The State of Maharashtra Vs Ramchandra Vasudeo Deshpande

Court: Bombay High Court

Date of Decision: March 15, 1973

Acts Referred: Penal Code, 1860 (IPC) â€" Section 120B, 161, 162, 165, 165A

Citation: (1974) 76 BOMLR 249

Hon'ble Judges: Naik, J; Bhole, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Bhole, J.
This is an appeal by the State against the order of acquittal passed by the learned Special Judge, Jalgaon, in a case where the

three accused were acquitted of the offence punishable under Sections 120B, 161 and 162, Indian Penal Code as well as of the offence

punishable u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. Accused No. 1 was a Junior Inspector of Industries working in

Amalner Division with his head-quarters at Amalner. His duty was to execute the provisions of the Bombay Weights and Measures (Enforcement)

Act, 1958 with the help of the manual assistant, who is accused No. 2, and the peon, who is accused No. 3. The manual assistant is appointed to

assist the Inspector so that he can facilitate handling of the standards in weights and measures and to help the Inspector in attesting and stamping

the weights and measures. Under the scheme of the Act the traders have to get certified as well as stamped their scales, weights and measures

every two years. The licensed repairers are paid by the traders for repairing their scales, weights and measures and they also pay the Government

fees to the licensed repairers for certification by the Inspector. Complainant Kazi in this case was a licensed repairer and it was his duty to prepare

a bill in triplicate showing the repairing charges, the Government fees and the description of the articles repaired by him. After the repairs he had to

give a copy to the trader concerned and present another to the Inspector at the time when the repaired articles are presented before him for

certification. The other is retained by the repairer in his book of the bills. The Inspector has to check the bill and see whether the bill is correct and

then receive the Government fees and issue certificate accordingly.

2. Complainant Kazi had been a licensed repairer from 1953 to 1969. His complaint is that whenever he was going for a certificate and for

stamping the weights and measures and scales of the traders after the repairs to the three accused, each of them, was demanding a bribe from him

on the basis of the percentage of the Government fees and they called this percentage as their commission. The Inspector was demanding 40 per

cent, of the Government fees, the manual assistant was demanding 25 per cent, and the peon 10 per cent. Accused No. 1 was taking as motive or

reward for not rejecting the weights, scales and measures; accused No. 2 was doing so for not pointing out mistakes to accused No. 1 and

accused No. 3 was doing so for not doing anti-propaganda amongst the traders against the quality of the repairs by the complainant.

3. The Inspector used to move around and camp at different places to facilitate the different traders as well as the licensed repairers to go to him

and get the certificates as well as the stampings. Accused No. 1 was camping along with the other two accused at Shirsale in the month of April

1969. It is the complainant''s case that he went to the camp of the three accused at Shirsale on April 17, 1969 after repairing the weights, scales

and measures of 13 traders and that he presented the work along with the necessary bills to the accused. His complaint is that because he took on

that day only the amount of the Government fees, therefore the accused told him that they would not be in a position to pass his work until and

unless he paid them their commission on them as settled. He requested them not to reject his work but only accept the Government fees on that

day but the accused did not listen to him. The accused asked him to meet them on April 21, 1969 in the noon in their office at the Camp along with

their commission, which he had to pay. They said that until and unless the commission was brought they would not certify his work. He, therefore,

reluctantly agreed to do so. It is after this that he thought of approaching the Anti-Corruption Police and therefore he went to Jalgaon on April 19,

1969 and met P.S.I. Palve of the Anti-Corruption Police. He narrated to him his story and told him that the accused were demanding bribe from

him as a motive to pass his work. By April 19, 1969 he had completed the work of 17 traders and the Government fees according to this work

was Rs. 78.50p. The bribe or commission according to the percentage of all the three accused was Rs. 58-85P. After showing the P.S.I, the 17

bills he had given his complaint to him. The P.S.I, asked him to meet him on April 21, 1969 at 9 a.m. at the Dak Bungalow at Amalner.

