CASE NO.:
Appeal (crl.) 719 1995

PETITIONER:
N. NARSINGA RAO

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 12/12/2000

BENCH:
U.C.Banerjee, R.P.Sethi

JUDGMENT:

L.....I.........T.......T.......T.......T.......T.......T..J

J U D G M E N T

THOMAS, J.

Can a legal presumption be based on a factual presumption? The latter is discretionary whereas the former is compulsory. Such a question arose in this appeal and in view of the importance of the issue a two-Judge Bench has referred this case to be heard by a larger bench. The legal presumption envisaged in Section 20 of the Prevention of Corruption Act 1988 (for short the Act) is that on proof of certain fact the court shall presume certain other fact. When there is no direct evidence for establishing the primary fact the court has to depend upon the process of inference drawn from other facts to reach the said primary fact. The crux of the question involved, therefore, is whether an inference thus made could be used as a premise for the compulsory presumption envisaged in Section 20 of the Act.

The aforesaid question arose from the following assortment of facts. Appellant was manager of a Milk@@
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Chilling Centre attached to Andhra Pradesh Dairy Development Co-operative Federation. He is alleged to have received bribe money of Rs.500/- from a milk-transporting contractor (PW1-Satya Prasad). He was caught red handed on 20.4.1989 in a trap arranged by the officials of the Anti Corruption

Bureau (ACB). They charge-sheeted him before a Special Court for offences under Sections 7 and 13(2) read with Section 13(1)(d) of the Act. After trial the Special Judge convicted him and sentenced him to rigorous imprisonment for two years and a fine of Rs.2000/- under each of the above counts. The High Court of Andhra Pradesh confirmed the conviction but reduced the sentence of imprisonment to a period of one year. This appeal is in challenge of the said conviction and sentence.

A summary of the allegations made against the appellant are thess: PW1-Satya Prasad was to get some amount from Andhra Pradesh Dairy Development Corporation for transporting milk to or from the Milk Chilling Centre at Luxettipet (Adilabad district). He approached the appellant for taking prompt steps so as to enable him to get the money disbursed. But appellant demanded Rs.500/- for sending the recommendation in favour of payment of the amount due to PW1. As the appellant persisted with his demand PW1 yielded to the same, but before handing over the money to the appellant PW1 lodged a complaint (Ex.P2) with the DSP of Anti Corruption Bureau. On the basis of the said complaint PW7 (DSP) registered Ex.P18 FIR and then made all arrangements for a trap to catch the corrupt public servant red handed.

On 24.4.1984 PW1 brought the currency notes to the office of the ACB for making up the demanded bribe amount. The said currency notes were treated with phenolphthalein powder by or at the direction of PW7 as preparation for the trap. PW1 and the already arranged witness PW2 together went to the house of the appellant by about noon. When appellant asked whether the amount was brought PW1 handed over the phenolphthalein smeared currency notes to the appellant. He accepted the amount and put the currency notes in his pocket. Thereupon, a pre-scheduled signal was transmitted to the members of the ACB team who were waiting outside. They suddenly rushed to the place where the appellant was then standing, caught the appellant red-handed and the tainted currency notes were recovered from his pocket. All the usual follow up steps were thereafter adopted by the ACB team and on completion of the investigation the case was charge- sheeted against the appellant.

It took four years thereafter for the Special Judge to commence evidence taking for the prosecution. The said long interval, perhaps, helped the appellant as is reflected from the fact that PW1 and PW2 made a volte-face in the trial court and they denied having paid any bribery to the appellant and also denied that appellant demanded the bribe amount. PW1 said, for the first time, that he acted at the behest of one Dr. Krishna Rao and went to the office of the appellant and did everything as directed by the said Krishna Rao. Both the witnesses were declared hostile by the Public Prosecutor and both were cross-examined in detail. After examining the remaining witnesses for prosecution the appellant was called upon to answer questions put to him under Section 313 of the Code of Criminal Procedure (for short the Code). He then submitted a written statement in which he said that Dr. Krishna Rao bore grudge against him and that person orchestrated this false trap against him by employing PW1 and PW2. According to the appellant, the tainted currency notes were forcibly stuffed into his pocket. He examined two witnesses on the defence side and

both of them said that on the dates when the alleged demand was made by the appellant he was on tour at a different place.

Both the trial court and the High Court disbelieved the defence evidence in toto and found that PW1 and PW2 were won over by the appellant and that is why they turned against their own version recorded by the investigating officer and subsequently by a magistrate under Section 164 of the Code. The Special Judge ordered those two witnesses to be prosecuted for perjury and the said course suggested by the trial judge found approval from the High Court also.

In the appeal the High Court dealt with the contention that it is not possible to draw any presumption against the delinquent public servant in the absence of direct evidence to show that the public servant demanded bribery and that the same was paid to him. Learned single judge of the High Court observed thus on that aspect: It is true that there is no direct evidence in this case that the accused demanded and accepted the money. But the rest of the evidence and the circumstances are sufficient to establish that the accused had accepted the amount and that gives rise to a presumption under section 20 of the Prevention of Corruption Act that he accepted the same as illegal gratification, particularly so when the defence theory put forth is not accepted.

