

Mohmoodkhan Mahboobkhan Pathan vs State Of Maharashtra on 3 February, 1997

Equivalent citations: 1998 AIR SCW 2334, 1997 (10) SCC 600, 1998 CRI. L. J. 3635, (1997) 1 ALLCRILR 621, (1996) CRILT 123, (1997) 2 ALLCRILR 725, (1996) 3 RECCRIR 400, (2001) 3 TAC 461, (1997) 1 SCJ 309, (1997) SC CR R 782, (1997) 1 CURCRIR 184, (1997) 1 SCR 830 (SC), (1998) 4 ALLMR 78 (SC), (1997) 1 SCALE 689, (1998) 1 SERVLJ 122, 1997 CALCRILR 119, 1997 CHANDLR(CIV&CRI) 309, 1997 CRILR(SC&MP) 231, (1997) 1 CRIMES 186, 1997 CRILR(SC MAH GUJ) 231, (1997) 2 SUPREME 414, (1997) 34 ALLCRIC 558, (1998) 3 APLJ 21(1), (1997) 2 BLJ 203, 1997 SCC (CRI) 894, (1997) 2 JT 232 (SC), 1997 (1) KLT SN 60 (SC), AIR 1998 SUPREME COURT 2360

Bench: Madan Mohan Punchhi, K.T. Thomas

PETITIONER:

MOHMOODKHAN MAHBOOBKHAN PATHAN

Vs.

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT:

03/02/1997

BENCH:

MADAN MOHAN PUNCHHI, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T THOMAS. J.

Appellant was a Sub-Register in the Registration Department under Maharashtra Government. The Special judge at Latur convicted him under Section 161 IPC and Section 5(2) read with Section

5(1)(d) of the prevention of corruption Act, 1947 ('the act' for short) for receiving a sum of Rs. 60/- as illegal gratification from one Shesherao Patil (PW-1). Appellant was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.200/- on each count. High Court of Bombay (Aurangabad Bench confirmed the conviction and sentence and dismissed the appeal filed by the appellant.

The official duties of the Sub-Registrar included, among other things, receiving applications for certified copies of registered documents and issuance of such copies. Appellant was Sub-Registrar of Nilanga Sub Registry office. PW-1 Shesherao Patil, an employee of postal department, was in need of certified copies of three sale deeds. When he approached the appellant he was told to submit necessary applications on stamp paper and to pay an amount of Rs.20/- for each certified copy. PW-1 reported the matter to the Anti Corruption Bureau. A trap was arranged to catch the appellant red-handed. On 8.8.1986 PW-1 went to the office of the appellant and presented the applications for copies of the sale deeds which he required and then he paid Rs.60/- to the appellant. As soon as appellant put the amount in his shirt pocket PW-1 transmitted a signal to the waiting anti corruption squad and they rushed to the office and caught him red-handed. These are the facts found against the appellant.

There is no scope for any dispute that appellant received the amount of Rs.60/- from PW-1. In fact learned counsel for the appellant did not dispute the aforesaid finding. The stand of the appellant is that he received the amount as advance money which he was required to collect as per the Rules in force. His further case is that before he could make any entry in the books he was caught by the anti corruption officials on the premise that he received illegal gratification from PW-1.

Appellant, when questioned by the trial judge under section 313 of the code of criminal Procedure stated, inter alia, thus: "On 7.8.1986 the complainant came to my office and told me that he required copies of three sale deeds. I had asked him to submit three applications in writing and bring Rs.20/- for each copy to be paid in advance. On 8.6.1986 the complainant gave me application and paid Rs.20/- for each copy. Thus in all he paid Rs.60/-. I was about to issue receipt but just then people rushed into my office and therefore I could not issue receipts". His contention was repelled by the trial judge as well as by the High Court. Learned single Judge of the High Court while confirming the conviction and sentence has mainly relied on the presumption of law envisaged in Section 4(1) of the Act.

Learned counsel for the appellant contended that both courts failed to take into account certain broad probabilities in this case and it resulted in the wrong conclusion that he received the amount as illegal gratification.

The presumption of law contemplated in Section 4(1) of the Act is in para materia the same as the legal presumption mentioned in Section 20(1) of the Prevention of Corruption Act, 1988. Section 4(1) of the Act enjoins that upon proof of a certain premise "it shall be presumed, unless the contrary is proved that" he accepted the gratification as a motive or reward etc. If the primary condition specified in the sub-section is satisfied by the prosecution the court is legally bound to proceed on the footing that the public servant/accused has accepted the gratification as a motive or

reward for doing any official work in exercise of official functions. The burden stands shifted would not become necessary until prosecution proves that what the accused has accepted was gratification. Of course the court can draw presumption on premises even de hors section 4(1) of the Act because Section 114 of the Evidence Act empowers the court to do so. But the difference between the presumption under Section 114 of the Evidence act and the legal presumption under Section 4(1) of the Act is that under former it is only discretionary for the court to draw presumptions as the court can as well decline from doing so, but under section 4(1) it is incumbent on the court to proceed on the presumption as the burden stands transferred to the accused to prove the contrary. (Vide Dhanvantrai Balwantrai Desai vs. State of Maharashtra, AIR 1964 SC 575).

