1957

The State of Bombay v. *Saubhagchand M. Doshi*

Venkatarama Aiyar J.

Junagadh, the age of superannuation was 60, that art. XVI of the Instrument of Accession provided that the permanent members of the public services in the several States should be continued on conditions not less advantageous than those on which they were holding office at the date of accession, and that under this Covenant, the respondent was entitled to continue until he attained the age of 60. The decision in *Bholanath J. Thaker* v. *State of Saurashtra*(1) was relied on in support of this position. But no such claim was put forward in the writ petition, and it is now too late to raise it.

In the result, the appeal is allowed, the order of the lower Court is set aside, and the petition of the respondent is dismissed. The parties will bear their own costs throughout.

Appeal allowed.

1957

September 26

THE STATE OF MADRAS

v.

A. VAIDYANATHA IYER

(B. P. SINHA, GOVINDA MENON and J. L. KAPUR, JJ.)

Appeal by special leave—Order of acquittal by the High Court—Power of Supreme Court—Presumption—Prevention of Corruption Act. (II of 1947), *s.* 4—*Constitution of India, Art.* 136.

Respondent, an Income-tax Officer, called an assessee to his house and took a sum of Rs. 800 from him. Immediately afterwards a search was made and the respondent, after some evasion produced the money. The respondent's defence was that he had taken the money as a loan and not as illegal gratification. The Special Judge who tried the respondent found him guilty under s. 161, Indian Penal Code, and sentenced him to six months simple imprisonment. On appeal, the High Court acquitted the respondent. The State obtained special leave and appealed.

Held, that the words used in Art. 136 of the Constitution show that in criminal matters no distinction can be made as a matter of construction between a judgment of conviction and one of acquittal. The Supreme Court till not readily interfere with the findings of fact given by the High Court but if the High Court

(1) A.I.R. (1954) S.C. 680.

acts perversely or otherwise improperly interference will be called for.

The findings of the High Court are halting and its approach to the case has been erroneous as it disregarded the special rule of burden of proof under s. 4 of the Prevention of Corruption Act (II of 1947). The judgment of the High Court shows that certain salient pieces of evidence were missed or were not properly appreciated.

In this situation the Supreme Court can interfere in an appeal by special leave.

Where it is proved that a gratification has been accepted, the presumption under s. 4 of the Prevention of Corruption 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 s. 4.

The evidence and circumstances in this case lead to the conclusion that the transaction was not one of loan but of illegal gratification.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 5 of 1957.

Appeal by special leave from the judgment and order dated the 6th September, 1955, of the Madras High Court in Criminal Appeal No. 498 of 1954 and Criminal Revision Case No. 257 of 1955, arising out of the judgment and order dated the 12th July, 1954 of the Special Judge, Coimbatore in C.C. No. 1 of 1952.

H. J. Umrigaer, *H. R. Khanna* and *R. H. Dhebar*, for the appellants.

K. S. Krishnaswamy Iyengar and *Sardar Bahadur*, for the respondent.

1957. September 26. The following Judgment of the Court was delivered by

KAPUR J.—This is an appeal by the State of Madras from the judgment and order of the High Court of Madras reversing the judgment of the Special Judge of Coimbatore and thereby acquitting the respondent who had been convicted of an offence under s. 161 Indian Penal Code and sentenced to six months simple imprisonment.

Kapur J.

The respondent, Vaidyanatha Aiyer, was at all material times the Income-tax Officer of Coimbatore and it is not disputed that he was there in the beginning

1957

The State of Madras
v.
A. Vaidyanatha Iyer

Kapur J.

of June 1951. According to the prosecution the respondent in the end of September 1951 demanded from K. S. Narayana Iyer (hereinafter referred to as the complainant) who is a proprietor of a "Coffee Hotel" called Nehru Cafe in Coimbatore with another similar hotel at Bhavanisagar a bribe of Rs. 1,000.

