

(1963) 03 GUJ CK 0001
In the Gujarat High Court
Case No : Criminal Appeal No. 591 of 1961

The State of Gujarat

APPELLANT

Vs

Madhavbhai Narottam

RESPONDENT

Date of Decision : 12-03-1963

Acts Referred:

Evidence Act, 1872 — Section 3

Prevention of Corruption Act, 1947 — Section 4(1)

Citation : AIR 1964 Guj 206 : (1964) CriLJ 291 : (1963) GLR 886

Hon'ble Judges : B.J. Divan, J; A.R. Bakshi, J

Bench : Division Bench

Advocate : A.D. Desai, Asst. Govt. Pleader, for the Appellant; I.M. Nanavaty, for the Respondent

Final Decision : Allowed

Judgement

Divan, J.

1-3. *****

4. In this particular case, a question arises about the scope and applicability of the presumption u/s 4(1) of the Prevention of Corruption Act, 1947, and the further question as to when the presumption under that section can be said to have been rebutted has to be considered. That section provides as follows:-

"4.(1) Where in any trial of an offence punishable u/s 161 or Section 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 agree to accept or 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."

This presumption u/s 4 (1) of the Act has come up for consideration in three recent decisions of the Supreme Court. The first of these cases is the case of The State of Madras Vs. A. Vaidyanatha Iyer, , and there it was laid down as follows :-

"The presumption u/s 4, Prevention of Corruption Act 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. 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. 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 e. g. presumptions, and therefore should have the same meaning."

5. In the subsequent case of C.I. Emden Vs. State of Uttar Pradesh, , the exact scope of the presumption u/s 4 (1) of the Prevention of Corruption Act and as to when that presumption can be said to have been rebutted were both considered by the Supreme Court At p. 551 it was held by the Supreme Court as follows :-

"Paragraph 3 of Section 161 of the Code provides that the word "gratification" is not restricted to pecuniary gratification or to gratifications estimable in money. Therefore "gratification" mentioned in Section 4(1) cannot be confined only to payment of money. What the prosecution has to prove before asking the court to raise a presumption against an accused person is that the accused person has received a "gratification other than legal remuneration"; if it is shown, as in the present case it has been shown, that the accused received the stated amount and that the said amount was not legal remuneration then the condition prescribed by the section is satisfied. In the context of the remuneration legally payable to, and receivable by, a public servant, there is no difficulty in holding that where money is shown to have been paid to, and accepted by, such public servant and that the said money does not constitute his legal remuneration, the presumption has to be raised as required by the section. 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 Section 161 of the Code. In our opinion, this could not have been the intention of the Legislature in prescribing the statutory presumption u/s 4(1) In the context we see no justification for not giving the word "gratification" its literal dictionary meaning."

Then in para 11 onwards the consideration of the question as to when the presumption can be said to have been rebutted was taken up and there it was

argued by the learned counsel for the appellant that in a criminal case the onus of proof which the accused is called upon to discharge can never be as heavy as that of the prosecution, and that the High Court should have accepted the explanation given by the appellant because it was a reasonably probable explanation. The Supreme Court in the light of the facts of that particular case did not think it necessary to decide this point in that appeal. Their Lordships indicated that they were prepared to assume in favour of the appellant that even if the explanation given by him is a reasonably probable one the presumption raised against him can be said to have been rebutted. But on the facts of that particular case, Their Lordships held that the explanation given by the accused was not reasonably probable.

6. Both these cases of the Supreme Court came up for consideration again before the Supreme Court In the case of *Dhanvantrai Balwantrai Desai Vs. State of Maharashtra*, . In that case it was observed as follows :

" It was contended that the use of the word "gratification" in Sub-section (1) of Section 4 emphasises that the mere receipt of, any money does not justify the raising of a presumption thereunder and that something more than the mere receipt of money has to be proved. A similar argument was raised before this Court in *C.I. Emden Vs. State of Uttar Pradesh*, . Dealing with it this Court has pointed out that what the prosecution has to prove is that the accused person has received "gratification other than legal remuneration" and that when it is shown that he has received a certain sum of money which was not a legal remuneration, then the condition prescribed by this section is satisfied."

Then the Supreme Court in this case of *Dhanvantrai Balwantrai Desai Vs. State of Maharashtra*, considered as to when the burden of proof cast upon the accused by Section 4 (1) of the Prevention of Corruption Act can be said to have been discharged. The learned counsel for the appellant in that case relied upon the decision in the case of *Otto George Gfeller v. The King* AIR 1943 PC 211; but their Lordships of the Supreme Court have pointed out that the decision in AIR 1943 PC 211 turned upon a consideration of provision similar to provisions u/s 114 of the Evidence, Act arising from the fact of possession of goods recently stolen. Dealing with this point in *Dhanvantrai Balwantrai Desai Vs. State of Maharashtra*, , the Supreme Court has held as follows:

"It is well to bear in mind that whereas u/s 114 of the Evidence Act it is open to the Court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under Sub-section (1) of Section 4, however, if a certain fact is proved, that is where any gratification (other than legal gratification or any valuable thing is proved to have been received by an accused person the court is required to draw a presumption that the person received that thing as a motive or reward such as is mentioned in Section 161, I. P. C. There-fore, the Court has no choice in the matter, once it is established that the accused person has received a sum-of money which was not due to him as a legal remuneration. Of

course, it is open to that person to show that, though that money was not due to him as legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised u/s 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless the contrary is proved" which occur in this provision make it clear that the presumption has to be re-butted by "proof" and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted."

7. Mr. Nanavaty, appearing on behalf of the respondent in the present case, has relied upon the following passage from the judgment of the Supreme Court in *Dhanvantrai Balwantrai Desai Vs. State of Maharashtra*, .

"Something more than raising a reasonable probability is required for rebutting a presumption of law. The bare word of the appellant is not enough and it was necessary for him to show that upon the established practice his explanation was so probable that a prudent man ought, in the circumstances, to have accepted it."

In our opinion, in this particular passage, the Supreme Court was merely paraphrasing the general principle of law, which they had earlier laid down in the passage which we have quoted and they were applying that principle to the facts of the case before them and to the contentions urged before them in the light of those facts.

8. From these three decisions of the Supreme Court, which we have mentioned above, the following principles emerge :-

(1) the word "gratification" in Section 4, Sub-section (1) must be given its literal dictionary meaning.

(2) In the case of a public servant, when it is shown that he has received a certain sum of money, which was not a legal remuneration, condition prescribed by Section 4, Sub-section (1) is satisfied and the presumption must be raised by the Court as mentioned in that section.

(3) Once this presumption is raised, the burden of rebutting that presumption is on the accused and this burden cannot be said to have been discharged merely by an explanation offered by the accused, which explanation might be reasonable and probable.

(4) The burden can only be said to have been discharged by the accused when besides offering an explanation, which may be reasonable and probable, the

accused must show that the explanation is a true one and for that purpose it must be borne in mind that the presumption has to be rebutted by proof and not by a bare explanation, which is merely plausible.

In this context the Court must bear in mind the definition of the word "proved" occurring in Section 3 of the Evidence Act.

9-17. *****