4. After making the necessary panchanamas for the trap on April 21, 1969 and after arranging to get two panch witnesses from the office of the

Zilla Parishad at Jalgaon the P.S.I., accompanied by a constable and two panchas, went to Amalner Dak Bungalow, where he met complainant

Kazi. The P.S.I, took Kazi to the Judicial Magistrate, First Class, Amalner, to get a sanction for investigating this offence on the ground that the

Deputy Superintendent of Police was otherwise busy. After getting the necessary permission from the Magistrate to investigate, the P.S.I. Palve

started drawing the panchnama in the presence of the panchas of what all he had narrated to them. Kazi narrated his complaint to the panchas and

also produced Rs. 78.50P.+58.85P. =Rs. 137.35P. before the panchas. The usual routine was followed and the notes were smeared with

anthracene powder. Panch witness Tayade was asked to accompany the complainant to the office of the accused and the complainant was told

that he should give the money only when the bribe was demanded from him. The raiding party after the usual formalities started from Amalner for

Shirsale and stopped their car outside Shirsale village. The car was then sent a mile backwards. The complainant and panch Tayade then walked

down to the office of the accused at their Camp which was in a. house. The complainant had also arranged to fix his workshop next to the Camp

only for the purpose of convenience during the Camp of the accused. The P.S.I. and his party were waiting outside watching what was happening.

5. At the time when Kazi and Panch Tayade went inside, accused Nos. 1 and 2 were taking meals upstairs and accused No. 3 only was there.

Kazi in the meanwhile therefore asked his servant to bring the weights and measures as well as the bills and other documents and the summary of

all the bills and keep them on the table of accused No. 1. After sometime accused Nos. 1 and 2 came down in the office and sat near each other

on the respective chairs. Accused No. 3 at that time went in the verandah outside to wash the utensils and then he went upstairs for drying1 the

utensils.

6. It is then the case of the complainant that accused No. 1 asked the complainant whether he had brought the money. The complainant then

handed him over Rs. 78.50P. which were in the pocket of his bush shirt and accused No. 1 counted the same and kept them on the table.

Accused No. 1 said that this was only the Government fee and he wanted his commission. The complainant said that he had also brought the

commission, but he wanted a receipt of Rs. 78.50P. from accused No. 1. He then promised to give the commission after that. Accused No. 1

therefore wrote a receipt for the sum of Rs. 78.50P, and gave it to the complainant. Kazi asked accused No. 1 what his commission was and

accused No. 1 informed him that it was Rs. 31.40P. Therefore Kazi took out that money from his pant pocket and after counting the same gave it

in the hand of accused No. 1. Accused No. 1 counted the money with both his hands and then kept not only this sum of Rs. 31.40P. but also the

other sum of Rs. 78.50P. in his brief ease. Accused No. 2 then asked the complainant to give his share of commission and therefore the

complainant gave him his share of Rs. 19.60P. Then came accused No. 3 who was at that time washing the utensils along with the Rumal which

was for the purpose of drying up the utensils. The complainant gave him Rs. 7.85P. which was his share of the commission. Accused No. 3 took

his money in his hand put in the Rumal and he went upstairs.

7. Kazi then went out in the verandah and gave the pre-arranged signal to the raiding party. He had to call his servant Ishak and he did so. After

the signal the raiding party which included P.S.I. Desai, P.S.I. Palve, panchas Savkhedkar and Tayade and others went inside the office. After

disclosing their identity, after introducing the panchas to them, after closing the doors and windows of the office room and after doing the necessary

formalities the hands of the three accused were seen in the light of ultra-violet lamp. They found anthracite powder on the hands of each of the

accused as well as on the Rumal and the brief case. Accused No. 1 produced the amount at the instance of P.S.I. Palve. He produced Rs. 31.40

as well as Rs. 78.50P. from the brief case. The notes were all smeared with anthracene powder. Accused No. 2 as well as accused No. 3 were

also asked to produce their shares of money and each of them also produced their share of money which they had received from accused No. 1

and they were also found to have been smeared with anthracene powder. It is in these circumstances that all the three accused were caught red

handed and the panchnama accordingly of all what had taken place there was drawn, The numbers of the notes found with each of the accused

were tallied with the notes which were first shown by the complainant to the panch witnesses. There was a receipt book on the table of accused

