the decision of the trial court was in favour of the accused. The first question is, whether the story of P. W. 1 regarding the payment of Rs. 9,000 to the appellant on 24-4-1948 is true? The second is, whether the promissory note (Ex. C), the execution of which is not disputed, was executed in the circumstances alleged by P. W. 1? The third

and the subsidiary question which arises on the charge framed in this case is, whether the mill suffered loss by reason of the fact that certain bales of May cloth were stamped with April prices in connection with the delivery of 49 bales to P. W. 1 in May 1948?

10. As regards the payment of Rs. 9,000 to the appellant, it has been pointed out by the trial Judge that the story of the prosecution rests upon the uncorroborated testimony of P. W. 1 alone. According to P. W. 1, two or three other persons besides the nephew of the appellant were present at the time when the money was paid, but none of them was examined. It has been pointed out next that P. W. 1 states definitely in his deposition that he got the allotment letter (Ex. A) on the same day, that is to say on 24-4-1948; but the allotment letter contains a much earlier date namely, 15-4-1948. Then again the entry relating to the alleged payment is seen in the account books of the Swadeshi Piece-Goods Depot against the date, 10-5-1948.

According to P. W. 3, the son-in-law of P. W. 1 who is in charge of writing the account books of the firm, this entry (F1) denotes that Rs. 9,100 was given to P. W. 1 on that date. He says that he made the entry under instructions from P. W. 1. P. W. 2, the son of P. W. 1, further says that the said entry was made first on the 27th Medom, corresponding to 9-5-1948. The date was subsequently changed to 28th; and he says that his father directed the entry of the expenditure of Rs. 9,100 to be made on the very date that the money was spent. The words "trade charges" occurring in the entry were, according to this witness, not written in the same ink and might have been squeezed in later.

11. As regards the payment of Rs. 14,100 by execution of the handnote (Ex. C), the trial Magistrate observes that the prosecution evidence is still more discrepant. First of all, P. W. 1 states in his deposition that the pro-note was executed at night on 11-5-1948. His version is that after execution of the document the accused took him to the mills and there he obtained delivery, under the invoice, Ex. D, of 49 bales of cloth on the very same day. Exhibit D also bears date, 11-5-1948. As a matter of fact, however, it is admitted by the prosecution witnesses that the mills close at 5-30 p.m. and so it was not possible to take delivery of the goods at night. It seems that in order to wriggle out of this difficulty, the Public Prosecutor as well as P. W. 1 himself put in applications at a late stage of the trial, praying that the word "night" might be changed into "day". These applications were either not pressed or dismissed.

In the second place, the premium or bribe, according to P. W. 1, was calculated on the basis of 26 per cent. of the price of the first allotment and 50 per cent. of the second. On this calculation the total amount would be more than Rs. 23,100. Then again if the balance payable by P. W. 1 was Rs. 14,100, no conceivable reason could be assigned for P. W. 1's giving a pro-note for Rs. 15,000 & at the same time taking back Rs. 900 in cash from the accused. In the letters (Exs. H and J), which P. W. 1 admittedly wrote to the appellant and P. W. 8 respectively, he requested the addressees to return to him the pro-note and expressed his readiness to pay a further sum of Rs. 1,000 to make up the total amount of Rs. 10,000 which was all that he promised to pay to the first accused. If he had already received Rs. 900 in cash from the first accused, he was certainly liable to pay back that sum as well and the amount payable by him in that event would be Rs. 1,900 and not Rs. 1,000.

12. The case of the accused in respect of the pro-note Was that the transaction represented a genuine loan advanced to P. W. 1 out of the money belonging to P. W. 8 who was a close relation of the first accused. The money remained as deposits in the Anchal Savings Bank in the names of the first accused, his wife and son. The interest payable by the Anchal Savings Bank was very low and as P. W. 1 asked the first accused for a loan, the latter with the consent of P. W. 8, advanced this amount which was to carry interest at 6 per cent. per year. P. W. 8, who was examined as a witness for the prosecution, narrated this whole story in court. He stated in his deposition that he sold a property belonging to him to one Krishna Menon and got a sum of Rs. 21,800 as its price.

