

(1957) 11 KL CK 0010
In the High Court Of Kerala
Case No : Criminal Appeal No. 82 of 1957

Sreekrishnanarayana Rao

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision : 28-11-1957

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104
Penal Code, 1860 (IPC) — Section 165
Prevention of Corruption Act, 1947 — Section 4

Citation : AIR 1958 Ker 136 : (1958) CriLJ 640 : (1958) 2 LLJ 728

Hon'ble Judges : Sankaran, J; Raman Nayar, J

Bench : Division Bench

Advocate : K.T. Thomas and M. Bhaskara Menon, for the Appellant; K.V. Surianarayana Ayyar, General, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayak, J.—The appellant accused, has been convicted by the Special Judge, Trivandrum (a Judge appointed u/s 6 of the Criminal Law Amendment Act, (XLVI/1952)) of an offence u/s 165 of the Indian Penal Code. He has been sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 300/- in default to suffer rigorous imprisonment for a further period of one month.

2. The following facts are amply borne out by the evidence and were indeed admitted by the accused when questioned at the trial u/s 342 CrI. P. C. The accused was an Assistant Garrison Engineer in the Military Engineering Service, a gazetted post under the Central Government. He was a public servant within the meaning of Section 21 of the Indian Penal Code. From 1951, up to his transfer in April 1953, he was stationed at Willingdon Island, Cochin, and was living in Ernakulam.

On 10-3-1953, Pw. 2 an engineering contractor of the accused's department, who was, at the time, executing two works under the supervision of the accused

supplied the accused with a refrigerator costing Rs. 1300 and odd and had it delivered and installed at the accused's residence in Ernakulam. On his transfer to Bombay, the accused left the refrigerator behind with Pw. 13 with whom he subsequently carried on a correspondence for its sale and from whom it was seized by the investigating officer.

3. It is thus proved and admitted that the accused, a public servant, accepted the refrigerator, a valuable thing, from Pw. 2 a person, who, to his knowledge, was concerned with a proceeding which was being transacted by him (the accused) as such public servant and having connection with his (the accused's) official functions. The only element remaining to be proved to constitute an offence u/s 165 of the Indian Penal Code is that the acceptance was without consideration or for a consideration which the accused knew to be inadequate.

On this point, it is the case of the prosecution as spoken to by Pw. 2 that the refrigerator was demanded and obtained by the accused as a gift, while it is the case of the accused that he brought the refrigerator through Pw. 2 who canvassed his order promising him a substantial commission (being closely connected with Messrs. Harrisons and Crosfield, the local agents for this particular make of refrigerator), and that before he left for Bombay he paid Pw. 2 Rs. 1200/- in cash for its price in two instalments, the first of Rs. 500/- and the second of Rs. 700/-.

4. u/s 4(1) of the Prevention of Corruption Act (Act II of 1947) the burden of proving these alleged payments rests on the accused. The section runs as follows:--

"Where in any trial of an offence punishable u/s 161 or Sections 165 or 165-A of the Indian Penal Code, 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."

A reading of this section as a whole, and in particular the interposition of the words "as the case may be" in the two places, can leave no room for doubt that the proper way of reading the section so far as it relates to an offence u/s 165 of the Indian Penal Code is as follows :

"Where in any trial of an offence punishable u/s 165 of the Indian Penal Code, 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 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 valuable thing without consideration or for a consideration which he knows to be

inadequate."

The argument advanced on behalf of the accused, that it must first be proved that the acceptance of the valuable thing was as a gratification other than legal remuneration before the presumption, can be drawn so as to throw the burden on the accused was, in our view, rightly repelled by the learned Sessions Judge, and we might say it has not been advanced before us.

5. The precise scope of the presumption has been explained in a case recently decided by the Supreme Court in Crl. Appeal No. 5 of 1957, *The State of Madras Vs. A. Vaidyanatha Iyer*, which has not yet been fully reported, but a copy of the judgment in which has been placed in our hands by the learned Advocate General appearing for the State, in acquitting the accused in that case, the High Court had said,

"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."