The complainant had been assessed to income-tax all along since 1942. During the course of assessment for the year 1950-51 it was discovered that he had failed to pay advance income-tax. A notice was therefore issued to him on March 24, 1951 under s. 28 read with s. 18-A(2) of the Income-tax Act to show cause why a penalty should not be imposed for underestimating his income. For the assessment year 1951-52 also the complainant in the usual course filed his return on August 11, 1951 and on a notice being issued to him produced his accounts before the Income-tax Officer on September 27, 1951. He again appeared before him on the 28th and the respondent told him that the "penalty papers had not been disposed of and that the accounts of the current year had also not been gone through" and asked the complainant to see him at his house on the following morning, which the complainant did. There he was told by the respondent that if he wanted to have his return accepted and to be helped in the matter of penalty proceedings he should pay the respondent Rs. 1,000 as illegal gratification. The complainant mentioned this fact to his manager and also that he had been told by the Income-tax Officer that his accounts were unsatisfactory. Because he was asked to do so the complainant saw the respondent at the latter's house on October 6 or 7 and he asked the complainant if he had brought the money and after some talk about the assessment the respondent asked the complainant to pay half the amount as it was Deepavali time. There is evidence of a defence witness also to show that towards the end of October 1951, the complainant was seen coming from the house of the respondent though the prosecution and the defence are not in accord as to the purpose of this visit.

The Circle Inspector, Munisami P.W. 12, claims to have received complaints while at Madras about the respondent being corrupt and his "indulging in corrupt practices". He then came to Coimbatore and got into touch with the complainant and asked him if he had paid any bribe to the respondent. The complainant mentioned to the Inspector about the demand of a bribe by the respondent At the instance of the Inspector the complainant appeared before the Tehsildar-Magistrate who recorded his statement P-17 wherein the whole story of the demand of the bribe has been set out. The Inspector then gave ten one hundred currency notes to the complainant after their numbers were taken down in Ex. P-17. The complainant then went to the office of the accused but no money was accepted on that day because the respondent had received an anonymous letter Ex. P-18 warning him of the trap which was being laid by the Malayalam people. The respondent naturally got very annoyed with the complainant and sent him away. The same evening the complainant was told that he was required to go to the house of the respondent on the following morning which he did at 8 a. m. . The respondent told him that he should take no notice of the anonymous letter which must have been sent by his enemies and asked him to pay some money. The complainant paid a sum of Rs. 200 which on his return he entered in his kacha account book which the High Court has rejected without sufficient reason. On the evening of November 15, the complainant again went to the house of the respondent and the latter told him that he would pass final orders and that money should be paid. The record, P-7 and P-7(a), shows that an order was dictated on November 13 although there is no proof or even indication that the complainant knew about it. The complainant was given 8 one hundred rupee notes by the Inspector and the complainant paid them to the respondent on the morning of November 17 at the latter's house. On this occasion the complainant accompanied by his manager P.W. 14 had gone towards the house of the respondent along with the Magistrate and Circle Inspector and Venkatesa Iyer

1957

The State of Madras
v.
A. Vaidyanatha Iyer

Kapur J.

P.W. 14 in a car which was stopped three or four blocks away from the house of the respondent and only the complainant and his manager went into the respondent's house and paid the money. Two or three minutes later the Inspector P.W. 12 and the Magistrate P.W. 13 and one Sesha Ayyar who had joined the party en route also came into the house on receiving the signal from the complainant. They disclosed their identity to the respondent and told him that they had information that he had received Rs. 800 from the complainant as illegal gratification and asked him to produce the money which he had received from the complainant. The respondent did not say anything and got up from the chair on which he was sitting and tried to go into the house but was prevented from doing so by the Inspector and he then produced the money from the folds of his dhoti. While the *mahazar* was being prepared the respondent said that he had received this money as a loan from the complainant who denied this and said it had been paid as a bribe. A telegram was then sent to the Superintendent of Special Police Establishment and under his orders a case was registered and the investigation was then taken up by a Deputy Superintendent of Police who searched the house of the respondent on November 19 but no pronote seems to have been received or taken into possession on that date. A pronote with four anna stamps affixed was later produced in the court by the respondent on July 17, 1952 during the course of his statement under s. 342 Criminal Procedure Code but it was not mentioned to the Magistrate P.W. 13 by the respondent.

