

(1964) 09 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 77 of 1964

Deonath Dundhnath Mishra	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 18-09-1964

Acts Referred:

Evidence Act, 1872 — Section 101, 104, 114, 3, 5
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 4, 4(1)

Citation : AIR 1967 Bom 1 : (1967) CriLJ 21

Hon'ble Judges : Paranjpe, J

Bench : Single Bench

Advocate : R.D. Saranjame and T.M. Bashikkar, for the Appellant; S.M. Hajarnavis, Asst. Govt. Pleader, for the Respondent

Judgement

(1) The appellant was the reader to the Sub-Divisional Officer, Achalpur from the 29th of June 1963 till the 1st of October 1963. The complainant Ibrahim (P. W. 1), who has been holding a licence for possession and sale of explosives, had applied to the Sub-Divisional Officer, Achalpur, on the 4th of March for a renewal of the licence after adding five more villages therein. The Sub-Divisional Officer was authorized by the district magistrate, amravati, to renew such licences, but without making any alterations therein. Since an alteration was prayed for by way of inserting five other villages, the licence was forwarded to the district Magistrate, Amravati, for renewal on the terms as prayed for by Ibrahim. The licence, however, was not received back from the District Magistrate, Amravati, for several months, and Ibrahim had to go to the office of the Sub-divisional Officer, Achalpur, on about five or six occasions to get his licence, if received back. Ibrahim had met the appellant as also the predecessor of the appellant, and was given in September 1962, the details of the forwarding number by which the licence was sent to Amravati. On going to Amravati, on the 27th of September 1962 Ibrahim learnt that the licence had been sent back to the officer of the Sub-Divisional Officer, Achalpur. Ibrahim, therefore, came back to Achalpur

and enquired from the appellant about the licence on the 30th of September 1963. However, the licence was not delivered that day.

(2) The case for the prosecution was that the appellant told Ibrahim on the 30th of September 1963 that he would give the licence immediately on its receipt if he were paid Rs. 5 by way of illegal gratification. Ibrahim ostensibly agreed to pay the amount; but did not like the idea and, therefore, approached the Anti Corruption Police at Amravati on the 1st of October 1963 and gave his complaint, Exh. 8. He was sent to the Magistrate Mr. Pathak (P. W. 7), who granted permission for investigation of the offence. Thereafter, a trap was laid, as usual, and five one rupee notes which were dusted with anthracene powder were handed over to Ibrahim. Later on Ibrahim returned to Achalpur in a jeep with P. S. I. Deshmukh (P. W. 6) and the two panchas, Trimbakin (P. W. 2) and Makkan. Ibrahim went to the office of the Sub-Divisional Officer, Achalpur, and asked the appellant for the licence. The appellant replied that he had not seen the dak received that day and he would take action on receipt of the licence. Ibrahim then said that he was intending to go to his Desh. Thereupon, the appellant asked him to give Rs. 5 for sending the licence by post to his address after it was received. In accordance with that demand, Ibrahim paid the marked notes of Rs. 5 to the appellant in the presence of the panch Trimbakin. Upon the agreed signal being given, P. S. I. Deshmukh (p. W. 6) came there and called the appellant out. He examined the hands of the appellant under the ultra-violet lamp and on finding that there were traces of anthracene powder, called upon the appellant to produce the amount which he had received from Ibrahim. The appellant then took out the five marked notes and handed them over to the P. S. I. By that time, the Sub-Divisional Officer Mr. Kolhatkar was called out and he also saw the appellant giving those notes to the P. S. I. The notes were seized and their numbers were found to tally with the numbers noted in the panchanama at the time of giving them to Ibrahim after applying anthracene powder to them. The appellant was then arrested. The Collector Amravati, under whom the appellant was serving, accorded his sanction under S. 6(1) (c) of the Prevention of Corruption Act to prosecute the appellant. Accordingly, the appellant was prosecuted under S. 161, Indian Penal code and S. 5(1)(d) read with S. 5(2) of the Prevention of Corruption Act.