No. 1 and that was also attached. The seventeen bills and the summary of the bills, which showed the calculation of total on account of the

different weights and. measures were also attached under a panchanama. The receipt which was given by accused No. 1 to the complainant was

also seized. Accused No. 1 had also written on the receipt the date and the name of the camp which was also attached.

8. The P.S.I. then started recording the statements of the accused and after drafting the complaint gave it at Marawad Police Station on April 4,

1969. An offence was registered there. After recording the statements of the different witnesses including those of the traders, whose articles were

repaired by the complainant Kazi and after doing all the necessary investigation he sent a report of the same with the investigation papers to the

Director of Anti-Corruption Bureau. They were then sent to the Director of Industries for a sanction to prosecute all the three accused. The

Director of Industries Dr. Desai after going1 through the papers accorded a sanction to prosecute all the three accused. He passed three different

orders for the same. It is after all these steps that P.S.I. Palve prepared a charge-sheet and sent it for trial.

9. All the three accused denied having committed the offence. Accused No. 1"s version is that he did not present the bills, which were actually

found by the panch witness on his table; that, on the other hand, Kazi had brought the seventeen white bills and they were on the table; there was

also a summary of the bills brought by the complainant. After scrutinizing those white bills be found them incorrect. The Government fee for the

repair of 500 Kg weight was less and therefore he made an account of each of the bills on the bill itself and corrected the same and according to

him the total Government fee came to Rs. 157.75P. Accused No. 1 has produced the seventeen bills on a plain white paper which according to

the complainant were the copies of the bills, which were found by the P.S.I, and the panch witness on the day of the incident. The accused

according to the complainant wanted the bills when he went to him after a few days to get back the scales, weights and measures so that he could

deliver them to the different traders. The case of accused No. 1 therefore is that the printed bills which were found by the panch witness on the

table were not presented to him by the complainant but they were the bills which he produced during the course of Kazi"s cross-examination on a

plain paper. The case of the accused is that the complainant kept on the table a sum of Rs. 109.90P and asked him to give him a receipt of Rs.

78.50P. He further requested him to prepare another receipt for the balance money. That is why he gave the complainant the receipt of only Rs.

78.50P. and afterwards he started writing the second receipt and when he put date ""21.4.69"" and the name of the place Shirsale on the receipt

Kazi told him that he would bring the remaining money afterwards and that he should wait till then. The accused asked him to bring Rs. 57.88P.

The complainant left the office for a while when he was writing the reports. Kazi then went out and came back with the raiding party. He admitted

having kept the money Rs. 109.90P. given by the complainant in his brief case and having opened it and having produced the same before the

panch witnesses. He has also stated that he had informed the Police at that time that he was to receive some more money from the complainant as

Government fees; that he also showed seventeen white bills which he produced later on during the course of the cross-examination of the

complainant but the Police did not listen to him. They kept only the summary and not the bills. The panchas, therefore, signed only on the summary

and not the bill.

10. Accused No. 2 denies the whole case of the prosecution and says that it is all false. He admits that the pant on which anthracene powder was

found and which was attached was his but says that the amount was not found in his pocket. Accused No. 3 also denies having committed the

offence and says that the complainant Kazi was at the table but says that he did not know what he talked with accused No. 1. He says that the

story of finding of the money in the Rumal is all false.