The charge against the respondent was that he had obtained from the complainant Rs. 800 as gratification other than legal remuneration as a motive for the reward for showing favour to him in the exercise of official functions and had thereby committeed an offence punishable under s. 161 of the Indian Penal Code read with s. 4 of the Prevention of Corruption Act (Act II of 47).

The explanation of the respondent was that he mentioned to the complanant about his money difficulties

when accidentally he met him on the road towards the end of August or beginning of September 1951. The complainant offered to lend him Rs. 1,000/-. At that time he was not aware that the complainant had an assessment pending before him. It was the complainant who told him on November 15 when he met him again that the anonymous letter was the "work of his enemies" and promised to advance the loan as previously promised and he also suggested that the respondent should execute a pronote for Rs. 1,000 which would be attested by Venkatesa Ayyar to which he (the respondent) was agreeable. The complainant paid Rs. 800 on the morning of November 17 and promised to pay Rs. 200 in the evening. The respondent had the pronote ready and offered to hand it over in the morning but the complainant said he would take it when "he left the house".

The learned Special Judge accepted the story of the prosecution and after a careful analysis of the evidence found the respondent guilty of the offence charged and sentenced him to six months simple imprisonment.

On appeal being taken to the High Court the learned Single Judge reversed the judgment and acquitted the respondent. It will be convenient to give here the main findings of the learned judge in his own words :

(i) "It is true that at the time when the money was accepted by the accused, the proceedings in relation to assessment of income-tax on P.W. 8 were pending before the accused. Naturally, therefore, if in such circumstances, the accused should receive money from an assessee, the suspicion is readily aroused that the money must have been paid only as an illegal gratification. On going through the judgment of the learned trial Judge, I formed the impression that he was totally influenced by such suspicion."

(ii) "The result is that if the version of P.W. 8 and that of the accused are balanced, the probability seems to tilt the scale in favour of the accused's version. In any case, the evidence is not enough to show that the explanation offered by the accused

1957

The State of Madras v. A. Vaidyanatha Iyer

Kapur J.

cannot reasonably be true, and so, the benefit of doubt must go to him."

(iii) "But this was not a case of ordinary lendee, but an Income-tax Officer whose favour was needed by the lender."

(iv) "Evidence shows that in November, 1951, the accused was in need of a sum of Rs. 1,000 and, for that purpose, has asked P.W. 8 for a loan."

(v) "In my view, the evidence does not necessarily make out a case that the accused must have accepted the money only as a bribe."

(vi) "I do not therefore feel certain that the taking of a loan with an obligation to repay it with interest, would fall within the meaning of the term 'gratification'."

The extent of the power of the Supreme Court to interfere with a judgment of acquittal was raised before us by the respondent's counsel and it was contended that the jurisdiction exercised by this court under Art. 136 was the same as that exercised by the Judicial Committee of the Privy Council and reliance was placed on a minority judgment by Venkatarama Aiyar J. in *Aher Raja Khima* v. *The State of Saurashtra* (1) where the learned judge after discussing the various Privy Council judgments and quoting a passage from the judgment of this court in *Pritam Singh* v. *The State* (2) observed:

"The preceding article referred to in the opening passage is clearly article 134. Article 134(1) confers a right of appeal to this court in certain cases, in terms unqualified, on questions both of fact and law, and if the scope of an appeal under Article 136 is to be extended likewise to questions of fact, then article 134(1) would become superfluous. It is obvious that the intention of the Constitution in providing for an appeal on facts under Article 134(1)(a) and (b) was to exclude it under Article 136, and it strongly supports the conclusion reached in *Pritam Singh* v. *The State* (2) that like the Privy Council this Court would not function as a further court of appeal on facts in criminal cases."

(1) [1955] 2 S.C.R. 1285, 1301. (2) [1950] S.C.R. 453, 458.