(3) The appellant abjured the guilt. He denied the allegations of the prosecution and contended that he was falsely implicated by Ibrahim, who was annoyed because of his not getting the licence for a long time. According to him, one Govindsingh was ordered by the Sub-Divisional Officer to file certain sketches in a revenue case that day and Govindsingh who had obtained the sketches from Aziz (D. W. 2), had no time to wait and had to hand over those sketches to Ibrahim for giving them to the appellant. Accordingly, Ibrahim gave the folded sketches and the appellant never knew that any moneys were passed on in them. When the Sub-Inspector asked him to take out the articles in his pocket he had taken out all the articles including the sketches and on opening the sketches, five currency notes which were kept inside the folds fell down. He handled the

notes only after the P. S. I. ordered him to do it. He had not committed any offence.

(4) The learned Special Judge, Amravati, accepted the evidence led by the prosecution to prove that the appellant had received the amount of Rs. 5 as an gratification by way of a motive or reward for doing his official duty and disbelieved the defence that the notes were passed on to him in the folds of the sketches said, to have been given on behalf of Govindsingh. The learned Special Judge convicted the appellant under both the counts and sentenced him to undergo rigorous imprisonment for 18 months on each count, the sentences being concurrent. Those convictions and sentences are now being challenged.

(5) Mr. R. D. Saranjame, advocate for the appellant, contended that the learned Special Judge was in error in relying on the oral interested evidence and on a proper scrutiny of the evidence, it ought to be held that the prosecution had not proved that Ibrahim paid Rs. 5 by way of illegal gratification to the appellant, Mr. S. M. Hajarnavis, Assistant Government Pleader contended, on the other hand, that the prosecution had proved, beyond any doubt whatsoever, that the appellant had demanded a bribe of Rs. 5 and had received that amount of Rs. 5 as an illegal gratification from Ibrahim. According to him, the learned special Judge was quite right in relying on the evidence, which was adduced by the prosecution. The learned advocates have taken me through the entire evidence in the case, and it would be necessary to consider the version of the prosecution witnesses to find out, whether the prosecution have succeeded in establishing their allegations.

(6) Before I consider the evidence on its merits, I would consider the legal point raised by Mr. Hajarnavis, Assistant Government Pleader. He submitted that the learned Special Judge had unnecessarily gone into the question whether the amount was paid as a bribe and whether a demand for such payment, or the payment thereof itself, were or were not probable under the circumstances of the case. According to him, the moment it was proved that the appellant had accepted the amount of Rs. 5 as a gratification other than legal remuneration, it was incumbent on the Court to raise the legal presumption under S. 4(1) of the Prevention of Corruption Act that the appellant had accepted or obtained the amount as a motive or reward, such as is mentioned in S. 161 of the Indian Penal Code. He relied on C.I. Emden Vs. State of Uttar Pradesh, and Dhanvantrai Balwantrai Desai Vs. State of Maharashtra, in support of these submissions. He pointed out from the concluding portion of the notes of arguments on page 91 of the paper book, that Dhanvantrai Balwantrai Desai Vs. State of Maharashtra, was cited by the learned defence counsel in the trial Court; but even so, it was not considered at all. Mr. Saranjame did not show any authorities to the contrary and did not dispute the legal position that once it was established that the amount of Rs. 5 was paid as a gratification other than legal remuneration, the presumption under S. 4(1) of the Prevention of Corruption Act would arise and the burden would then lie on the accused to rebut that presumption; but his further

contention was that the prosecution had not established that the amount was received by the appellant or that he was consciously in possession of it.

(7) It is true that the learned Special Judge has considered, at great length, the evidence in order to determine whether a demand for such an illegal gratification and the payment thereof, were or were not probable. All that unnecessary discussion could have easily been avoided if the legal presumption under S. 4(1) of the Prevention of Corruption Act had been raised on finding that the prosecution had established that the amount of Rs. 5 was paid to the appellant otherwise than as legal remuneration. The following observations from C.I. Emden Vs. State of Uttar Pradesh, , which were quoted with approval in the latest case of Dhanvantrai Balwantrai Desai Vs. State of Maharashtra, which had been cited in the course of the arguments before the learned Special Judge would be pertinent:

"If the word "gratification" is construed to mean money paid by way of a bribe then it would be futile or superfluous to prescribe for the raising of the presumption. Technically it may no doubt be suggested that the object which the statutory presumption serves on this construction is that the court may then presume that the money was paid by way of a bribe as a motive or reward as required by S. 161 of the Indian Penal Code. In our opinion, this could not have been the intention of the Legislature in prescribing the statutory presumption under S. 4(1)

It cannot be suggested that the relevant clause in S. 4(1) which deals with the acceptance of any valuable thing should be interpreted to impose upon the prosecution an obligation to prove not only that the valuable thing has been received by the accused but that it has been received by him without consideration or for a consideration which he knows to be inadequate. The plain meaning of this clause undoubtedly requires the presumption to be raised whenever it is shown that the valuable thing has been received by the accused without anything more. If that is the true position in respect of the construction of this part of S. 4(1), it would be unreasonable to hold that the word "gratification" in the same clause imports the necessity to prove not only the payment of money but the incriminating character of the said payment."

After giving this quotation, their Lordships accepted it as incorporating the correct legal position and held that the presumption under sub-section (1) of S. 4 ought to have been raised. Applying those principles, I would consider the evidence from the view-point of finding out whether the prosecution has proved that the amount was paid by Ibrahim to the appellant as a gratification, other than legal remuneration.

(8) The version of Ibrahim (P. W. 1) that he had given his application (Exh. 6) for the renewal of his licence (Exh. 7) after adding five villages therein to the then Reader of the Sub-Divisional Officer on the 4th of March 1963 and that the application was forwarded to the Colector, Amravati, on about the 8th of April

1963, but the licence had not been received for several months thereafter, has not been questioned before me. The further claim of Ibrahim that he had gone to the former Reader of the Sub-Divisional Officer and also to the appellant on five or six occasions was not disputed. Mr, Saranjame pointed out that though the appellant was serving at Daryapur in May, Ibrahim had purported to say that he had met the appellant during that period and the complainant had also purported to give specific dates of having met him when he could not possibly remember them. He also drew my attention to the fact that his complaint (Exh 8) purported to mention specific dates, namely 3rd June and 8th September 1963 as the dates on which he had met the appellant. Mr. Saranjame contended that a witness who is making these statements without having any idea of the correctness of the dates ought not to be relied on. In this connection, Mr. Hajarnavis pointed out that Ibrahim was not likely to remember specific dates and his mention of wrong dates would not have the effect of discrediting his evidence, particularly because of his specific statement in his complaint (Exh. 8), that at that time he did not recollect on what dates he had gone to the Sub-Divisional Officer's office for enquiring about the licence.

(9) No doubt, Ibrahim has made certain statements about dates, but Mr. Saranjame did not dispute that Ibrahim had made the following statement in the complaint (Exh 8):

" At present I do not recollect on what dates I had gone there."

After making this statement, he had purported to give specific dates, namely 3rd June and 27th of September 1963; but I am not prepared to read those dates by separating them from the context of the quotation given above. It appears that he has mentioned those dates only on surmise or through inadvertence and those wrong statements ought not to have the effect of casting a doubt on his veracity. At the stage of evidence, it appears that he was pressed by cross-examination to mention the dates of particular incidents and it is common knowledge that when a witness is asked a question he feels that he must answer it whether he knows about it or not. The fact that the witness has made some wrong statements about the dates on which he had met the appellant and his predecessor, will not have the effect of castigating his evidence, particularly when the appellant did not dispute the fact that Ibrahim had come to him on several occasions to enquire about his licence.

(10) Ibrahim (P. W. I) was the duly witness who had deposed about the demand of the appellant for an illegal gratification of Rs. 5 as a motive for promptly giving him the licence. The contention that such a demand was not made would not appear to be correct in view of the admission elicited in the cross-examination of Ibrahim himself that he had talked to the Anti Corruption Police on the trunk-telephone that very evening. The further version of Ibrahim that he went to Amravati the next day and gave his complaint (Exh 8) to the Anti Corruption Police and then he was taken before the Judicial Magistrate Mr. Pathak (P. W. 7) who accorded his sanction for investigating the offence and then the

preliminaries of the trap were carried on, was fully supported by P. S. I. Deshmukh (P. W. 6), Mr. Pathak (P. W. 7) and also by the Panch Trimbakin (P. W. 2) from the stage of his coming there at the time of preparing the panchanama and giving the marked notes to Ibrahim. The evidence of these witnesses that they came to Achalpur that evening by a bus was also not disputed.