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. If the money paid is not for personal satisfaction or pleasure of the recipient it is not gratification in the sense it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at any stage.

Here the crucial question, in the light of the defence adopted, is whether the amount of Rs.60/- paid by PW-1 was for the personal satisfaction or pleasure of the appellant. If there is reason to doubt whether the money was received as lawful collection the benefit of it cannot be denied to the appellant.

In dealing with that crucial question we have to bear in mind certain broad aspects in this case. First is that appellant has been consistently maintaining the stand that as per the Rules governing issuance of certified copies from a sub Registry office an applicant has to pay some charges the amount of which depends on the length of manuscripts to be copied, besides a fee for search. Secondly, PW-1 Shesherao Patil himself admitted that when he submitted application for certified copies he was not aware about the charges required for each copy. In his own words - "when I submitted application for copies I was not aware about the charges required for each copy. As the accused demanded Rs. 20/- for each copy I felt that he was demanding a bribe". So it was only the surmise of PW-1 and it was not what appellant told him. The third feature is, when applications were presented the appellant asked PW-1 to pay Rs.20/- each copy and when the money was given the appellant counted it in the presence of all those who were present then and he kept it in his pocket.

In the above context we may examine the relevant Rules of the Maharashtra Registration Manual. Rules 345 to 355 pertain to "Searches and inspections, and grant of copies etc." The material words in Rule 346 are these: "when an applicant for copy is tendered, the application should be required to deposit in advance an amount sufficient to cover the search fee for the whole period mentioned in

the application." Rule 347(iv) reads thus: "When an application for copy is tendered, the applicant should be required to deposit in advance an amount sufficient to cover the search fee for the who period mentioned in the application." Rule 347(iv) reads thus: "When an application for copy is presented personally and the fees are paid, the probable date on which the copy will b e ready for delivery and the serial No. of application should be endorsed on the receipt and on the counterfoil." Rule 348(i) - "A Register of fees paid or of deposit or payment in lump made by applicants either personally or by Money Order on account of searches and copies should be maintained in form Appendix XXXIX in every office."

A reading of the above rules indicates that if appellant had made entries regarding amount collected from PW-1 in the Register prescribed and if he had prepared a receipt acknowledging payment of the amount of Rs.20/- per copy, there would not have been any scope for a contention that the amount paid was for gratification of the appellant.

Learned single Judge of the High court highlighted three main reasons for repelling the plea of the appellant. First is, there is no evidence to show that appellant talked anything to PW-1 about any advance. Second is, appellant put the amount in his pocket instead of keeping it in the drawer. Third is. appellant did not issue any receipt, and on the contrary appellant told PW-1 to come to the office on the next Monday or Tuesday to collect the copies. On the above reasons learned single Judge concluded that the amount was not paid towards any legal charges.

A closer scrutiny of the evidence unfurls a different profile on every one of those three reasonings. When ht sub- registrar told the applicant that he had to bear Rs.20/- per copy, the mere fact that he did not use the word "advance" is hardly sufficient to conclude that what he required was not the advance amount which he was legally obliged to collect from the applicant. Similarly the act of keeping the amount in his pocket is not decisive to conclude that it was intended for himself. Perhaps that could have been the mode of his keeping the money safe till that day's amount was closed. The third reason cannot be used against the appellant because as soon as appellant collected the amount the signal was transmitted by PW-1 which was immediately followed up as members of the anti corruption squad rounded him up. Hence there would not have been sufficient interval for the appellant to made entries in the Register or to prepare the receipt. Evidence shows that appellant told PW1 to come to the office again on the next Monday or Tuesday only as an answer to the query made by PW1 as to when he was to go there again for collecting the certified copies.

For the above reasons we entertain a reasonable doubt, on the admitted facts, that what appellant collected from PW-1 could have been the charges which he was lawfully obliged to collect from any person applying for three copies of the sale deeds. In such a situation it is only just and fair that benefit of the aforesaid doubt is extended to the appellant albeit the last stage of this litigation.

We, therefore, upset the conviction and sentence passed on the appellant and acquit him of the offences charged. His bail bond will stand discharged.