

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. APPEAL NO. 168/2001**

% Reserved on: 10th January, 2011
Decided on: 14th February, 2011

ASHOK KUMAR KAPOOR Appellant
Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Anurag Jain, Advocate.
versus

C.B.I. Respondent
Through: Mr. Vikas Pahwa, Standing Counsel.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

1. By the present appeal, the Appellant lays a challenge to the judgment dated 27th February, 2001 passed by the learned Special Judge convicting the Appellant for offence punishable under Section 161 IPC and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (in short POC Act) and the order on sentence dated 28th February, 2001 directing the Appellant to undergo Rigorous Imprisonment for a period of one year for

commission of each offence and to pay a fine of ₹500/- and in default of payment of fine to further undergo simple imprisonment for a period of 15 days on each count.

2. Briefly, the prosecution case is that the Complainant Gokal Prasad PW2 reported to the S.P., CBI vide his complaint dated 27th April, 1987 Ex.PW2/A that he was a licensed dealer of kerosene oil and sells the same against the ration card in a shop situated at 125/A, Pul Prahladpur, Sharma Market, New Delhi. The area Inspector Ashok Kumar used to harass him and was demanding ₹500/- monthly and threatens that in case of default in payment, he would get his license cancelled. Ashok Kumar came to his shop in the evening on 24th April, 1987 at about 5:30 p.m. and took into his possession the papers of his shop, license and cash memo and stated that in case he needed them back, he would have to pay ₹2,000/-. On the Complainant appealing to him, he agreed to accept ₹1,500/-. The Complainant was having ₹550/- which the Appellant took and stated that the remaining ₹950/- must be kept ready by Monday, when he will visit the shop between 4.00 to 5.00 p.m. to collect the same. On the basis of this complaint, a trap was laid by treating 19 currency notes of ₹50 denomination each by the chemical. Sh. Anshuman Sharma PW3 working as Assistant in the Ministry of Environment and Forest, Wild Life Section was associated as a shadow witness and Sh. C.L. Dogra, PW4 was

associated as a panch witness. PW3 was directed to be close to the Complainant PW2. As per the prosecution case, on 27th April, 1987 when the Appellant came at the shop, he took the Complainant PW2 in the inner room and there he demanded the bribe amount. The said bribe amount of ₹950/- was given by PW2 to the Appellant, however, PW2 again requested him to reduce the amount and thus, the Appellant returned ₹500/-. Thereafter, Complainant gave the signal and the Appellant was apprehended along with the tainted currency notes amounting to ₹450/-. On completion of investigation, the charge-sheet was filed against the Appellant. After considering the prosecution evidence, the statement of the Appellant under Section 313 Cr.P.C. and the defence evidence, the learned Special Court convicted and sentenced the Appellant as above.

3. Learned Counsel for the Appellant challenging the conviction at the outset, says that the Appellant does not deny receiving ₹550/- on the 24th April, 1987 and ₹450/- on the 27th April, 1987. However, the said money was not the bribe amount but a re-payment of the loan. Learned counsel for the Appellant contends that the Complainant was short of money and thus on 7th April, 1987, he took a loan of ₹1,000/- from the Appellant for 15 days so that he could receive the supply of kerosene oil. The Complainant however, stated that in case he did not return the money within 15 days, he would pay the

amount of ₹1,500/- instead of ₹1,000/-. The Complainant returned ₹550/- on the 24th April, 1987 and the remaining ₹450/- on 27th April, 1987. This version of the Appellant is corroborated from the testimonies of prosecution witnesses PW3 and PW5 itself. PW3 stated that immediately on apprehension, the Appellant stated that this was not the bribe amount but the return of loan amount taken by the Complainant. This plea of the Appellant is also supported by the testimony of Rakesh Kawra, DW1 who had witnessed the Complainant taking loan of ₹1,000/- from the Appellant on 7th April, 1987. Learned counsel further submits that the defence is entitled to rebut the presumption and it has to prove its defence on the basis of preponderance of probabilities unlike the prosecution which has to prove its case beyond reasonable doubt. If there is a possibility of the defence version being correct, then the accused cannot be convicted for the offence. Reliance in this regard is placed on *M.Abbas vs. State of Kerala, JT 2001 (4) SC 1992*; *Punjabrao vs. State of Maharashtra, AIR 2002 SC 486* and *T. Subramanian vs. State of Tamil Nadu, AIR 2006 SC 836*.

