

**(1968) 10 DEL CK 0012**

**In the Delhi High Court**

**Case No : Criminal Appeal No. 15 of 1966**

State

APPELLANT

Vs

Harbans Lal

RESPONDENT

**Date of Decision : 25-10-1968**

**Acts Referred:**

**Citation : (1969) 5 DLT 45**

**Hon'ble Judges : V.S. Deshpande, J;I.D. Dua, J;Hardayal Hardy, J**

**Bench : Full Bench**

**Advocate : K.C. Pandit, Prithvi Raj and K.D. Sood, for the Appellant;**

## **Judgement**

V.S. Deshpande, J.

(1) This is an appeal by the State against the decision of the learned Special Judge acquitting the accused of a charge for the offence of criminal misconduct in discharge of official duty punishable u/s 5 of the Prevention of Corruption Act. The appeal was originally heard by a Division Bench consisting of two of us, namely. Hardy and Deshpande Jj The arguments at the Bar before the Division Bench were limited only to the aspects of the case which were dealt with in the judgment of the learned Special Judge under appeal. In writing the judgment, however, the Division Bench had to consider several other aspects of the case including the following questions of law :- "(1) "What is the precise nature and effect of the presumption raised by section 4 of Prevention of Corruption Act ? (2) Whether the High Court can convict the respondent under sections 161 and 165, Indian Penal Code, though he was acquitted by learned Special Judge of the Charge purported to have been framed against him only u/s 5 of the Prevention of Corruption Act ? (3) Whether the sanction to prosecute purporting to be u/s 6 of the Prevention of Corruption Act but without mentioning the names of the offences was valid because the facts Constituting the offences had been considered by the sanctioning authority-"

(2) Though the answers suggested to the above questions of law in the judgment

of the Division Bench speaking through Deshpande J. were clear enough, the Division Bench referred the case to the Full Bench on the 27th September, 1968 mainly for the following reasons :- The decisions of these questions would affect a large number of pending and future cases and would also serve as guidance to the authorities concerned. The learned counsel would thereby get a full opportunity to have their say as to these questions. Further certain observations made by another Division Bench of this Court to which one of us namely. Hardy J. was a party in Criminal Appeal No. 88 D of 1964 (Delhi Administration Delhi v. Shri S. P. Kohli, Deputy Municipal Engineer,) decided on 8th February, 1968, would have to be reconsidered in the light of the observations made in the referring order in this case and this could be done only by a larger Bench.

(3) On this reference, Therefore, we heard the learned counsel on all the aspects of the case including the above questions of law. We are in full agreement with the findings of the Division Bench on the various issues of fact and law tentatively arrived at in the referring order which also contains a full discussion of the facts, evidence and the statute law and the case law. We do not, Therefore, consider it necessary to go over the same ground again. We would only like to reconsider the following observations made by the Division Bench in the decision in Delhi Administration, Delhi v. S P. Kohli Deputy Municipal Engineer, referring to 4(1) of the Prevention of Corruption Act :- I. C. A No. 88U of 1984.

"THERE is neither any thing new nor startling about the presumption arising under this section. It is not unusual in certain classes of cases or in certain circumstances to throw the onus of proof of a defense on the accused person. Sections 105 and 106 of the Evidence Act are instances in point. The law is however well-settled that it is not incumbent upon the accused to establish his plea in defense with the same rigidity and exactitude as the prosecution and even where an accused fails to prove the same beyond reasonable doubt the decision of the Court has still to be given upon and as a result of the whole of the case including evidence adduced by the defense and if open such review a reasonable doubt is created in the mind of the court the accused is entitled to acquittal." "SINCE the initial burden of proof still lay on the prosecution the learned Judge finally concluded that the charges had not been brought home to the accused beyond reasonable doubt." "THE respondent is entitled to benefit of doubt as the prosecution has not succeeded in establishing its case against him beyond reasonable doubt." (4) With great respect we like to point out that the nature of presumption raised by section 4 of the Prevention of Corruption Act is that the case of the prosecution is regarded as "proved" thereby in the sense in which the word "proved" is used in the Indian Evidence Act. The effect is that the accused is thereupon required to "disprove" the case of the prosecution again in the sense in which the word "disproved" is used in the Evidence Act. The effect is that the general burden of proving the case against the accused beyond reasonable doubt no longer remains on the prosecution after the presumption is raised u/s 4(1) of the Prevention of Corruption Act. The shifting of the burden of proof from the prosecution to the accused thereafter is not similar to the shifting

of the burden of proof from the prosecution to the accused under Sections 105 and 106 of the Evidence Act. Under the said provisions of the Evidence Act, the burden shifts only partially to the accused. The accused does not have to disprove the ingredient of the offence proved against him. He merely escapes from being convicted by proving general or special exceptions because of which he is not held guilty of the offence though the main ingredient of the offence have been proved against him u/s 4 of the Prevention of Corruption Act has to be rebutted by the accused by disproving the main ingredients of the offence itself so that it may be held that the ingredients of the offence themselves have not been proved against him.

(5) As the burden of proof shifted to the accused by Section 4 of the Prevention of Corruption Act has to be discharged by him by proving that the defense case is by itself more probable than the prosecution case deemed to be proved with the help of the said presumption, the accused can secure acquittal only by proving that preponderance of probability in his favor. This is different from the benefit of doubt which would secure the acquittal of an accused in an ordinary criminal case in which the presumption u/s 4 of the Prevention of Corruption Act is not raised against the accused. In any ordinary criminal case a mere preponderance of probability is not sufficient to secure the conviction of the accused. The prosecution case has to be proved beyond reasonable doubt. This is why the accused is to be acquitted by being given the benefit of doubt. When the presumption u/s 4 is, however, raised against the accused the case against him is already deemed to be proved beyond reasonable doubt. After that he cannot be acquitted by being given the benefit of doubt. He can secure acquittal only by disproving the prosecution case which he can do by showing that the defense case is itself more probable than the prosecution case in the sense, that according to the standard of proof applicable to the decision of a civil case, the defense case would be believed by the Court in preference to the prosecution case.

(6) For the reasons given in the referring order we find the respondent guilty of the offences punishable under Sections 161 and 165 of the Indian Penal Code. We, Therefore, allow the appeal, set aside the acquittal and convict the respondent of the offences punishable under Sections 161 and 165 of the Indian Penal Code. We sentence the accused to rigorous imprisonment for four months for having committed each of the offences but order that the sentences shall run concurrently. Though we take a serious view of the corrupt conduct of a public servant we think this sentence will serve the ends of justice in this particular case inasmuch as the conviction will entail the dismissal of the respondent from public service.