(11) Ibrahim (P. W. 1) and Trimbakin (P. W. 2) were agreed in saying that on reaching Achalpur in the evening of the 1st October 1963, Ibrahim went to the appellant and again enquired about the licence, but was told by the appellant that he had not seen the dak till then. They were also agreed in saying that Ibrahim told the appellant that he was to go away to his Desh and then the appellant was paid Rs. 5 by Ibrahim, though Trimbakin did not support the claim of Ibrahim that his payment was in consequence of the demand of the appellant for that amount. Upon the agreed signal being given, P. S. I. Deshmukh and the other panch, who were at a short distance, came to that place. P. S. I. Deshmukh brought the appellant out to the verandah. Ibrahim, Trimbakin and P. S. I. Deshmukh were agreed in saying that Deshmukh called upon the appellant to produce the amount which he had received from Ibrahim and then the appellant took out the five rupee notes and handed them over to Deshmukh (P. W. 6) in the presence of the Sub-Divisional Officer Mr. Kolhatkar (P. W. 3). Mr. Kolhatkar also supported the version of these witnesses that on P. S. I. Deshmukh demanding the moneys, the appellant produced the five notes from his pocket and they were seized from him. All these persons were further agreed in saying that the hands of the appellant, on being examined under the ultra-violet light, were found to bear traces of anthracene powder. However, Ibrahim and Kolhatkar had purported to say that this examination by ultra-violet lamp was after the moneys were taken out of his pocket by the appellant, while Trimbakin and Deshmukh were saying that it was done before Deshmukh called upon the appellant to take out the moneys with him.

(12) Mr. Saranjame contended that this agreed evidence ought not to be believed. According to him, Ibrahim was annoyed with the appellant for not getting his licence and he was, therefore, interested in falsely implicating the appellant. Trimbakin was characterised as a man of no status and means and according to Mr. Saranjame, he had virtually acted as a stooge of the police and he merited no reliance. According to Mr. Saranjame, the Sub-Divisional Officer Kolhatkar had apparently made a mistake in stating what he had done and, therefore, his evidence should be discarded and P. S. I. Deshmukh should also not to be believed because he was interested in the success of the trap prepared by him. Mr. Hajarnavis, Assistant Government Pleader contended, on the other hand, that nothing was brought out on the record to show that Ibrahim had any axe to grind against the appellant or he had any reason to falsely implicate him. He also submitted that the fact that Trimbakin was not a man of status ought not to affect his veracity and there was no material on record to show that Trimbakin was in any way under the influence of the police. Nothing also was brought out in the cross-examination of the P. S. I. Deshmukh which could have entitled the

appellant to say that his evidence was unreliable.

(13) Nothing was brought out in the cross-examination of Ibrahim or any other witness to show that Ibrahim was annoyed with the appellant or had any axe to grind against him. I am not prepared to agree that the mere fact that Ibrahim had not received the licence for several months should be sufficient to create such a malice in his mind as to impel him to falsely implicate the appellant. The evidence of Ibrahim showed that he learnt in September 1963 that the licence had been sent to Amravati and it was only on the 27th of September that he was informed at Amravati that it was sent back to Achalpur. After learning this at Amravati he came to Achalpur on the 30th of September 1963 and was told by the appellant that the licence had not been received by the dak. Under these circumstances, it would not seem likely that Ibrahim, who had patiently waited for about 7 months to get his licence, would get so annoyed with the appellant as to rush to make a false allegation that the appellant had demanded a bribe for delivering the licence. The evidence of Ibrahim showed that the licence was handled by the previous reader Bajpai (P. W. 5) and if the mere non-receipt of the licence were to create such an ill will in the mind of Ibrahim he would have evinced it against Bajpai also and not only, against the appellant. In the absence of any material on record, Mr. Saranjame was not right in wanting me to assume that the existence of such a bad feeling about the appellant should be attributed to Ibrahim so as to lead to a false allegation of this kind. It has to be remembered in this context, that the prosecution had also shown that the money was again demanded and then accepted by the appellant next day, which would be incompatible with the assumption which Mr. Saranjame was wanting me to make. There is nothing in the evidence of this man to show that his evidence was unreliable.

