PETITIONER:
MADHUKAR BHASKARRAO JOSHI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 09/11/2000

BENCH:
K.T. Thomas, & R.P. Sethi.

JUDGMENT:

THOMAS, J.

Leave granted.

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

Once the prosecution established that gratification in any form cash or kind had been paid or accepted by a public servant the court is under a legal compulsion to presume that the said gratification was paid or accepted as a motive or reward to do (or forbear from doing) any official act. The only exception to the said rule is, when the gratification is so trivial that no inference of corruption could in fairness be drawn on a particular fact situation the court has no such legal compulsion to presume. Such a presumption was introduced in the Prevention of Corruption Act, 1947 (Act of 1947, or short) through a later amendment. The said legal presumption was carried forward into the successor enactment of 1988. In the present case, a public servant admitted that a certain amount was paid to him by a private party, but he sought to explain that it was an amount otherwise payable to him and hence it was no gratification at all. The trial court and the High Court found that the public servant failed to prove that the amount received by him was legally due to him otherwise. The trial court convicted him under Section 5(2) of the Act of 1947, and sentenced him to rigorous imprisonment for one year and a fine of Rs.5000/-. Though he was convicted under Section 161 of the Indian Penal Code also the court did not award any separate sentence on that account. When he appealed to the High Court, a single judge concurred with the finding and confirmed the conviction. However, learned single judge reduced the imprisonment limb of the sentence to just one day, but enhanced the fine limb to Rs.3000/-. The public servant was not satisfied with the substantial amelioration he secured from the High Court. Perhaps he thought that the conviction itself would magnetize hazards in his service career. Hence he filed this appeal by special leave. But when the special leave petition was considered we felt, prima facie, that the learned single judge reduced the sentence of imprisonment to the vanishing point without the authority of law after confirming the conviction. We therefore, issued notice to the appellant to show cause why the sentence passed by the trial court shall not be restored if the conviction remains undisturbed. The appellant public servant, optimistic as he was, has chosen to pursue the SLP to its logical end even at the risk of

losing the benefit he secured from the High Court. Appellant was a Sub Engineer in the Maharashtra State Electricity Board (Electricity Board, for short). During the relevant time he was posted at Wadia Sub Station, Pune. The incident which dragged him into the vortex of this criminal litigation had happened during his tenure at Wadia. It all happened in the following manner: PW-1 (Prem Gangaram Adwani) was a businessmen and also a social activist. He was engaged in carrying out contract work for electrical decorations and illumination at different places. The name of his business was Modern Decorators. According to the prosecution case, PW-1 secured a contract work to do illumination and electric decoration during a particular period in November 1979, in connection with the birth centenary of a spiritual person who was adored in the locality. As additional load of electric power was required for the aforesaid illumination he filed an application to the Electricity Board for sanction of such additional load. The Manager of the company (Kishan Jadhav) was deputed to approach the appellant in connection with the said sanction. But Jadhav reported to PW-1 that appellant was demanding a sum of Rs.550/- as reward for granting sanction for the additional load. PW-1 assured that the sum would be paid and on that assurance appellant sanctioned the additional load of power. But the amount expected by the appellant was not paid till December 1979. Hence, he phoned up PW-1 and reminded him of his word. It appears there was a little bargaining and appellant reduced the amount to Rs.300 and agreed to collect that amount from the office of PW-1. In the meanwhile PW-1 lodged a complaint with the Anti Corruption Bureau. They arranged a trap to catch the appellant red-handed. After the scheme for the trap was finalised appellant was informed of the readiness of PW-1 to pay the amount desired by him. On 25.2.1980, around 8.00 P.M. appellant went to the office of PW-1. On seeing him PW-1 switched on a concealed tape-recorder. There was some dialogue between them which got recorded on the tape-recorder. However, when other customers visited the same office appellant indicated to PW-1 through a gesticulation about his readiness to accept the promised money then and there. It was then that PW-1 handed over the pre-arranged currency notes to the appellant. PW-1 transmitted the message through a signal to the members of the Anti Corruption Squad who were waiting outside. Those persons then rushed to the room and caught the appellant red-handed with the tainted currency notes. Later the case was charge-sheeted against him. After recording the evidence relating to the said trap the Special Judge examined the appellant under Section 313 of the Code of Criminal Procedure. Appellant filed a written statement in which he said, inter alia, that he went to the office of PW-1 on the said night as he was requested to reach there for a discussion about certain programmes of the Sindhi Association in which, perhaps, both were interested. While they were talking on that subject some persons reached there. Then the appellant stood up and was about to leave the place, but then PW-1 paid him some money saying that it was a gift. Appellant told him that he would not accept any such gift. However, appellant wanted to ask his manager as to why PW-1 was giving such gifts to him. But before he could actually hand over the money back to PW-1 he was caught by the office bearers of the Anti Corruption Bureau. The above is, in substance, the statement made by the appellant in court through the written submission. In the light of the said stand of the appellant we do not find the