11. The learned Special Judge, Jalgaon, after considering the documents as well as the evidence on record found that each of the three accused

was a public servant under the Prevention of Corruption Act but on consideration of all the evidence found that the prosecution have not

established the three charges either against accused No. 1 or accused No. 2 or accused No. 3. On the other hand, he held that there are quite a

few circumstances which favour the story of accused No. 1 when he says that the complainant had brought only white bills and not the printed bills

and if that was so, then accused No. 1 might have innocently given the receipt of Bs. 78.50P. to the complainant thinking that he would bring the

rest of the money; instead of starting a quarrel with the complainant regarding the receipt of Bs. 78.50P. he probably thought that it was better to

pass that receipt and deliver it to the complainant. He believed the story of accused No. 1 also because a receipt was found with the date as well

as the name of the Camp when he said that he started writing the second receipt for the balance money which was to be paid by the complainant at

that time; neither the complainant nor the prosecution attempted to establish that the white bills produced by the defence were wrong. He,

therefore, accepted the story of accused No. 1 to be highly probable and acquitted accused No. 1. So far as the case of accused Nos. 2 and 3 is

concerned, after considering the statements of accused No. 2 in his written statement that accused No. 1 had asked him to count the money and

therefore he had kept that money in his pocket and also the say of accused No. 3 in his written statement that accused No. 1 had given him the

amount and asked him to give it to accused No. 2, he thought that mere finding of the notes applied with anthracene powder in the pockets of the

accused will not help the prosecution to establish that the money was passed as gratification or bribe. Because according to the learned Judge the

prosecution had failed to prove that the money passed to accused No. 1 was gratification, therefore, he acquitted not only accused No. 1 but also

accused No. 2 and accused No. 3. It is in these circumstances, therefore, that all the three accused were acquitted. This order of acquittal is now

challenged here by the State. The only point, therefore, that arises here for consideration is whether this order of acquittal is legal and proper.

12. Mr. Pendse says that the sanction was only given for prosecuting the accused for the offences u/s 161, Indian Penal Code and Section 5(2) of

the Prevention of Corruption Act but not for the offence u/s 120B, Indian Penal Code. This is correct. It is, therefore, contended by Mr. Pendse

that the charge u/s 120B, Indian Penal Code against the accused without sanction will fail. It is true that each of the accused was charged with the

offence punishable under Sections 161, 162, Indian Penal Code and Section 5(1)(d) read with Section 120B, Indian Penal Code. The point that

arises here for consideration is whether in the absence of any sanction the charge of conspiracy should fail. It is urged that they are charged with

the conspiracy to commit the main offence and that no sanction was obtained u/s 196A of the Criminal Procedure Code in regard to such

conspiracy. u/s 196A of the Criminal Procedure Code no Court shall take cognizance of the offence of a criminal conspiracy punishable u/s 120B

of the Indian Penal Code in a case where the object of conspiracy is to commit any non-cognizable offence or a cognizable offence not punishable

with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards unless the State Government or the Chief

Presidency Magistrate or the District Magistrate empowered in this behalf by the State Government has by an order consented to the initiation of

the proceedings. There is a proviso to Section 196A but we are not concerned with it. This is, therefore, a section regarding the cognizance by a

Court of a case. It is under Chapter 15 of Part VI. This particular Section 196A is under the head ""Conditions Requisite for Initiation of

Proceedings."" It is, therefore, clear that no Court can take cognizance of an offence of criminal conspiracy under certain conditions. If the object of

conspiracy is to commit a cognizable offence punishable with imprisonment less than two years then sanction is necessary but if it is a cognizable

offence punishable with imprisonment of more than two years then sanction is not necessary. We will, therefore, have to see with what sort of

conspiracy the accused were charged. So far as Sections 161 and 162, Indian Penal Code are concerned under the Second Schedule of the

Criminal Procedure Code they are cognizable offences. Section 165, Indian Penal Code also is a cognizable offence. At one time before 1955

these offences were not cognizable offences but by the Amendment Act 26 of 1955 these offences were made cognizable. They became

cognizable offences under the Criminal Procedure Code from the year 1955 although they were cognizable u/s 3 of the Prevention of Corruption

Act from the year 1947. These sections in Section 3 were therefore deleted when these offences became cognizable under the Act of 1955. So far

as the punishment for these offences is concerned, the punishment u/s 161, Indian Penal Code is three years" imprisonment of either description or

fine or both. Punishment u/s 162, Indian Penal Code is also the same. Therefore, the imprisonment is for three years which is more than two years

and if that is so, then so far as the offences under Sections 161 and 162, Indian Penal Code are concerned for the cognizance of those offences

sanction u/s 196 A will not be necessary.