(14) As regards Trimbakin, he was, no doubt, a man earning about Rs. 1-17 per day, but I have not been able to understand how that fact, by itself, should be sufficient to lead to the inference that he is not a truthful person. Accepting that argument would mean that truthfulness is the monopoly of persons who are rich and who hold a high status. No such generalization, either way is permissible or possible and the want of status or of riches on the part of a witness can have no bearing on his credibility and reliance. the evidence of this witness must be judged on its merits and the mere fact that he happens to be a poor person cannot lead to the inference that he was, therefore, unreliable. If the appellant wanted to castigate the evidence of these witnesses, proper and sufficient material could have been brought on record, but nothing of that sort was done. Trimbakin had, no doubt, admitted that he knew one constable Mishra at Amravati Trimbakin was a stooge of the police. No material was brought on record to substantiate that criticism against Trimbakin. His evidence did not disclose any material which could have resulted in creating a doubt about his varacity or about his independence.

(15) As adumbrated, the version of Ibrahim (P. W. 1) and of Trimbakin (P. W. 2)

that the amount of Rs. 5 was paid by Ibrahim to the appellant, found very substantial and material corroboration from the evidence of the Sub-Divisional Officer Kolhatkar (P. W. 3) and the P. S. I. Deshmukh (P. W. 6), who deposed that on a demand by Deshmukh to produce the moneys which he had received from Ibrahim, the appellant produced five one rupee notes which were found to have stains of anthracene powder and the numbers of which tallied with the numbers of the notes given to Ibrahim at Amravati at the time of the panchanama earlier in the day. The contention of Mr. Saranjame that Mr. Kolhatkar was making some mistake in giving his evidence, had no basis or foundation in the record. His criticism that P. S. I. Deshmukh was interested in giving false evidence because he was the person who had laid the trap, cannot be accepted by way of a general statement. Nothing was brought out in his evidence to show that he had any personal interest in the matter or that he had made any untrue statements. Mr. Saranjame did not show any reasons much less convicting reasons, for disbelieving these witnesses.

(16) Mr. Saranjame strenuously urged that the evidence of these witnesses about the alleged payment of the money to the appellant and about the production thereof by the appellant, should be disbelieved because of the variant statements made by them with respect to the point of time at which the hands of appellant were examined under the ultraviolet lamp. Ibrahim as also Mr. Kolhatkar had purported to say that his examination was made after the amount was produced by the appellant, while Trimbakin and P. S. I. Deshmukh had stated that this examination was made before the appellant took out the money was from his pocket and anthracene powder was found on his hands even before he produced the money. there is, no doubt, an apparent variance in these versions. However, a perusal of the evidence of Kolhatkar would show that he was not present at the early stages when the hands of the appellant and others were examined under the ultraviolet lamp upon the arrival of the P. S. I. at that place. His evidence showed that he came on the scene when P. S. I. Deshmukh was asking the appellant to produce the amount which was with him and then the appellant produced it and thereafter the hands of the appellants were seen under the ultraviolet lamp. His omission to speak about the stage of examination before Deshmukh called upon the appellant to produce the amount is easily understood when it is remembered that he came on the scene after that stage. Ibrahim (P. W. 1) had, no doubt, stated that the examination of the hands was made after the amount was taken out by the appellant. Surprisingly, however, not even a suggestion was made either to Trimbakin (P. W. 2) or to Deshmukh P. S. I. that their versions of a prior examination under the ultraviolet light were not correct and the appellant's hands had been examined only after the amount was produced by the appellant and not before. No explanation for that important omission was forthcoming. Nothing was brought out in cross-examination either of Trimbakin or of P. S. I. Deshmukh to show that their versions were not reliable. Under these circumstances, it was difficult to understand how Mr. Saranjame was submitting that the agreed version of Trimbakin (P. W. 2) and P.S.