In commenting on this passage Their Lordships remarked that it was indicative of a disregard of the presumption which the law required to be raised u/s 4 of the Prevention of Corruption Act. They went on to say :

"The relevant words of this section are:

"Where in any trial of an offence punishable u/s 161It 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 gratificationas 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 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 Section 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 viz., presumptions, and therefore should have the same meaning. "Shall presume" has been defined in the Evidence Act as follows :--

"Where 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 u/s 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a

branch of jurisprudence".

6. The decision does not, however, lay down what is the standard of proof required of an accused person for rebutting the presumption. But the passage quoted makes it quite clear that it is not enough for the accused to offer an explanation which has not been disproved or to create some doubt in the mind of the court.

7. To secure an acquittal in the present case, it is necessary for the accused to prove that he did make the payments alleged. Though this need not necessarily be by evidence of his own, it is obvious that a bare statement by him to that effect will not suffice; that statement considered in the light of the circumstances of the case and of the entire evidence must satisfy the court that the payments were, in fact, made.

8. What is the degree of proof required for such satisfaction has been laid down in the leading English case of *Rex v. Carr-briant* (1943) 1 K.B. 607 (B), with reference to the similar presumption in Section 2 of the (English) Prevention of Corruption Act, 1916. There it was laid down that

"where, either by statute or at common law, some matter is presumed", against an accused, person "unless the contrary is proved", the jury should be directed that it is for them to decide whether the contrary is proved, that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish".

To borrow the words of Lord Goddard C. J., in *R. v. Dunbar* (1957) 2 All ER 737 (C),

"This case is often cited as showing that where an onus is placed on an accused person it may be discharged by proving what would be enough to support a verdict in a civil action, and that to use the words of Willes, J., in *Cooper v. Slade* (1858), 6 HLC 746 at P- 772 (D), "in civil cases the preponderance of probability may constitute sufficient ground for a verdict".

Rex v. Carr-briant (B), has been uniformly followed by the courts in England, in all cases where the law casts an onus on an accused person, and, so far as has been brought to our notice, by the courts in India in dealing with the presumption u/s 4 (1) of our Prevention of Corruption Act. (See for example, *State v. Minaketa* AIR 1052 Ori 267 (E), though the actual application of the principle in that case may be open to question, *The State Vs. Abhey Singh, and v* (G). The principle laid down seems to us consistent with the observations of Supreme Court which have already been quoted, and we think it necessary to go into the question how far it is in accord with what has been said in cases like *Parbhoo and Others Vs. Emperor*, dealing with the analogous presumption in Section 105 of the Evidence Act.

9. The learned special Judge relying on the statement of law in Halsbury (Simonds Edition, Volume 10 Part 5, Section 4, page 437), itself largely based on Rex v. Carr-briant (B), came to the conclusion that the burden cast on the accused was "less stringent than that laid on the prosecutor in proving guilt, and corresponds to that which rests upon a plaintiff or defendant who is required to prove an issue in civil proceedings". This we have no doubt, is the correct approach.

10. Now to consider how far the accused has succeeded in proving the alleged payment, not of course beyond reasonable doubt, but at least by that preponderance of probability which would enable a plaintiff Or defendant to obtain a favourable verdict in a civil action. The learned special Judge was prepared to hold that, leaving aside the presumption u/s 4 (1) of the Prevention of Corruption Act, the evidence of the prosecution taken together with the proved circumstances of the case, was, sufficient to prove beyond reasonable doubt that the acceptance of the refrigerator by the accused was without consideration.

It is not necessary for us to go so far; it is sufficient to say that there is nothing in support of the accused's case apart from his bare statement, and that the circumstances tend to show that that case cannot be true.

11. The accused examined two witnesses in his defence. The first was a subordinate of the accused at the relevant time, being a gardener in his office. This witness used to go often to the house of the accused and his evidence is that one day, early in March 1953, when he was in the house talking to the accused's children, he saw the accused hand over some currency notes to Pw. 2. Of what amount and for what purpose he could not say. It was at the trial that, for the first time, this witness mentioned this to anybody.

Before that he told no one, not even the Sub-Divisional Magistrate, Ernakulam, who, in the course of the investigation, examined this witness u/s 164 CrI. P. C. Ext. P-41 is the statement then recorded from the witness, and it makes no mention whatsoever of the incident now spoken to by him. His excuse that he was not asked about it is hardly acceptable and we agree with the learned Special Judge that the testimony of this witness has to be rejected in entirety.