Out of this sum, he deposited Rs. 5,000 in his own name in the Anchal Savings Bank and Rs. 5,000 in the name of the first accused. Two other sums of Rs. 5,000 each were deposited in the names of the wife and son of the accused respectively. It is a fact that in the Anchal Savings Bank deposits are not taken exceeding Rs. 5,000 from one person. The version of P. W. 8 is corroborated toy the pay-in-slips by which these amounts were deposited and they are all in his hand-writing. P. W. 8 states in his deposition.

> "Vaidyanath (P. W. 1) demanded money on loan. I was asked whether money could be advanced to him and I replied that there was no objection. A1 told me that he had obtained the pro-note. This fact was entered in my account book on the date on which Al told me."

The entry in the account book, which has been made an exhibit in this case, undoubtedly corroborates the story of P. W. 8 and the entry was made long before any controversy arose.

The trial Magistrate, who had this witness before him, believed his story to be true. It is also noticed by the Magistrate that P. W. 1 could not say as to how he procured the sum of Rs. 33,000 and odd which he had to pay as the price of the 49 bales of cloth. This lends colour to the suggestion that he was in need of money and consequently the story of his receiving a loan is by no means improbable. Further, if Ex. C was the result of a sudden decision as P. W. 1 wants to say, it is difficult to believe how he could at that time write out the handnote on his own letter head and stamp it with the requisite revenue stamp, which must have been procured in advance.

13. The Special Magistrate analysed the evidence relating to the loss, if any, sustained by the mills by reason of certain quantity of May cloth being stamped with April prices; and the conclusion reached by him is that no loss was suffered by the mills on this score at all and this fact was not even relevant for purposes of the present case. Ex. A(m), which is the order alleged to be initialled by the appellant, directed that 25 bales of May cloth should be stamped with April seal and 25 bales of April cloth with May seal. The Magistrate has pointed out that the mills had to produce a certain quota of cloth every month. Owing to scarcity of water certain bales of cloth produced in April could not be bleached in time.

To meet the necessities, the receivers had to take the unbleached May quota for distribution to the April quota-holders by affixing April seals. According to the Special Magistrate the order Ex. A(m) was passed in course of routine business and there was no dishonest intention behind it.

Undoubtedly the May prices were higher, but as an equal quantity of April cloth was stamped with May seal, the mills could not possibly suffer any loss. Moreover, the charge framed in the case did not specify what loss, if any, was sustained by the mills by reason of such stamping and the entire loss alleged by the prosecution was included in the sum of Rs. 23,100 which alone was the subject-matter of criminal breach of trust. These are the salient findings upon which the trial court based its decision.

14. Mr. Nambiar appears to be right in his contention that to many of these matters upon which the trial court, relied, the learned Judges of the High Court paid little or no attention. The High Court did not discuss the evidence relating to the two payments separately; but took up, for consideration, the entire case as was presented by P. W. 1 in his deposition. In paragraph 14 of the judgment the learned Judges observe that "the lower court has chosen to disbelieve the evidence of P. W. 1 because of certain so-called discrepancies which are mentioned in the judgment". The only discrepancy however which is referred to and discussed in that paragraph is the one relating to the date of the first delivery order (Ex. A).

That document, as has been said already, bears the date, 15-4-1948, though admittedly it was given to P. W. 1 on 24-4-1948. The learned Judges explain away this discrepancy by saying that the delivery order was written in a set form and many such forms were already typed and lying ready. The paper that was delivered to P. W. 1, contained the date, 15-4-1948, already on it & it was possibly through inadvertence that this date was not corrected.