The *State of Madhya Pradesh* v. *Ramakrishna Ganpatrao Limsey* (1) was also referred to by counsel for the respondent and it was contended that the Supreme Court should not interfere with the order of the High Court merely on the ground that it took a different view of the facts. That was an appeal which had been brought on a certificate by the High Court and not by Special Leave of this Court. That judgment was considered by a Constitution Bench in *States of Madras* v. *Gurviah Naidu & Co., Ltd.* (2) and S.R. Das, Acting C.J., delivering the judgment of the court pointed out that that was a decision of a bench of three judges and not of a Constitution bench and the observation that there was no provision corresponding to s. 417 of the Criminal Procedure Code only emphasised that this Court should not in appeal by Special Leave interfere with the order of acquittal passed by the High Court merely for correcting errors of fact or of law. *Gurviah Naidu's case* (2) was an appeal against a judgment of acquittal and this court reversed the judgment saying :—

"In our view, the High Court erred in holding that the prosecution had failed to establish their case and in acquitting the accused."

This case negatives the contention that under Art. 136 interference by this court with findings of High Courts in judgments of acquittal is not intended. Even in *State of Madhya Pradesh* v. *Ramakrishna Ganpatrao* (1) Mahajan J. was of the opinion that the Supreme Court can interfere where the High Court "acts perversely or otherwise improperly or has been deceived by fraud."

In *Pritam Singh* v. *The State* (3) Fazl Ali J. after a careful examination of Art. 136 along with the preceding articles stated the scope of the appeal under Art. 136 to be :—

"Generally speaking, this court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question

(1) A.I.R. 1954 S.C. 20.
(2) A.I.R. 1956 158, 161.
(3) [1950] S.C.R. 453, 458.

1957

The State of Madras v. *Vaidyanatha Iyer*

Kapur J.

presents features of sufficient gravity to warrant a review of the decision appealed against."

Even the Privy Council in laying down the permissible limits for review in criminal matters included things "so irregular or so outrageous as to shock the very basis of justice". See *Mohinder Singh* v. *The King*(1).

An instance of this principle is the decision of the Privy Council in *Stephen Seneviratne* v. *The King* (2) which will be discussed later in this judgment and which has been approved of by this court.

Interpreting the following words of s. 205 of the Government of India Act, 1935, "any judgment, decree or final order of a court" and "it shall be the duty of every High Court in British India to consider in every case", Lord Thankerton in *King Emperor* v. *Sibnath Bannerji*(3) said :—

"The purpose of the provision is to confer a right of appeal in every case that involves a substantial question of law as to the interpretation of the Act or of any Order in Council made thereunder."

One of the questions for decision in that case was whether an appeal lay in cases of *Habeas corpus*. Lord Thankerton there observed :

"In the absence of an express exception of habeas corpus cases, and having in view the terms and purpose of the section, their Lordships are unable to limit the terms of the section by mere construction so as to exclude these cases from its operation."

In Art. 136 the use of the words "Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India" show that in criminal matters no distinction can be made as a matter of construction between a judgment of conviction or acquittal. In *Bhagwan Das* v. *The State of Rajasthan*(4) the following observation of the Judicial Committee of the Privy Council in *Stephen Seneviratne* v. *The King*(2) at p. 299 :

(1) (1932) L.R. 59 I.A. 233, 235.
(2) A.I.R. 1936 P.C. 289.
(3) (1945) L.R. 72 I.A. 241, 255.
(4) A.I.R. 1957 S.C. 589.

"....there are here no grounds on the evidence, taken as a whole, upon which any tribunal could properly as a matter of legitimate inference, arrive at a conclusion that the appellant was guilty...."
was quoted with approval and after an examination of all the facts and circumstances of the case the Supreme Court reversed the judgment of conviction by the High Court under Art. 136. The question for decision in the present case is whether it falls within the limits laid down in the above-mentioned cases. This court will not readily interfere with the findings of fact given by the High Court but if the High Court acts perversely or otherwise improperly interference will be called for.

