T. Shankar Prasad vs State Of Andhra Pradesh on 12 January, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1242, 2004 (3) SCC 753, 2004 AIR SCW 262, (2004) 164 ELT 143, 2004 CRILR(SC&MP) 417, 2004 (1) SLT 620, 2004 (1) SCALE 318, 2004 (1) ACE 328, 2004 SCC(CRI) 870, 2004 CRILR(SC MAH GUJ) 417, 2004 (1) RECCRIR 784.2, 2004 (2) SRJ 305, (2004) 15 ALLINDCAS 374 (SC), (2004) 1 JT 188 (SC), (2004) 1 SCALE 318, (2004) 1 CAL LJ 284, (2004) 1 CHANDCRIC 107, (2004) 27 OCR 599, (2004) 1 RECCRIR 784(2), (2005) 3 ALLCRIR 2700, (2004) 113 ECR 122, (2004) 15 INDLD 118, (2004) 1 ALLCRILR 753, (2004) 48 ALLCRIC 584

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  909 of 1997

PETITIONER:
T. Shankar Prasad

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 12/01/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T With Crl. A. No. 910/1997 ARIJIT PASAYAT, J.

These two appeals are directed against the common judgment of the Andhra Pradesh High Court which upheld the conviction of the appellants under Sections 7, 11, and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act') and Section 120B of the Indian Penal Code, 1860 (for short the 'IPC').

Appellants T. Shankar Prasad (in Crl. A. No.909/1997) and Ghaiz Basha (in Crl. A.No.910/97)(also described as A1 and A2) were working as Assistant Commercial Tax Officer and Junior Assistant respectively in the office of the Commercial Tax Department of Kanigiri, Prakasam District. Way bills were issued to the traders by the department for their day to day transactions and taxable goods to be transported were required to be covered by the way bills issued by the department.

Complainant (PW-1) was a dealer in grocery articles and under the relevant sales tax statutes, a registered dealer. He applied for way bills. On 25.4.1992 he requested the accused T. Shankar Prasad to get the way bills duly stamped and signed by him. The officer demanded Rs.400/- as bribe in the presence of other accused. When the complainant expressed his inability to pay the amount, the demand of the bribe was reduced to Rs.300/-. Complainant agreed to pay the amount within two to three days. Since he was not interested to pay the bribe, he reported the matter to the Anti Corruption Bureau officials on 28.4.1992. The case was registered by the officials on the said date and mediators were secured and trap was arranged. Since on that day accused T. Shankar Prasad was not available in the office, the trap could not be laid. On the next date again the mediators and the members of the trap party arranged the trap and accordingly the complainant approached the accused T. Shankar Prasad who directed him to pay the amount to other accused Ghaiz Basha. When the latter received the bribe amount from the complainant the trap party caught hold of both the officers and the amount was recovered from the possession of second accused and the sodium carbonate solution test conducted proved positive. After furnishing documents to the accused persons and hearing on the question of framing charges, charges were framed. The accused persons pleaded innocence and claimed to be tried. Eight witnesses were examined and several documents were marked. The complainant was examined as PW-1. PW-2 was the Assistant Audit Officer who deposed about the whole scenario before the search was conducted. The significance of the test by the chemicals and their reactions was explained to him. Currency notes were applied with phenolphthalein powder. The powder was not visible on the currency notes. The DSP who was monitoring the trap instructed PW-1 not to touch the cash and only pay to the accused on demand. He was asked to give signal after bribe amount was accepted, by waving a handkerchief. PW-4 was an Assistant Director of Veterinary Hospital who acted as a mediator. He also described in detail about the trap operations. PW-5 was a Senior Assistant in the Commercial Tax office who deposed about part of the transaction relating to issuance of way bills forms with reference to the official records. PW-7 was DSP who monitored the operations. PW-8 was the Inspector who had received the complaint from PW-1. The accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code'). They denied about the demand and acceptance of bribe, and took the stand that false case had been foisted due to enmity. One witness was examined on behalf of the accused T. Shankar Prasad. Said witness deposed about the registration of a relative of the complainant and his business activities.

Stand of the accused T. Shankar Prasad was that no money was recovered from his possession. The other accused Ghaiz Basha took the plea that there was no material to show that he had demanded any bribe. He further stated that he had accepted the amount to be deposited as advance tax and when he was about to write the challan, the Anti Corruption Bureau officials caught hold of him and implicated him falsely.

The trial Court noticed that PW-1 had partially resiled from the statement made by him during investigation. He made half-hearted attempt to support the accused Ghaiz Basha. The trial Court found them guilty under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. It sentenced each of the accused to undergo rigorous imprisonment for two years for the offence relatable to Section 7 and imposed similar sentence for the other offence i.e. under Section 13(1)(d) read with Section 13(2) of the Act. Fine of Rs.1,000/- each was also imposed with default stipulation. Appeals filed by

the accused persons before the Andhra Pradesh High Court were dismissed by the impugned judgment except modification of sentence. The sentence was reduced to 6 months for the offence relatable to Section 7, and one year for the offence relatable to Section 13(1)(d) read with Section 13(2) of the Act. It did not find any substance in the plea that the evidence of PW-1 did not implicate the accused persons and since no money was recovered from the accused T. Shankar Prasad he was not guilty, and that there was no material about demand of bribe by the other accused. The pleas were re-iterated in the appeals before us.