15. As regards the first payment, the trial court, as mentioned above, examined very carefully the account books of P. W. 1 and also the evidence of P. Ws. 2 and 3 on the point and came to the conclusion that the entry relating to the payment of Rs. 9,000 was a subsequent interpolation. The High Court brushes aside this portion of the evidence by merely observing that if P. W. 1 believed that the amount paid by him was an illegal gratification, it would certainly make him nervous and this explains the absence of any prompt entry relating to such payments in his books. Mr. Nambiar argues, and not without reason, that if this was the real position, then why was entry made at all? It is not the delay in making the entry that raises suspicion, but a deliberate attempt at concoction by subsequent interpolation and other unfair means. It is arguable also that if delay is excusable, what explanation is there for the total absence of any entry regarding the payment of Rs. 14,100 in May 1948, particularly when P. W. 1 is not the sole owner of his shop and has other partners?

16. In paragraph 13 of the judgment the learned Judges began by saying that the promissory note (Ex. C) furnishes a very strong and circumstantial evidence in support of this evidence given by P. W. 1. The point is elaborated in the passages that follow. It is pointed out, first of all, that the promissory note does not mention any cash consideration. It is stated next that it is difficult to believe that the first accused became so magnanimous in his dealings with P. W. 1 that he not only gave him more than double his original allotment but further advanced him money in order to enable him to make his purchase. The third point mentioned is, that it is not proved that the first accused had with him money belonging to P. W.

8. Even if he had any, the evidence of P. W. 8 would suggest that his consent was taken to the advancing of loan after the pro-note was executed.

The learned Judges observe further that it is unbelievable that if the first accused was dealing with money belonging to a relation of his, he would be contented with taking a bare promissory note from P. W. 1 unaccompanied by any security and that too carrying interest only at the rate of 6 per cent. per annum, while there was no doubt that P. W. 1 could make huge profits out of his purchase. It is said lastly that if the money really belonged to P. W. 8, the accused should not have kept the promissory note with him but would have handed it over to his relation.

17. It is true that the promissory note does not state that it was executed for cash consideration. The over-liberality of the first accused in the matter of making allotments of cloth in favour of P. W. 1 and his helping the latter by advancing money, are undoubtedly matters which raise suspicion; but we think that the appellant's counsel can legitimately complain that the accused should have been examined on these points and given an opportunity of offering his explanation, if he had any, regarding them, when he was examined under Section 259 of the Cochin Criminal P. C., which corresponds to Section 342 of the Indian Code. Similarly the accused should have been asked as to why he thought proper to lend money belonging to his relation at an interest of 6 per cent. per annum only if other and more profitable investments were available.

We cannot agree however with the learned Judges when they say that there was no proof that the accused had with him any money belonging to P. W. 8. There was both oral and documentary evidence adduced on this point which was believed toy the original court; and it is not proper for the appellate court to say that there was no proof, without at all adverting to that evidence, and without stating for what reasons such evidence should be discarded. We do not think also that it is a correct reading of the evidence of P. W. 8 to say that his consent was taken before the loan was advanced. His evidence would indicate that his consent was taken before the loan was given, though he was informed of the execution of the handnote after it was actually executed. If P. W. 8 had so much confidence in the first accused that he could keep with him and his family members a large sum of money, it is a matter of no importance that the handnote was not forthwith handed over to him but remained with the first accused.

But the main defect of the judgment of the High Court on this part of the case lies in the fact that the learned Judges did not advert to or consider various matters appearing in the judgment of the Special Magistrate which 'prima facie' are favourable to the accused. The first court relied on a vital defect in the evidence of P. W. 1 when he said that the promissory note was executed at night and delivery of goods was taken after that. The High Court has not referred to this evidence at all; nor did it consider as to how far the statement of P. W. 1 that the accused paid him in cash a sum of Rs. 900 simultaneously with the execution of the handnote is contradicted by his own statement contained in his letters (Exs. H and J).