I. Deshmukh (P. W. 6) on this point should be discarded in preference to the contrary version of Ibrahim, whose evidence has shown that his memory is not very dependable and reliable. Considering the evidence on its merits, I think that if a mistake has been made in stating the point of time, it was done by Ibrahim in saying that the examination was made after the notes were taken out by the appellant and there was no mistake of Trimbakin (P. W. 2) or of P.S. I. Deshmukh (P. W. 6) when they stated that the examination was made before the notes were taken out. On giving my most anxious consideration to the evidence, I am inclined to accept the version of Trimbakin (P. W. 2) and of P. S. I. Deshmukh (P. W. 6) that the hands of the appellant were examined before he took out the money. The finding of anthracene powder on his hands at that time could leave no manner of doubt that he had handled the notes himself for putting them in his pocket and that was how the anthracene powder stains came on his hands and fingers before even he produced the notes on demand by P. S. I. Deshmukh.

(17) It was also pointed out by Mr. Saranjame that Trimbakin (P. W. 2) should not be believed because he had not supported the version of Ibrahim that the appellant made a demand for the amount in the evening of the 1st October and then the payment was made in consequence of the demand. It is true that Trimbakin did not disclose that fact in his evidence. However, the prosecution was permitted to put questions in the nature of cross-examination to Trimbakin accordance with the amended proviso to S. 162 of the Code of Criminal Procedure with reference to his contrary statement in the case diary. On that statement being shown to him, he not only admitted that he had made such a statement but he further stated that the statement about the demand by the appellant, with which he was confronted, was correct. It would be interesting to note that despite this additional statement of Trimbakin at the end of his examination-in-chief no attempt whatsoever was made to show that Trimbakin was not telling the truth on this point. Reading the evidence of Trimbakin, it would clearly appear that Trimbakin was, if at all, under the influence of the appellant and not of the police because he had tried to shield the appellant by suppressing the fact that the appellant had made a demand and the payment was made in consequence of that demand. In the face of that material, Mr. Saranjame was not right in asking this Court to discard the evidence of Trimbakin on the assumed ground that he was under the influence of the police.

(18) Mr. Saranjame was submitting that in view of the defence of the appellant that Ibrahim did not give any notes to him but gave only the folded sketches, Exhs. 10 and 11, and the notes were concealed therein, the version of the four witnesses named above that the appellant, on demand by P. S. I. Deshmukh, produced five notes of one rupee each from his pocket, should be disbelieved altogether. In making that submission, Mr. Saranjame was wanting me to assume that the notes were not given openly to the appellant, but were kept concealed in the folds of the sketches and Ibrahim only gave the folded sketches without giving any idea that he had kept moneys thereunder. However, there was no basis for that assumption in the record. A suggestion was, no doubt, put to

Ibrahim at the end of his evidence that govindsingh had given the sketches to him and he had put in these notes inside the sketches before giving them to the appellant, but he stoutly denied that suggestion. surprisingly, however, no such suggestion was made to Trimbakin, who also was present with Ibrahim during the incidents of that evening. No explanation for that omission was forthcoming. As adumbrated, the evidence of all the four witnesses was that on a demand by P. S. I. Deshmukh to produce the amount given by Ibrahim, the appellant took out these five rupee notes from his pocket and handed them over to P. S. I. Deshmukh. However, not even a suggestion was put to any of these witnesses that on that demand by P. S. I. Deshmukh for producing the moneys given by Ibrahim, he either repudiated the possession of moneys or that he stated that he had only received the maps or that he purported to produce the maps and then the notes fell down from the maps. If there was any truth in this defence, such a suggestion was bound to have been put to these witnesses and at least to Kolhatkar and P. S. I. Deshmukh, if not to others, but that had not been done. their statements that the accused, on demand, produced only the five rupee notes as also the two maps from the same pocket, was not challenged by cross-examination at all. Moreover, suggestions were put to Kolhatkar in his cross-examination that his amount was the property of the accused and was claimed by the accused as his property. In the face of all this material on record, there was no force in the criticism on behalf of the appellant that the learned Special Judge had erred in accepting the evidence. On the contrary, the evidence clearly showed that the learned Special Judge was right in finding that the amount of Rs. 5 was paid by Ibrahim to the appellant otherwise than as his legal remuneration. Consequently, the legal presumption under S. 4(1) of the Prevention of Corruption Act that this gratification of Rs. 5 was received as a motive or reward, such as is mentioned in S. 161, Indian Penal Code, must arise and the burden will be on the accused to rebut that presumption.