The findings of the High Court in the present case are, to say the least, halting, and the approach to the whole question has been such that it falls within what Mr. Justice Mahajan in *State of Madhya Pradesh* v. *Ramakrishna Ganpatrao* (1) described as "acting perversely or otherwise improperly". Although the learned High Court Judge has in the beginning of the judgment mentioned the presumption which arises under s. 4 of the Prevention of Corruption Act (II of 1947), the following passage in the judgment :

"in any case, the evidence is not enough to show that the explanation offered by the accused cannot reasonably be true, and so, the benefit of doubt must go to him."
is indicative of a disregard of the presumption which the law requires to be raised under s. 4. The relevant words of this section are :

"Where in any trial of an offence punishable under s. 161.....it is proved that an accused person has accepted.....any gratification (other than legal remuneration).....from any person, it shall be presumed unless the contrary is proved that he accepted.....that gratification.....as a motive or reward such as is mentioned in the said section 161....."
Therefore where it is proved that a gratification has been accepted, then the presumption shall at once arise

(1) A.I.R. 1954 S.C. 20.

1957

The State of Madras
v.
A. Vaidyanatha Iyer

Kapur J.

under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words 'shall presume' and not 'may presume' the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but s. 4 of the Prevention of Corruption Act is *in pari materia* with the Evidence Act because it deals with a branch of law of evidence, *e.g.*, presumptions, and therefore should have the same meaning. "Shall presume" has been defined in the Evidence Act as follows :

"Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under s. 4 of the Prevention of Corruption Act because unlike the case of presumptions of fact, presumptions of law constitute a branch of jurisprudence. While giving the finding quoted above the learned judge seems to have disregarded the special rule of burden of proof under s. 4 and therefore his approach in this case has been on erroneous lines.

The judgment also shows that certain salient pieces of evidence were missed or were not properly appreciated.

At the time when the penalty notice was issued under s. 28 of the Income-tax Act the respondent was not the Income-tax Officer at Coimbatore but by June 6, he had been posted at Coimbatore and the note on the Penalty File dated June 6, 1951 :

"put up proposal to I.A.C. for levy of standard penalty,"

was made by him. Although this proposal was made on June 6, 1951, it is not clear as to what final orders were passed in these proceedings and when. At least there is nothing to indicate that any intimation was given to the complainant in regard to this matter. The complainant has stated on oath as P.W. 8:—

"I alone went to the accused on 28th September, 1951. He then told me that the penalty paper was not disposed of and that the accounts for the current year had not also been gone through."

On the day following this the respondent asked the complainant for illegal gratification of Rs. 1,000. Counsel for the respondent contended that there was no occasion for the respondent to say anything about the penalty proceedings because as far as he was concerned the recommendation had already been made by him but the real question is whether the complainant was told as to what had happened or had any knowledge of this. He states that he had none and there is nothing to indicate that he had.

The respondent has then stated that the complainant was known to him since 1942 when he, the respondent, was the Head Clerk of the Appellate Assistant Commissioner of Income-tax and that is the reason why towards the end of August or the beginning of September when he casually met the complainant on the road, he told him that he was in financial difficulties and the complainant offered him a loan of Rs. 1,000 to be returned in easy instalments and that he did not know at that time that the complainant was an assessee before him. This statement of the respondent has been accepted by the High Court without considering the following important facts. Notice was issued to the complainant and he filed his return on August 11, 1951. The notice must have been issued to the complainant under s. 22(2) of the Income-tax Act by the respondent himself as he was at that time the Income-tax Officer. So it is difficult to believe his statement about his not knowing that the complainant was an assessee before him and it is improvable that the respondent would mention his financial troubles to a more or less casual acquaintance who has neither been shown to be a banker, nor a money lender nor a wealthy person. The complainant has stated that he visited the respondent on 6th or 7th October 1951, when he asked him if he had brought the money. The complainant replied that he had no money to spare as he had purchased a house

1957

The State of Madras

A. Vaidyanatha Iyer

Kapur J.

and he also asked him if the respondent had finished the assessment. The latter's reply was that he would look into the matter and also told him that the complainant might pay half the amount (of the illegal gratification) before the deepavali time. This statement the respondent has denied but the statement of the complainant as to his having no money as he had purchased a house has not been seriously challenged in cross-examination.

The complainant had been asked to produce the accounts and he did produce them on Sptember 27. The notes made by the respondent in P-7 and P-7(a) show that the accounts of the complainant were not being accepted in regard to Coimbatore Hotel. The portion of the order was :—

"All the defects that are usual in hotel accounts exist here."