It was submitted that since the complainant himself did not support the prosecution version fully, it was impermissible to convict the accused persons. The statutory presumption available under Section 7 read with Section 20 of the Act was not to be utilized against the accused person. The effect of an affidavit by the complainant was lost sight of. He did not implicate the accused persons directly. Since there was no recovery from A-1, there was no material to connect him with the tainted money and he should not have been held guilty. As A-2 was not in the same room where A-1 was sitting, it has not been established as to what was his role. There was no conspiracy. A-2 did not know that the amount that was offered was bribe. Great stress has been laid by the learned counsel for the appellants on the evidence of PW-1 to show that he has not categorically implicated the accused persons. Since the accused persons were acquitted of the charge under Section 120B IPC, they are entitled to acquittal for the offence relatable to the Act. Such a plea was specifically rejected by this Court in Madan Lal v. The State of Punjab (AIR 1967 SC 1590). It was held that if the charge of conspiracy to commit criminal breach of trust is followed by a substantive charge of criminal breach of trust in pursuance of such conspiracy, the Court can convict the accused under the second charge even if conspiracy was not established. In any event, no prejudice is caused to the accused persons where there was a substantive charge of criminal breach of trust.

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.

Learned counsel for the State on the other hand supported the conviction as done by the trial Court. With reference to the evidence of official witnesses and the documents brought on record it was submitted that they have no axe to grind with the accused, are independent witnesses and the Courts below have rightly relied on the evidence.

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.
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> 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).
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> 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:
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> "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:
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> "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.

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

On a close reading of PW 1's evidence it appears that he has not really given a clean chit to the accused persons. Though a feeble attempt was made to show that he has not implicated A-2, in fact that is really not of significance when his evidence is read along with the evidence of other witnesses. The evidence clearly shows that A-1 directed the money to be paid to A-2. The stand of accused about nature of receipt of the money is also not consistent. The stand was taken as if the money was received by A-2 for the payment of the advance tax. The documents brought on record go to show that there was no necessity for paying any advance tax. In fact the official records indicate that the tax due was fully paid. Therefore, the plea that the amount was paid as advance tax is clearly without substance.

The fact that PW-1 did not stick to his statement made during investigation does not totally obliterate his evidence. Even in criminal prosecution when a witness is cross-examined and contradicted with the leave of Court by the party calling him, his evidence cannot as a matter of law be treated as washed off record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process the credit of the witness has not been completely shaken he may after reading and considering the evidence of the said witness, accept in the light of other evidence on record that part of his testimony which he found to be creditworthy and act upon it. As noted above, PW-1 did not totally resile from his earlier statement. There was only a half-hearted attempt to partially shield A-

2. PW-1 has categorically stated that he had paid the money to A-2 as directed by A-1. As noted above, the plea of A-2 that he had accepted the money as advance tax has been rightly discarded

being contrary to official records. Evidence of PW-2 with regard to proceedings on 28.4.1992 has been clearly established. Evidence of PW-4 the mediator is corroborated by the evidence of PWs 1, 3, 7 and 8. His report was marked as Ext P.13. The same along with the other evidence clearly establish the accusations against both the accused. When money was recovered from the pocket of one of the accused persons a presumption under Section 7 of the Act is obligatory. It is a presumption of law and cast an obligation on Court to operate it in every case brought in Section 7. The presumption is a rebuttable presumption and it is by proof and not by explanation which may seem to be plausible. The evidence of PWs 4, 5, 7 and 8 read with the evidence of PW-1 established recovery of money from A-2. A belated and stale explanation was offered by A-2 that the money was paid towards tax. This plea was rightly discarded as there was no tax due and on the contrary the complainant was entitled to some refund. An overall consideration of the materials sufficiently substantiate, in the case on hand the prevalence of a system and methodology cleverly adopted by the accused that the demand will be specified when both the accused were present and thereafter as and when the A-1 puts his signature the party has to meet A-2, at his seat for fixing the seal and making entry in the Register to make the process complete only after collecting the amount already specified by A-1 in A-2's presence. The involvement of both of them in a well planned and cleverly managed device to systematically collect money stood sufficiently established on the evidence let in by prosecution. Further A-2 did not offer his explanation immediately after the recovery of money. A similar plea of receiving money as advance tax was rejected and affirmed by this Court in A. Abdul Kaffar v. State of Kerala (2003 (8) Supreme 804). It was noted that such a stand was not taken at the first available opportunity, and the defence was not genuine. In State of U.P. v. Dr. G.K.Ghosh (AIR 1984 SC 1453) it was observed that in case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction.

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 irreversible.

Above being the position, the appeals being without merit are dismissed.