Mr. L. Nageswara Rao, learned counsel for the appellant, adopted a twin contention. First is that the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ presumption under Section 20 of the Act could be drawn only when the prosecution succeeded in establishing with direct evidence that the delinquent public servant accepted or obtained gratification. That premise cannot depend on an inference for affording foundation for the legal presumption envisaged in Section 20 of the Act, according to the learned counsel. The second limb of his contention is that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification. Prosecution has a further duty to prove that what was paid amounted to gratification, contended the counsel.

In support of the first contention, learned counsel relied on the decision of a two judge bench of this court in Sita Ram vs. State of Rajasthan {1975 (2) SCC 227}. It was held by the bench that on mere recovery of certain money from the person of an accused without the proof of its payment by or on behalf of some person to whom official favour was to be shown the presumption cannot arise.

The said observation was made in the background of a finding made by the High Court in that case that the evidence of the witnesses was not reliable and particularly because so many jerks and jolts seem to have been given to the prosecution case by contradictory and hostile statements of the witnesses that a good part of it had to be rejected by the High Court. That decision and the observation could thus confine to the facts of that case, and no legal principle for future application could be discerned therefrom.

Learned counsel then relied on another decision of a two judge bench of this court in Suraj Mal vs. State (Delhi Administration) {1979 (2) SCC 725} wherein the bench

observed that in our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In that case also the said finding depended upon the veracity of the testimony of the witnesses. But the contention raised by the learned counsel in this case on the point convassed by him cannot find any support from the said decision either.

While adverting to the first contention of the learned counsel we may reproduce Section 20(1) of the Act. [That sub- section is virtually the same as Section 4(1) of the predecessor Act of 1947]. 20(1) Presumption where public servant accepts gratification other than legal remuneration. -(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 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 section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. Before proceeding further, we may point out that the expressions may presume and shall presume are defined in Section 4 of the Evidence Act. The presumptions falling under the former category are compendiously known as factual presumptions or discretionary presumptions and those falling under the latter as legal presumptions or compulsory presumptions. When the expression shall be presumed is employed in Section 20(1) of the Act it must have the same import of compulsion.

When the sub-section deals with legal presumption it is to be understood as in terrorum i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. The word proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word proved in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the

supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company, Ltd. [1911 (1) K.B. 988] observed like this: Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

The said observation has stood the test of time and@@ IIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIIII can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-Ã -vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in Suresh Budharmal Kalani vs. State of Maharashtra [1998 (7) SCC 337]. A presumption can be drawn only from facts - and not from other presumptions by a process of probable and logical reasoning. Illustration (a) to Section 114 of the Evidence Act says that the court may presume that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. That illustration can profitably be used in the present context as well when prosecution brought reliable materials that appellants pocket contained phenolphthalein smeared currency notes for Rs.500/- when he was searched by PW-7 DSP of the Anti Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that appellant had willingly received the currency notes.

PW-7 DSP said that PW-1 approached him on the previous day and lodged Ext.P-2 complaint stating that appellant was persistently demanding Rs.500/- from him. The currency

notes were actually prepared by PW-7 by smearing them with phenolphthalein powder. When appellant was caught red handed with those currency notes he never demurred to PW-7 that those notes were not received by him. In fact, the story that such currency notes were stuffed into his pocket was concocted by the appellant only after lapse of a period of 4 years and that too when appellant faced the trial in the court. From those proved facts the court can legitimately draw a presumption that appellant received or accepted the said currency notes on his own volition. Of course, the said presumption is not an inviolable one, as the appellant could rebut it either through cross-examination of the witnesses cited against him or by adducing reliable evidence. But if the appellant fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that appellant received the said a mount. In Raghubir Singh vs. State of Haryana [1974 (4) SCC 560] V.R. Krishna Iyer, J, speaking for a three Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is res ipsa loquitur. In this context the decision of a two Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, JJ) in Hazari Lal vs. Delhi (Delhi Administration) [1980 (2) SCC 390] can usefully be referred to. A police constable was convicted under Section 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs.60/- from one Sriram who was examined as PW-3 in that case. In the trial court PW-3 resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW-8 have spoken to the prosecution version. The court found that phenolphthalein smeared currency notes were recovered from the pocket of the police constable. A contention was raised in the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption under Section 4 of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two Judge Bench) observed as follows: It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the chief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the f acts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no

material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below. The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned Judges of the two Judge Bench that the legal principle on this aspect has been correctly propounded therein.

Regarding the second limb of the contention advanced by Shri Nageshwar Rao, learned counsel for the appellant (that it was not gratification which the appellant has received) we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. [Vide Madhukar Bhaskarrao Joshi vs. State of Maharashtra, JT 2000 (supple.2) SC 458]. The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act. So the word gratification need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like gratification or any valuable thing. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for the official act, the word gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

We, therefore, agree with the finding of the trial court as well as the High Court that prosecution has proved that appellant has received gratification from PW1. In such a situation the court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing the public duty. Of course, the appellant made a serious endeavour to rebut the said presumption through two modes. One is to make PW1 and PW2 speak to the version of the appellant and the other is by examining two witnesses on the defence side. True PW1 and PW2 obliged the appellant. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the date when the alleged demand was made by PW1. But the trial court and the High Court have held their evidence unreliable and such a finding is supported by sound and formidable reasoning. The concurrent finding made by the two courts does not require any interference by this Court.

In the result we dismiss this appeal.

[K.T. Thomas]