4. It is next contended that the prosecution has not been able to prove its case beyond reasonable doubt. According to the prosecution, the trap money which was treated with the chemical was ₹950/- and as per PW2, he first gave the Appellant ₹950/- however, further bargained with him, on which the

Appellant gave him back ₹500/- as a full and final settlement. It is stated that this conduct of the Complainant of taking back the trap money which was treated with chemical is wholly unnatural. Moreover, this money should have been recovered from the Complainant on the spot which has not been done and thus, it falsifies the entire prosecution case and lends support to the version of the Appellant that out of the loan amount, only ₹450/- were remaining and on that day the Appellant only took ₹450/- from PW2. PW3, the shadow witness has not witnessed either the demand or acceptance. PW3 in his testimony has stated that the moment the Appellant was apprehended on the spot, he stated that this amount was the refund of loan and not the bribe amount. PW5, the employee of the Complainant who overheard the conversation between PW2 and the Appellant has also stated that on 27th April, 1987, the Appellant asked PW2 to give his 'Amanat' on which Gokal Prasad PW2 took out the money from his pocket and gave the same to the Appellant. This witness does not say that PW2 persisted on, due to which the Appellant returned ₹500/- to him and thus, does not support the version of the prosecution. The sole testimony of the Complainant is not reliable. As per the testimony of PW2 in his examination-in-chief he has stated that the Appellant took ₹550/- from the drawer of the Complainant whereas in his cross-examination he stated that this amount was taken from his pocket. PW2 has

stated that he does not know how to read and write and thus after the Appellant took ₹550/- from him on the 24th April, 1987, he got the complaint written from a person from the market and folded the same and kept it in his pocket for three days and thereafter on the 27th April, 1987 gave it to the S.P., CBI. When the complaint was produced in the Court, even the Court observed that there were no fold marks on the complaint Ex.PW2/A except the fold mark of margin. Neither the statement of that person who wrote the complaint has been recorded by the CBI, nor he has been cited as a witness, nor examined in the Court. The fact that the complaint was written by somebody else on 24th April, 1987 is not supported by the testimony of PW5 who in his cross-examination has stated that “It is not that someone from the public had written the complaint of Gokal Prasad” and that he was not aware as from whom Gokal Prasad had got the complaint written. The Complainant accepts that he used to draw kerosene oil on 1st and 2nd of each calendar month, however, in the said calendar month, he did so only on the 11th April, 1987. PW2 admits that for drawing this kerosene, he took loan on 7th April, 1987, however, does not name the person from whom he took the loan. PW2 admits that he used to habitually take loans for buying kerosene. The finding of the learned Judge that under Central Civil Services (Conduct) Rules, 1964, a government servant is neither permitted to take loan or give loan is

incorrect. In terms of proviso to Rule 16(4) (i) (a) & (b) of the Central Civil Services (Conduct) Rules, 1964, a government servant can give or accept from a relative or a personal friend, a purely temporary loan of a small amount free of interest. PW5 has been introduced as a witness subsequently as he is not shown in the site plan Ex.PW6/B nor the Complainant or any panch witness testifies about his presence. His statement was recorded belatedly after 20-30 days. Thus it is prayed that the Appellant is entitled to be acquitted and that the impugned judgment is liable to be set aside.

5. Per contra, learned counsel for the Respondent contends that there is no merit in the contention of the learned counsel for the Appellant that as the trap amount of ₹500/- which was taken back by the Complainant as a bargain was not recovered and thus the defence version is probable that the Appellant had gone to collect the remaining ₹450/- of the loan amount of ₹1,000/-. 9 G.C. notes of denomination of ₹50/- each were recovered from the Appellant and the hand wash were taken vide recovery memo Ex.PW2/C. Personal search of PW2 was also conducted whereupon ₹500/- were recovered which were seized vide seizure memo Ex.2/E. The numbers of the currency notes recovered from the Complainant were tallied and the same were the remaining 10 currency notes of the trap amount of 19 notes of denomination of ₹50/- which were handed over vide memo Ex.PW2/B. All the essential ingredients