(19) Mr. Saranjame then submitted that the appellant had rebutted this presumption firstly, by proving through Sadasheo (D. W. 1) that no amount was demanded or paid in his presence on the 30th of September or the 1st of October 1963 as stated by Ibrahim (P. W. 1). It would be interesting to note, however, that this Sadasheo (D. W. 1) was not prepared to admit that he was present either with Ibrahim or with the appellant in the evenings inquestion. On the contrary, he categorically stated in his cross-examination that he went home at 5 p.m. on the 1st of October 1963. If that is true, he could not possibly know what had happened between Ibrahim and the appellant in the evening of the 30th September or of the 1st October 1963 in his absence. His evidence cannot, therefore, have the effect of falsifying the version of Trimbakin and Ibrahim regarding what had happened in the evenings in question. Probably the only effect of his version would be to castigate the veracity of the claim of these two persons that Sadasheo was also present at that time . Even if that is the effect, I have already shown from the rest of the evidence that the prosecution had proved, beyond doubt, that the amount was paid by Ibrahim in the presence of

Trimbakin to the appellant in the evening of the 1st October 1963. Consequently, the evidence of Sadasheo (D. W. 1) does not advance the defence in any manner.

(20) The evidence of Kolhatkar, Sub-Divisional Officer (P. W. 3) and Aziz (D. W. 20) showed that as desired by the former the latter had prepared the maps, Exhs. 10 and 11, for being given to Govindsingh for filing in the revenue case pending in the Sub-Divisional Officer's Court. the statement of Aziz (D. W. 2) that he gave those maps to Govindsingh was not questioned at all. Krishnarao (D. W. 3), however, came forth to say that Govindsingh was in a hurry to go home in the evening and, therefore, handed over the maps, Exhs. 10 and 11, to Ibrahim for giving them to the appellant. Mr. Saranjame was commending the witness as a very truthful person. I am afraid, a perusal of his evidence, however, would lead to a contrary inference. It would be pertinent to note that this witness went to the length of saying that Ibrahim had met him at Paratwada on 1-10-1963. The evidence of P. S. I. Deshmukh and the Judicial Magistrate Mr. Pathak (P. W. 7) and Trimbakin (P. W. 2) as also Ibrahim (P. W. 1), however, unquestionably showed that Ibrahim was at Amravati at least from about 10 a.m. till about 3.30 p.m. that day. Even then, this witness wanted to depose to the contrary. That shows what regard he has for truth. His cross-examination shows that he was interested in the appellant and appeared to be his friend. He wanted to give out the entire defence on the basis that he had learnt of it from the accused subsequently, though he had no personal knowledge about it. That shows how keen he was in shielding the accused. Even if his entire evidence were to be accepted, it only proved that Govindsingh gave some maps to Ibrahim. But there was nothing, to show whether Ibrahim retained the maps with him or handed them over to the appellant or returned them to Govindsingh or gave them to some-one else. According to the defence, it should be presumed by this Court that these maps must have been given by Ibrahim to the appellant after they were received by him from Govindsingh as stated by Krishnarao (D. W. 3). I am entirely unable to make any such assumption, particularly when this witness's evidence was rightly found by the learned Special Judge to be untrue. Even if it were to be relied on, the proper course for the accused would have been to summon Govindsingh and to prove through him that he had given the maps to Ibrahim for handing them over to the appellant. that had not been done and no explanation for that important omission was forthcoming. Krishnarao (D. W. 3) admitted that he was a friend of Govindsingh and Govindsingh was alive and yet the accused, who also was a friend of Krishnarao, did not take steps to summon him. This failure to examine the material witness Govindsingh ought to lead to the inference inaccordance with illustration (g) below Section 114 of the Indian Evidence Act, that the witness was deliberately withheld as he was not likely to support the defence.