As regards the reason for his taking a loan, the trial court laid stress on the fact that in his own evidence P. W. 1 could not state clearly as to how he was able to secure Rs. 33,000 and odd which was necessary for making the purchase. The High Court did not consider this aspect of the case, but

contented itself with observing in a most general way that there is evidence to show that P. W. 1 had abundant funds in his hand.

18. The only other thing upon which the learned Judges lay great stress as furnishing strong support to the story of P. W. 1 is the evidence of the Anchal Master (P. W. 10) which proves, according to the learned Judges, that P. W. 1 put in writing his complaint against the first accused as early as possible with the intention of transmitting this writing to the latter. Apparently, the learned Judges are referring here to the letters Exs. H and J which purported to have been sent on 14-7-1948, more than two months after Ex. C was executed. All that the evidence of the Anchal Master shows is that these letters were sent to him for despatch on 14-7-1948 and were countermanded by a subsequent letter Ex. K sent to him on the day following.

Apart from the question whether it is at all probable that a person in charge of a Post Office would receive for despatch by registered post two letters without entering them in his books and despatching them in course of the whole day, the learned Judges did not advert to or consider in this connection the circumstances disclosed in P. W.1's statement to the Deputy Commissioner of Police contained in Exs. II and III. In Ex. II, which is dated 18-7-1948, P. W. 1 stated:

> "I learnt that illegal gratification or premium was obtained at different rates from different persons. So I sent a registered notice to Namboodiri regarding the pro-note. I have sent a copy of it to Changallor Parameshwaran also. I am prepared to produce a copy of this notice also."

This indicates that the notices had been actually sent and not that the notices were sent only to the Anchal Master and subsequently countermanded.

In his statement (Ex. III) made before the same Police Officer on the 1st of August 1948, P. W. 1 makes the following statement:

> "Since you told me at the time of my giving the former statement before you that it is better to keep the matter secret, I tried to find ways and means to see that the notices were not despatched. On enquiry at the Anchal office I knew that they were not already despatched. At once. I gave instructions to the Anchal Master to retain them."

This obviously indicates that it is after P. W. 1 made the previous statement on 18-7-1948 that the countermanding letter was sent to the Anchal Master, though as a matter of fact it was sent on 15th July which is 3 days earlier than the date of his making the first statement. P. W. 1 was confronted with this statement during his cross-examination in court and he flatly denied that he said any such thing.

This is enough to show that P. W. 1 is not a person to be relied upon implicitly, and we cannot rule out the possibility of his creating self- serving evidence in the shape of these two letters (Exs. H and J). The subsequent letter (Ex. K) could very well be a part of the same scheme.

19. As regards the finding of the High Court, that in giving direction to stamp May cloth with April prices, the first accused acted in contravention of the duty imposed upon him not to do acts which are detrimental to the interests of the mills and consequently was guilty of criminal breach of trust, we think the reasons given by the learned Judges to be wholly unsatisfactory. The learned Judges altogether overlooked that the charge of criminal breach of trust framed against the accused was in respect of a sum of Rs. 23,100 only, and that the loss alleged to have been sustained by the mills by reason of stamping May cloth with April prices was not an item included in this amount. The learned Judges also overlooked the contents of the order, Ex. A(m), by which direction for such stamping was given. That exhibit clearly shows that the same quantity of May cloth was directed to be stamped with April prices.

As the prices in May were higher than those in April, the loss, if any, sustained by stamping 25 bales of May cloth with April prices would be exactly compensated by stamping of the same quantity of April cloth with May prices. On this part of the case also the learned Judges of the High Court do not seem to have paid the slightest heed or attention to the findings of the trying Magistrate. On the whole we think that there is much force in the first contention raised by the learned counsel on behalf of the appellant.