necessity to consider the evidence of the prosecution witnesses who all said that PW-1 gave the money to the appellant at his office. Of course, learned counsel for the appellant contended that the testimony of PW-1, on that score, is not corroborated by any other independent witness. At this stage itself we may point out that there is no merit in the said contention, as there is sufficient corroboration on that aspect, even apart from the testimony of other witnesses examined by the prosecution. The very undisputed fact that the amount had reached the hands of the appellant itself is sufficient corroboration for the testimony of PW-1 that the amount was paid to the appellant. Learned counsel next contended that the legal presumption envisaged in Section 4 of the Act of 1947 can be drawn only on establishing that gratification was paid to or accepted by the public servant and not merely that he was found in possession of the currency notes smeared with phenolphthalein. True the word gratification is not defined in the Act of 1947. (In the successor enactment, the Act of 1988, the same word is explained as not restricted to pecuniary gratification or to gratification estimable in money vide Explanation (b) to Section 7 of the Act of 1988). In Blacks Law Dictionary, gratification is defined as a recompense or reward for services or benefits given voluntarily without solicitation or promise. But in Oxford Advanced Learners Dictionary of Current English the said word is given the meaning to give pleasure or satisfaction to. Among the above two descriptions for the word gratification with slightly differing nuances as between the two, what is more appropriate for the context has to be found out. The context in which the word is used in Section 4(1) of the Act of 1947 is, hence, important. As the wording on the relevant portion employed in the corresponding provision in the PC Act of 1988 {Section 20(1)} is identical we would reproduce that sub-section herein: 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.

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 doing or forbearing to do an 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.

In Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra {1997(10) SCC 600} this Court has taken the same meaning for the word gratification appearing in Section 4(1) of the PC Act of 1947. We quote the following observations:

The primary condition for acting on the legal presumption under Section 4(1)of the Act is that the prosecution should have proved that what the accused received was gratification. The word gratification is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learners Dictionary of Current English, the word gratification is shown to have the meaning to give pleasure or satisfaction to. The word gratification is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient.

We, therefore, repel the contention of the learned counsel that prosecution has a further duty to prove beyond the fact that PW-1 had paid the demanded money to the appellant for enabling it to lay the hand on the legal presumption employed in the Prevention of Corruption Act. We may point out that the defence did not even attempt to prove that the amount received by the appellant was not accepted as a reward or motive for the official act done by him, except the ipse dixit of the appellant, that too made at the fag end of the trial when he put in a written statement of his defence. Hence no exception can be taken to the conviction passed by the trial court which was concurred by the High Court in respect of the offence under Section 5(2) of the Act of 1947.

Dealing with the sentence aspect learned single judge of the High Court has counted two aspects. One is that the counsel pointed out that the appellant was under suspension for 7 years and the High Court had suspended both the conviction and sentence during the pendency of the appeal in the High Court and that he was reinstated and continued as such till the date of the impugned judgment and in the meanwhile he was promoted to the post of Junior Engineer. Second is that another single judge of the Bombay High Court (Saldhana, J.) had reduced a sentence of imprisonment from two years to just one day, and increased the fine sentence from Rs.1,000/- to Rs.35,000/- for a similar offence in another case. That decision has been reported as Vasant Maruti Waikar vs. State of Maharashtra (1991 Maharashtra Law Journal 1318). The said decision was relied on as a precedent.

Learned counsel for the appellant submitted before us that the court has powers to impose any sentence below the minimum prescribed. He cited two decisions of this Court [Balaram Swain vs. State of Orissa, (AIR 1991 SC 279, M.O. Shamsuddin vs. State of Kerala (1995 3 SCC 351)]. In both the said decisions this Court had reduced the sentence to the period of imprisonment already undergone by the public servants in consideration of the long duration of the pendency of criminal proceedings against the convicted persons. We perused these decisions and it is difficult to find out therefrom as to the precise period of imprisonment awarded by this Court since there is no indication as to the period during which the convicted persons were in jail in

those cases. It is necessary to remind ourselves of the scope of the power of the court for reducing the sentence from the minimum fixed in the statute. We, therefore, extract Section 5(2) of the Act of 1947.

Any public servant who commits criminal misconduct shall be punishable 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: Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

It must be noted that in the corresponding provision of the Act of 1988 [Section 13(2) of that Act] there is no such proviso as in Section 5(2) of the earlier Act and no power whatsoever is given to the court to impose a sentence less than the minimum, even if there are special reasons for doing so. The Parliament fixed the minimum sentence of imprisonment of one year even under the Act of 1947 by making an amendment to it in 1958 for which the legislative language is apparently peremptory i.e. shall not be less than one year. The proviso is in the form of a rare exception by giving power to the court for reducing the imprisonment period below one year only when there are special reasons and the law required that those special reasons must be recorded in writing by the court.

When corruption was sought to be eliminated from the polity all possible stringent measures are to be adopted within the bounds of law. One such measure is to provide condign punishment. Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals. That was precisely the reason why the sentence was fixed as 7 years and directed that even if the said period of imprisonment need not be given the sentence shall not be less than the imprisonment for one year. Such a legislative insistence is reflection of Parliaments resolve to meet corruption cases with very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants. All public servants were warned through such a legislative measure that corrupt public servants have to face very serious consequences. If on the other hand any public servant is given the impression that if he succeeds in protracting the proceedings that would help him to have the advantage of getting a very light sentence even if the case ends in conviction, we are afraid its fallout would afford incentive to public servants who are susceptible to corruption to indulge in such nefarious practices with immunity. Increasing the fine after reducing the imprisonment to a nominal period can also defeat the purpose as the corrupt public servant could easily raise the fine amount through the same means.

In the present case, how could the mere fact that this case was pending for such a long time be considered as a special reason? That is a general feature in almost all convictions under the PC Act and it is not a speciality of this particular case. It is the defect of the system that longevity of the cases tried under the PC Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by the Parliament the legislative exercise would stand defeated. The High Court

unfortunately did not look at the sentencing aspect with the seriousness which the Parliament wanted the court to exercise in such situations. In our view, there was absolutely no special reason in this case as for the appellant to entitle to get a sentence less than the minimum prescribed by law. Accordingly, we restore the sentence passed by the trial court on the appellant for the offence under Section 5(2) of the Act of 1947.