to prove the case of the prosecution are made out from the evidence on record. The initial demand is proved by the testimony of PW2 and PW5 his employee. Relying on *Rajinder Kumar Sood v/s State of Punjab, 1983 Cr.L.J. 1338* it is contended that it is not possible to corroborate the demand made in the trap case as when the person first goes for his work, he goes naturally and not as a trap witness and does not know that the money would be demanded from him. In the present case, the demands made on 24th April, 1987 and 28th April, 1987 as stated by PW2 are duly corroborated by the testimony of PW5 who is his employee and a natural witness. The fact of the demand of money by the Appellant on 28th April, 1987 is also proved by the fact that when he goes to the shop to collect ₹950/-, he does not do so in the presence of PW3, the shadow witness Anshuman Sharma but enquires as to who he was and takes the Complainant to the inner room. If it was not a bribe amount but the return of the loan, then there was no necessity of going to the inner room. Further the defence of the Appellant cannot be accepted as in terms of the proviso to Rule 16 (4) (i) (a) & (b) of the Central Civil Services(Conduct) Rules, 1964, a government servant can give or accept purely temporary loan of a small amount free of interest from a relative or a personal friend. In the statement under Section 313 Cr.P.C., the Appellant on the one hand states that the Complainant bore a grudge against him, and on the other hand states that

he gave a loan of ₹1,000/- to the Complainant. The Complainant was neither his relative nor his personal friend. Moreover, on both the occasions, when he went to collect the money from the shop, he checked the records and even insisted on showing the old records but after the receipt of the bribe amount, he stopped checking the records. It is contended that since the testimony of the witnesses were recorded after a long time like that of PW5 was recorded nearly after a decade of the incident, some variations are bound to occur. The person who scribed the complaint was not required to be examined as he was neither an eye-witness nor aware of the facts of the case as held by the Hon'ble Supreme Court in *Anil Kumar vs. State of U.P.*, 2003 (3) SCC 569. The testimony of PW2 and PW5 is corroborated by the testimony of PW6, the trap officer of the Respondent who recovered ₹450/- out of the trap amount from the Appellant. The conduct of the Appellant as testified by PW6 that after he was apprehended, he was perplexed, nervous and kept mum is also relevant. In view of the fact that initial demand, demand at the time of raid, acceptance and the receipt of the bribe money has been proved, the statutory presumption under Section 4 of the POC Act is required to be raised. Reliance of the learned counsel for the Appellant on the decisions rendered in the case of *Punjabrao* (supra) and *T. Subramanian* (supra) is misconceived. In both these cases, neither the demand nor acceptance was proved and

moreover, the Complainants were required to pay the statutory liabilities which were being collected by the officers. It is contended that the decision of the Hon'ble Supreme Court in *State of Maharashtra vs. Rashid B. Mulani* 2006 (1) SCC 407 applies to the facts of the present case. There being no merit in the appeal, it is prayed that the same be dismissed.

6. I have heard learned counsel for the parties and perused the record. The prosecution in the present case has proved the initial demand by the testimony of PW2 who has stated that he was running the business of kerosene oil since 1972 and the Appellant was an area Inspector where his shop was situated. On 24th April, 1987, the Appellant came to his shop and asked him to show the records alleging that the Complainant indulged in black-marketing of kerosene oil. The Complainant made available the license, cash book and the register for inspection. Thereafter, the Appellant threatened that either he should pay him ₹2,000/- or he would get his license cancelled. He further stated that the records would be returned only after ₹2,000/- was paid as illegal gratification. On the Complainant stating that he had no money at that time, the Appellant pointed out that he will have to make the arrangements and took out ₹550/- from the drawer of the table kept in the shop and stated that the balance should be paid on the next Monday. On the Complainant further requesting, he reduced the bribe amount to ₹1,500/- whereafter the