12. The second witness for the defence was the accused's landlord and all that he was able to say in favour of the accused was that, at the time of his leaving Ernakulam on transfer, the accused told him that he had purchased a refrigerator for Rs. 1200/-. Even if it be true that the accused made such a statement, it is, as pointed out by the learned Special Judge, at best only self-serving evidence which does not carry the case of the accused any farther.

13. The circumstances tend to show that the accused's case that he paid for the refrigerator cannot be true. Assuming it to be true that, attracted by the prospect of a substantial commission (although Pw. 2 eventually got only a commission of 3 per cent, the evidence shows that he was hoping to get as much as 10 per cent) the accused was foolish enough to buy the refrigerator through Pw. 2, we

decline to believe that any person in the position of the accused would have been so foolish as not to obtain a receipt or secure other evidence in writing for the payment of the price.

Yet, admittedly, there is and was, no such evidence. Ordinary prudence would have required him to make the payment, if possible, directly to Messrs. Harrisons and Crosfield who supplied the refrigerator; or, if that was not possible, to make the payment to Pw. 2 by cheque which should have been easy enough since the accused had an account with the Central Bank of India at Ernakulam. Failing this, he could at least have taken a receipt from Pw. 2, and it is no answer to say that even if he had obtained a receipt, that receipt would still have been open to attack.

The departmental rules of conduct as also the dictates of common-sense and of common integrity, forbid a public servant from having any private dealings with persons connected with his official functions, and every public servant entering into such dealings knows that he does so at his risk, the risk after the enactment of Section 4 (1) of the Prevention of Corruption Act being a conviction for a criminal offence. That being so, we find it difficult to believe that the accused made a cash payment to Pw. 2 and that without even obtaining a receipt.

14. We might also refer to Ext. P-14, a letter written by the accused to Pw. 2 on 7-12-1954 asking for the certificate of guarantee and other connected papers with regard to the refrigerator. There he takes care not to mention the word "refrigerator", but refers to it instead as an instrument, and this it seems to us betrays a consciousness of guilt.

15. The financial resources of the accused were not such as to enable him to indulge in the luxury of a refrigerator unless he got it by way of gift. His net monthly salary was Rs. 339, out of which he had to pay Rs. 60 as house rent. He was keeping a motor car, and had also a family consisting of his wife and two children to maintain. His salary was being paid by cheque into his account with the Central Bank of India, and his Home Savings Account showed only a balance of Rs. 294 and odd in May 1953.

He had a Post Office Savings Bank account with a balance of Rs. 519-1-0 on 3-12-1955., and which had not been operated upon since. The accused was questioned about his resources, and his answer that, not having much faith in banks, he used to withdraw almost all his salary from the bank and accumulate his savings in the shape of cash, and that these accumulated savings together with the cash presents received by his wife for Deepavali, birthdays, and on other occasions, provided him with the necessary funds to pay Pw. 2 is most unconvincing.

16. So much about the evidence for the defence and the circumstances of the case. So far as the prosecution evidence is concerned nothing has been brought out in cross-examination which would support the case of the accused. What has been urged before us is that Pw. 2, apart from being an accomplice, is, on his

own showing, a most dishonest person and that the corroboration put forward by the prosecution in the shape of an entry (Ext. P. 2 (a) dated 10-3-1853) in his diary showing that he had given the refrigerator to the accused, and an alleged statement by him to Pws. 7 and 8. two employees, of Messrs. Harrisons and Crosfield, that he was buying the refrigerator for presentation to a M. E. S. official, was rejected (and we might observe rightly rejected) by the court below.

Further, that Pw. 2 made no complaint even after the accused's transfer, to the superior officers of the accused, or to any other authority, until as the circumstances show, Pw. 13, an officer of the Delhi Special Police Establishment solicited the complaint, Ext. P-I, from him on 16-4-1955, more than two years after the alleged offence. All that might well be so; but that can only mean that, on the strength of Pw. 2's evidence, it cannot be held that the accused did not pay for the refrigerator. But reducing Pw. 2's evidence to a nullity cannot prove, what it is tot the accused to prove, namely, that payment was, in fact, made.

17. We see no reason to interfere either with the conviction or the sentence recorded against the accused, and we dismiss his appeal.

18. The accused who is on bail will be committed to prison to serve his sentence.