13. We are now left with the conspiracy to commit the offence punishable u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act.

Let us see what the nature of the offences punishable u/s 5(2) of the Prevention of Corruption Act is. Punishment for the offence under Sections

5(1)(a) to 5(1)(e) is with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable

to fine. Therefore, the punishment can extend to more then two years. Therefore, for an offence of conspiracy to commit an offence u/s 5(2) of the

Prevention of Corruption Act there need be no sanction u/s 196 A of the Criminal Procedure Code. But Mr. Pendse contends here that it would

be non-cognizable at any rate when a P.S.I. investigates the offence with the consent of the Magistrate and therefore sanction is necessary. He

bases his argument on the wording of Section 5A. Under this Section 5A notwithstanding anything contained in the Code of Criminal Procedure no

Police Officer below the rank of a Deputy Superintendent of Police in the rural area shall investigate any offence punishable under Sections 161,

165 or 165(a), Indian Penal Code or even u/s 5 of the Prevention of Corruption Act without the order of the First Class Magistrate or make any

arrest therefore without a warrant. We have only mentioned the relevant portion of Section 5A. In this case the Deputy Superintendent of Police

has not investigated the offence, the Police Sub Inspector had investigated the offence with the permission of a local First Class Magistrate. It is

therefore contended that because the investigation was made with the permission of the Magistrate, therefore the offence of conspiracy to commit

an offence u/s 5 of the Prevention of Corruption Act will be a non-cognizable offence. After all, according to him if the P.S.I. wants to investigate,

into a non-cognizable offence he cannot himself start investigating into it but under the provisions of the Code of Criminal Procedure he has to seek

the permission of the Magistrate. If the offence, however, is cognizable, then it is not necessary for the P.S.I. to seek the permission of the

Magistrate and he can start off on his own and even arrest the culprit without a warrant. But since in this ease the P.S.I. has investigated into the

offence and has investigated with the permission of the local First Class Magistrate, therefore, an offence of conspiracy to commit an offence u/s 5

should be treated as non-cognizable. For that purpose he as well as the learned advocate Mr. Kanuga for accused No. 3 rely on two cases. They

are: (1) G.K. Apte v. Union of India A.I.R [1970] .A.& n. 43 and (2) Union of India v. Mahesh Chandra AIR [1957] M.B. 43 . The Division

Bench of Assam and Nagaland High Court were dealing with a case in which the accused was charged for an offence of conspiracy to commit an

offence u/s 5(2) of the Prevention of Corruption Act and they held that if the offences under Sections 161, 165 and 165A and 5(2) of the

Prevention of Corruption Act were to be punished u/s 5(2) of the Prevention of Corruption Act, the investigation ought to be under the Prevention

of Corruption Act. In that case no Police Officer below the rank of a Deputy Superintendent of Police can investigate it without the order of the

Presidency Magistrate or the Magistrate of the First Class, as the case may be. If that is so, then, according to the learned Judges of Assam and

Nagaland High Court an offence punishable u/s 5(2) of the Act is non-cognizable as Section 156 of the Criminal Procedure Code which authorises

an Officer in charge of a Police Station to investigate into a cognizable offence without the order of a Magistrate will not apply to investigation of an

offence made under the Act. There the attention of the Division Bench was invited to a passage in H.N. Rishbud and Inder Singh Vs. The State of

Delhi, which is as under (p. 202) ;

When, therefore, the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the

offences of corruption comprised in the Act, by making them cognizable, it may be presumed that it was considered necessary to provide a

substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated high

rank.