In regard to Bhavanisagar hotel the note stated:—

"Purchases are not fully supported and sales are reckoned from till takings."

On October 1, 1951, the assessee had filed his written statement and also some other documents. Nothing more seems to have been done till November 7, when the relevant part of the note on the file is:

"I have been keeping this in order to compare the results with other nearby hotels."

As to why no enquires could be made in the whole of this period is not clear from the assessment record and it lends support to the prosecution case that the respondent was making approaches to the complainant to get money from him. The respondent during the pendency of assessment proceedings of the complainant allowed the complainant to visit him at his house and even paid visit to his cafe. Even according to the findings of the High Court the complainant was "needing the favours" of the respondent who on his own showing was himself in dire need of a thousand rupees as he had succeeded in collecting only a thousand rupees by November 2, and needed twice that amount for his sons premium or security as he chooses to call it. No importance was attached to this aspect of the case by the learned

judge of the High Court. In our opinion the learned trial judge correctly appreciated this part of the prosecution case and his judgment is not, as the High Court has said, coloured by mere suspicion.

On November 6, 1951, Circle Inspector Munisami contacted the complainant and arrangement was made for Rs. 1,000 to be paid by the complainant to the respondent and the money was actually taken by the complainant, and offered to the repondent on November 8 which the respondent did not accept as he had received an anonymous letter Ex. P-18 which was dated November 6, 1951 in which the respondent had been warned that Malayam people were attempting to "ruin him". In spite of this warning the respondent continued to have truck with the complainant and actually accepted Rs. 800 from him. It is true that when soon after the money was paid and the Inspector P.W. 12 and the Magistrate P.W. 13 arrived at the house of the respondent and asked him about this money he stated that he had taken it as a loan but in the context it assumes a different complexion. The statement of the Magistrate P.W. 13 was :—

"While the mahazar was being prepared the accused volunteered and told me that he had received the 800 rupees as a loan from P.W. 8 the complainant."

This witness had also stated that when he went into the verandah of the house, he asked the respondent whether he had received an illegal gratification from the complainant and also asked him to produce the money. The accused did not say anything but got up from the chair and tried to go inside the house which he was prevented from doing by the Inspector P.W. 12. The witness added :

"The accused was seen trembling and meddling with something under the towel. I asked the accused to remove the towel. The accused removed the towel. I saw some bulging at his waist in the dhoti he was wearing. I asked him again to produce the currency notes. He produced them from the folds of the dhoti he was wearing. When producing the currency notes the accused did not say anything."

1957

The State of Madras v. A. Vaidyanatha Iyer

Kapur J.

No real cross-examination was directed against these portions of the statement of the Magistrate P.W. 13 nor has the High Court correctly appreciated them or given them due weight. The respondent produced before the Special First Class Magistrate on July 11, 1952, an unsigned pronote for Rs. 1,000 executed by him in favour of the complainant. That pronote was not found in the house when the search was made by the Deputy Superintendent of Police on November 19, 1951, and it is not explained why the pronote should have been made for Rs. 1,000 when actually the amount paid was only Rs. 800 and why the respondent offered to give this pronote to the complainant without receiving full consideration.

These salient features of the case do not seem to have been properly appreciated or given due weight to by the High Court and in our opinion the learned judge's approach to the question whether the sum of Rs. 800 was an illegal gratification or a loan is such that the judgment falls within the words of Mahajan J. in *Ramakrishna's case* (1), *i.e.* that the High Court has acted perversely or otherwise improperly. The evidence and the circumstances lead to the conclusion that the transaction was not one of loan but illegal gratification.

In view of the finding that the sum of Rs. 800 was a bribe and not a loan it is not necessary to consider whether in this case the loan would be an illegal gratification within s. 4 of the Prevention of Corruption Act (II of 1947) or not.

We would, therefore, allow this appeal, set aside the judgment and order of the High Court of Madras and restore that of the Special Judge of Coimbatore convicting the respondent of the offence he was charged with. The respondent must surrender to his bail bond.

Appeal allowed.

(1) A.I.R. 1954 S.C. 20.