(21) Gulab (D. W. 4) has stated nothing about the positive defence raised by the appellant. He has only negatively tried to support the defence by saying that he was present throughout that evening and nothing of the sort alleged by the prosecution had happened. The learned Judge had pointed out that this Gulab

was a subordinate of the appellant and his other colleagues and obviously, he was trying to shield the appellant. The learned Judge was right in discarding his evidence.

(22) It would not be permissible or possible to accept the defence on the basis that it may be reasonable or proper. In the first place, I do not think that it is reasonable or proper. On the contrary, it would seem inartificial and unnatural story. Even if it were not so, it would be seen from *Dhanvantraï Balwantraï Desai Vs. State of Maharashtra*, that it is not sufficient for the accused in such a case to merely put forth a reasonable or probable story, But that the explanation of the accused must be supported by proof within the meaning of Section 3 of the Indian Evidence Act. Nothing of the sort has been done in the present case. Consequently, it must be held that the presumption was not rebutted.

(23) Mr. Saranjame was contending that in view of the statement of Ibrahim (P. W. 1) that the appellant told him that he would send the licence by post, the payment of Rs. 5 may not be by way of a bribe but may be by way of reasonable expenses for doing the work of transmitting the licence by post for and on behalf of Ibrahim. In making that submission, Mr. Saranjame was overlooking the legal presumption arising u/s 4. When that presumption was raised, there would be no question of saying that the burden lying on the accused may be held to be discharged because of the possibility that this amount may not be a bribe but may be by way of reimbursement of postal expenses. Moreover, that was not the defence of the accused. He had not said that he received the amount by way of postal charges for remitting the licence. Not even a suggestion was put to Ibrahim or to Trimbakin on those lines. That alternative stand cannot, therefore, prevail.

(24) Mr. Saranjame then submitted that even if this amount was received by the appellant, it was not in his official capacity as it was no part of the duty of a clerk to remit by post documents which are to be delivered to the parties and particularly, when the licence was to be sent by the Collector. There is nothing on the record to show that the appellant and Ibrahim were having such friendly relations so that the one would agree to do this work on behalf of the other by sending the licence by post. This stand is entirely in variance with the argument addressed a little while ago that Ibrahim had an acute sense of annoyance as against the appellant. If such annoyance existed, it will be unlikely and unthinkable that Ibrahim would offer and the appellant would accept the amount for the purposes of transmitting the licence by post. Even if that may be the position, it cannot be forgotten that the appellant was a public servant and delivery of the licence after it was received from Amravati was a part of his official duty. Sending the licence by post instead of delivering it in person was nothing but discharging his official duty as a public servant, namely, the reader of the Court. Under these circumstances, therefore, the appellant cannot get out of the offence which has been established beyond any doubt.

(25) The last submission of Mr. Saranjame was that the sentences awarded are

too heavy. He made a submission for substantial reduction of the sentences in view of the fact that the appellant is bound to lose his job as a result of these convictions. Mr. Hajarnavis, Assistant Government Pleader did not support the reason given by the learned Special Judge for awarding a heavier sentence. He left the question of sentences to the Court.

(26) On considering the circumstances of the offence, as also the fact that the appellant is bound to lose his job as a result of these convictions, I think that the ends of justice would be met by sentencing the appellant to undergo the minimum sentence as prescribed by the Prevention of Corruption Act.

(27) In the result, the convictions of the appellant u/s 161, Indian Penal Code and S. 5(1)(d) read with S. 5(2) of the Prevention of Corruption Act, are affirmed, but his concurrent sentences of rigorous imprisonment for 18 months on each count are quashed and replaced by concurrent sentences of rigorous imprisonment for one year each. He shall surrender to his bail.

(28) Appeal dismissed.