20. It cannot be disputed that the High Court, even though it was hearing an appeal from an order of acquittal, had full powers to review the entire evidence on the record and reach its own conclusion that the acquittal order should be set aside. But as the Privy Council pointed out in

--'Sheoswarup v. Emperor' , in exercising these powers the High Court should and will always give proper weight and consideration to such matters as: (1) the views of the trial court as to the credibility of witnesses; (2) presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he had been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

The High Court, in our opinion, did not clearly keep before it these rules and principles well-known and recognised in the administration of criminal justice. It reversed the decision of the trial court without noticing or giving due weight and consideration to important matters relied upon by that court and its decision has to a large extent been influenced by suspicious circumstances disclosed at the trial which are undoubtedly prejudicial to the accused, but in regard to which no opportunity of explanation was given to him when he was examined under the provision of the Cochin Criminal Procedure Code which corresponds to Section 342 of the Indian Code. According to the principles which are recognised and acted upon by this court in dealing with criminal appeals coming before it on special leave these would be considered adequate grounds justifying our interference with the decision of the High Court.

21. The other point that requires consideration is, whether on the prosecution evidence as it stands, the accused can be held guilty of criminal breach of trust? As laid down in Section 385, Cochin Penal Code, (corresponding to Section 405, Indian Penal Code) to constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with

some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. In the case before us, it is not disputed that if the sum of Rs. 23,100 was paid by P. W. 1 to the appellant by way of illegal gratification to induce the latter to make an allotment of cloth in his favour, there could be no question of entrustment in such payment. The payee would then receive the money on his own behalf and not on behalf of or in trust for anybody else. The criminality of an act of this character would consist in illegal receipt of the money and the question of subsequent misappropriation or conversion of the same would not arise at all.

On the other hand, if the money was paid by P. W. 1 as an extra price for the bales of cloth which he was allowed to purchase and the accused received it on behalf of or as agent of the mills, the money would, strictly speaking, be the property of the mills, and if the accused in violation of his legal duties appropriated such money to himself without bringing it into the mills' accounts, there is no doubt that he would be guilty of criminal breach of trust. The question for determination is, whether the money was given by P. W. 1 to the accused for and on behalf of the mills or was it given to him personally as a motive and reward for showing him some favour? According to the learned Judges of the High Court the letters--Exs. H and J-- are the earliest documents wherein P. W. 1 put in writing his complaint against the accused.

In both these letters P. W. 1 says that the appellant promised to give him 100 bales of Sitaram piece goods in return for which he was to pay the accused a secret profit of Rs. 10,000. This indicates that the money was intended to be paid to the accused as his own personal profit and it was not an item of additional or extra price for the goods purchased, which was demanded by or paid to the accused on behalf of the mills. Four days after these letters were written P. W. 1 made his first statement before the Deputy Commissioner of Police and this is Ex. 11 in this case. In this document P. W. 1 states.

> "he demanded Rs. 10,000 in return for issuing me 100 bales and said that I could not hope to get any bale without payment of the said sum. I was compelled to give my reply. The said amount had to be paid over and above the ex-mill price. The said amount was not intended for the company. . . . . .The said sum of Rs. 10,000 was intended to be the reward for showing me a special favour in the allotment of bales by exercising the said power in his capacity as a Government officer."

There is no ambiguity whatsoever in this language and it plainly indicates that the payment was made as a reward or illegal gratification to the accused.

While giving his deposition in court, P. W. 1 stated in his examination-in- chief:

> "Accused No. 1 told me I shall give you 100 bales and you must give me Rs. 10,000 over and above the price."

This also leaves no doubt that the money was intended for the accused personally. After the charge was framed, the witness was cross-examined and then he began to prevaricate to some extent. "I do not know" he said, "What this additional amount was intended for. Whether it was received as illegal gratification or on behalf of the mill is also not known."

But this was said with a purpose and it clearly contradicts his earlier statements referred to above. It seems to us to be perfectly clear that P. W. 1 was under no misapprehension regarding the nature of the payment which he made and the learned Judges of the High Court in paragraph 16 of their judgment express their opinion that it was the belief of P. W. 1 that the money was paid as bribe or illegal gratification and because he was afraid that criminal liability might attach to him also, that is the reason why he delayed in making an entry in the account books.