14. There it was contended by the Advocate General that the above observations by the Supreme Court mean that an offence punishable u/s 161,

or 165, or 165(1), Indian Penal Code is cognizable and Section 5(a) only provides a safeguard to Public Officers and that an offence punishable

u/s 5(2) of the Act was also cognizable under the Criminal Procedure Code as the punishment prescribed by it may extend to an imprisonment for

seven years and that Section 5(a) only provides a safeguard. The learned Judges did not accept this interpretation and observed that the offence of

bribery and corruption on the part of the public officers has been made cognizable for the purpose of the Criminal Procedure Code but when the

investigation was made into such offences under the Prevention of Corruption Act a safeguard was provided in Section 5A of the said Act.

According to the learned Judges of the Division Bench the Supreme Court did not say that such an investigation will be an investigation into a

cognizable offence. With respect, we are unable to agree with these observations of the learned Judges of that High Court. The offences under

Sections 161, 165 or 165A, Indian Penal Code were already cognizable u/s 3 of the Prevention of Corruption Act before 1955 and later became

cognizable by the Amendment of the Criminal Procedure Code in 1955. When the learned Judges of the Division Bench observed that the

offences under Sections 161, 165 or 165A which are offences of bribery and corruption on the part of the Public Officers were made cognizable

for the purpose of Criminal Procedure Code, that is not consistent with the scheme of the Prevention of Corruption Act because u/s 3 of that Act

Sections 161, 165 and 165A were cognizable even before 1955 and though non-cognizable under the Criminal Procedure Code. The offences

under that Act were deliberately made cognizable and therefore the investigation is of the cognizable offence. The contention of the learned

Advocate General before the Division Bench wag more consistent with the making of the offences under the Act punishable under Sections 161,

165 and 165A cognizable. If those offences were cognizable, a similar offence which is also in that class of offences in the Prevention of

Corruption Act cannot be non-cognizable.

15. In the other case cited, the learned Judges of the Madhya Bharat High Court were of the view that if an offence u/s 5(2) of the Prevention of

Corruption Act and the other offences under the Indian Penal Code are investigated by a Deputy Superintendent of Police without any permission

from the Magistrate, then the offence should be treated as cognizable. They are, however, of the view that if such offences are investigated by a

Police Officer below the rank of a Deputy Superintendent of Police and, therefore, with the consent of the Magistrate, then those offences should

be treated as non-cognizable offences and this is the line of reasoning adopted by both the learned advocates Mr. Pendse as well as Mr. Kanuga

here for the defence. With respect, we are unable to agree with this line of reasoning adopted by the learned Judges of the Madhya Bharat High

Court.

16. Now, Sections 161 and 165, Indian Penal Code u/s 3 of the Prevention of Corruption Act were cognizable but not under the Schedule of the

Criminal Procedure Code. Therefore, the Legislature wanted that the offences under Sections 161 and 165, Indian Penal Code as well as u/s 5(2)

of the Prevention of Corruption Act to be cognizable ones. If they wanted either of the offences to be non-cognizable, they would have provided

so. This intention of treating the offences as cognizable can also be seen after the amendment Act of 1955 by which the offences under Sections

161 and 165, Indian Penal Code were made cognizable in the Schedule of the Criminal Procedure Code. Risbud"s case was heard by the

Supreme Court in 1955 prior to the amendment of the Code. The Supreme Court in that case observed that these offences were cognizable and

they only provided a safe-guard to the public officers. The safeguard was that the offence should at least be investigated by a Deputy

Superintendent of Police and if the P.S.I. investigates it, it should be done with the permission of the Magistrate. So an offence cannot become

cognizable merely because a Deputy Superintendent of Police investigates it and becomes non-cognizable when a Sub Inspector investigates it. In

this view of the matter, therefore, we hold that it was not necessary for the Investigating Officer to take the sanction not only for the charge of

criminal conspiracy to commit the offences under Sections 161 and 162, Indian Penal Code but also u/s 5(1) of the Prevention of Corruption Act

read with Section 5(1)(d) of the Prevention of Corruption Act read with Section 120B, Indian Penal Code.