Quite at variance with the view thus expressed the learned Judges ultimately came to the conclusion that the money was received by the accused on behalf of the mills and the offence consisted in his misappropriating the same without bringing it to the company's accounts. The main reasons given for this conclusion appear to be of a two-fold character. In the first place, the learned Judges said:

> "The receivers were given absolute powers by orders passed by the Chief Justice of the Cochin High Court and therefore the first accused would have been well within his rights in demanding this extra payment."

It is said further.

> "Whatever may have been the impression created in the mind of P. W. 1 when the extra payment was demanded, it is not likely that the first accused would have had the courage to openly demand bribe and it is more probable that he would have tried to cover the fraud contemplated by him by telling P. W. 1 that he wanted the extra value as premium."

The second reason is at best a surmise and a speculation not warranted by the admitted facts and circumstances of this case.

If P. W. 1, as the learned Judges say, himself believed that he was paying the money as a bride, it is difficult to imagine why the accused would attempt to conceal from P. W. 1 that he was taking the money as bribe and demand it only as an extra price for the goods sold.

22. As regards the first ground, we do not think that the view taken by the learned Judges is warranted by the materials on the record. It is a fact testified to by the prosecution witnesses themselves that the goods were sold at the mills at the rates stamped on the cloths in accordance with the resolution of the South Indian Mill Owners' Association. P. W. 1 17, who is the officer-in-charge of the Sales Department of the company, state explicitly that the goods were never

sold for more or less than the prices thus fixed. He further says that revised and increased rates were introduced from 1-5-1948 and Exs. AR series proved by him show the fixed prices of cloth taken form the rate book. This statement is fully corroborated by other documentary evidence on the record.

The evidence shows that the receivers used to submit reports to the court from time to time and sought directions from it regarding the rates at which the goods were to be sold. By order Ex. BT the court permitted the receivers to sell April products at the current price. The revised rates, which the receivers recommended should be introduced from 1-5-1948, were sanctioned by the court by its order. Ex. CB-1. It is not a fact that the receivers could charge any prices they liked.

The prices were all stamped on the cloths and the invoices (Exs. B and D) show that P. W. 1 was charged the stamped prices only.

23. The learned Advocate-General appearing for the State Government saw the difficulty in the way of establishing that there was any entrustment with the accused in respect of the sum of Rs. 23,100 paid to him by P. W. 1. He tried to get round this difficulty by saying that it could be held on the facts of this case that the entrustment with the accused was in respect of the goods of the mills and the criminal breach of trust consisted in disposing of the goods contrary to the directions of the court and misappropriating the sale proceeds. It is not necessary to enter into the merits of this argument for the simple reason that this was not the charge upon which the accused was tried.

The subject of criminal breach of trust, as stated in the charge, was a sum of Rs. 23,100 and the definite allegation against the accused was that he and his co-receiver functioning as public servants neither remitted this amount to the credit of the company, nor brought it to the company's accounts, but dishonestly misappropriated the same with the intention of causing illegal loss to the company and illegal gain to themselves. No doubt the charge, which we have set out in the beginning, refers to the two accused having custody of the company's goods, but the charge nowhere indicates that the offence consisted in wrongful use or disposal of these goods in violation or any direction of law, and it was not stated also what these directions of law were.

We think, therefore that we must accept the contention of the learned Advocate for the appellant that even on the prosecution evidence, as it stands, the accused could rot be convicted of criminal breach of trust. The result is that the appeal should be allowed. In our opinion, it would not be proper to make an order for retrial in this case. In the first place, the charge of accepting illegal gratification upon which alone any retrial could be ordered, was definitely abandoned by the prosecution at the time of the trial. In the second place, the accused has fully served out the sentence of imprisonment during the period that the appeal was pending in this court and a further trial would not be proper in the interests of justice. We, therefore, allow the appeal and set aside the order of the High Court and direct that the accused be acquitted. The fine if paid, should be refunded to him.