17. We, therefore, hold that there is abundant evidence to establish that the accused did demand bribe according to the percentage of the

Government fees from the complainant on April 17, 1969 and it is because of that demand and perhaps disgust that he had to seek the help of the

Anti-Corruption Police Officer. The prosecution have also established that the accused again demanded their share of the commission from the

complainant on 21st when the raid was about to be laid. Accused No. 1 gave the complainant the usual receipt of the Government fees, which

were according to the bills submitted by the complainant to the accused. Accused No. 1 as well as the other accused again demanded their share

of the commission on the basis of 17 bills as well as the summary submitted by him to accused No. 1 Therefore, they agreed and conspired on

April 17, 1969 to demand and accept a gratification other than legal remuneration from the complainant as a reward for the purpose of giving a

certificate in respect of the weights and measures brought by him. The complainant did say in his complaint that all these three accused demanded

and wanted a gratification from him on April 17, 1969 and that because he had no commission money with him on that day, therefore they asked

him to bring that money on April 21, 1969. He mentioned it all before the Police Officer, the punch witnesses as well as in his complaint. The

incident which took place on 21st was all in accordance with all what he had stated in his complaint and as per his talk with the accused on April

17, 1969. If, therefore, these incidents which took place on April 17, 1969 and April 21, 1969 do not prove the conspiracy between all the three

accused to demand and accept a gratification, what else do they prove? On April 21, 1969 the commission money was found with accused No. 1

as well as accused No. 2 as well as accused No. 3. Therefore, the demand as well as the acceptance of a gratification can easily be said to have

been established.

18. There are also independent charges against the different accused. Accused Nos. 1 and 3 are charged with an offence punishable u/s 161,

Indian Penal Code as well as u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. Accused No. 2 is charged with an offence

punishable u/s 161, Indian Penal Code as well as with an offence u/s 162, Indian Penal Code and the offence u/s 5(7)(d) read with Section 5(2) of

the Prevention of Corruption Act. We are of the view that the prosecution have established the charge against accused Nos. 1 and 3 u/s 161,

Indian Penal Code as well as u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. We are also of the view that the prosecution

have established the charge against the three accused u/s 161, Indian Penal Code as well as u/s 5(1)(d) read with Section 5(2) of the Prevention of

Corruption Act, read with Section 120B of the Indian Penal Code. We are also of the view that the prosecution have established their charge

against accused No. 2 only u/s 161, Indian Penal Code but not u/s 162, Indian Penal Code. They have also established the charge u/s 5(1)(d)

read with Section 5(2) of the Prevention of Corruption Act against accused No. 2. Section 162, Indian Penal Code is with reference to the taking

of the gratification by corrupt or illegal means to influence a public servant. Now when we hold that the charge of conspiracy to commit different

offences by each of the accused has been established, it means that they have all agreed to commit these offences. If they had agreed to commit all

these offences, then the question of exercising influence by one over the other will not arise. In that view of the matter, therefore, Section 162,

Indian Penal Code will not be attracted as against accused No. 2.

19. We, therefore, hold all the accused Nos. 1, 2 and 3 guilty and convict them u/s 161, Indian Penal Code and u/s 5(2) read with Section 5(1)(d)

of the Prevention of Corruption Act read with Section 120B, Indian Penal Code. We also hold accused Nos. 1, 2 and 3 guilty and convict each of

them u/s 161, Indian Penal Code. We again convict each of these accused u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act

and convict them of the said offences.

20. We convict each of accused Nos. 1, 2 and 3 u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and sentence each of

them to suffer rigorous imprisonment for one year and also to pay a fine of Rs. 1,000, Rs. 500 and Rs. 250 respectively in default to suffer

rigorous imprisonment for one year, three months and two months respectively. We do not propose to inflict sentence on other counts for which

they are convicted. The accused to surrender to bail.