Appellant left stating that he would come on the next Monday between 4.00 and 5.00 P.M. This testimony of PW2 is corroborated by the testimony of PW5, Rameshwar, his employee working in his shop who is a natural witness. This witness has also stated that on the 24th April, 1987, the Appellant came to their shop and told PW2 that there were many complaints against him and on his offering the chair, he sat down and checked the records. He demanded ₹2,000/- from PW2 and PW2 told him that he would not be able to pay ₹2,000/- as he was a small shop-keeper. After sometime, the Appellant got up and went from there stating that he has now received ₹550/- and PW2 should give him ₹950/- more to make the total amount of ₹1,500/- and stated that the amount should be paid on 27th April, 1987 between 4-5 p.m. at the shop. This witness also corroborated the demand on the 27th April, 1987 as he states that on 27th April, 1987 the Appellant came to their shop at 4:00 p.m. and checked the records. He said that he wanted to check more records and they went to the room which was situated behind the shop. PW2 asked this witness to take out the records and the Appellant asked PW2 to give his 'Amanat'. PW2 took out the money from his pocket and gave the same to the Appellant and told him that they were ₹950/-. The Appellant took the money, kept in his purse and kept the purse in his pocket. The Appellant then took out the purse and returned ₹450/- to the Complainant. The Appellant did not check any further

record after that. Thereafter, the CBI officers apprehended him. Thus, on both the occasions, it is clear that the Appellant threatened PW2 and started checking the records and after payment stopped checking the records. The fact that ₹500/- were returned back to PW2 has also been corroborated by the testimony of PW5. Even in his cross-examination PW5 has stood by his testimony that the Appellant demanded ₹2,000/- from PW2 in his presence. The acceptance of money is proved by the testimony of PW2, PW5 and that the fact that immediately after receiving the money the Appellant was apprehended and from him ₹450/- were recovered which tallied with the numbers mentioned in the handing over memo Ex.PW2/B. This fact is proved by the testimony of PW6 P.Lal, the DSP and the report of the CFSL Ex.PE1. The fact that the scribe of the complaint Ex.PW2/A was not examined would not affect the prosecution case. As per PW2, he did not know how to read and write and after the incident of 24th April, 1987 when people from the neighbouring shops got collected, someone wrote the complaint on his dictation. The scribe of this complaint was neither an eye-witness nor knew about the facts and thus his testimony was not relevant in the present case. Learned counsel for the Appellant laid much stress on the fact that PW2 in his testimony has states that he got the complaint written on 24th April, 1987, folded and kept it in his pocket and went to the CBI office on 27th April, 1987

at 11:30 a.m. On examination of this complaint, no fold marks were found except the fold mark of the margin. This discrepancy in the testimony of PW2 does not go to the root of the matter. The incident is of 24th April, 1987 and the cross-examination of this witness wherein he stated that he folded the complaint and kept in his pocket for three days, was recorded on 23rd August, 1996 i.e. nearly after 7 years of the incident. Thus, there are bound to be variations and contradictions in the same. His entire version cannot be discredited on this count.

7. Learned counsel for the Appellant has laid much stress on the fact that the presumption under Section 4 of the POC Act is a rebuttable presumption and the Appellant has to prove his defence not beyond reasonable doubt but by preponderance of probabilities which can also be through cross-examination of the Appellant and need not necessarily be by leading the defence evidence. In the present case, the Appellant does not deny the receipt of the money on the 24th and 27th of April, 1987. His defence is that it was return of the loan which the Appellant had given to PW2. Learned counsel for the Appellant states that it has been elicited from the cross-examination of PW2 that every month he used to buy the quota of kerosene oil in the beginning of every month and in April, 1987 he took the quota only on 11th April, 1987. The counsel further states that on the 7th April, 1987, the PW2

had come to his office and requested for loan of ₹1,000/-, which he promised to return within a fortnight, which has been corroborated by the testimony of DW1 Rakesh Kawra who was working as Sub-Inspector in the Food and Supply Department and used to sit on a table in front of the table of the Appellant in the office. DW1 has stated that on 7th April, 1987 at about 2 o'clock he was present in his office, the Complainant Gokal Prasad came to their office and talked to the Appellant. On the Appellant enquiring as to whether Gokal Prasad has received kerosene oil for the month, he replied in the negative stating that he did not receive the kerosene oil due to shortage of fund of ₹1,000/-. The Complainant repeatedly requested the Appellant to lend him ₹1,000/- and offered to repay ₹1,500/- instead of ₹1,000/-. The Appellant then gave ₹1,000/- to Gokal Prasad in his presence. Thus, it was this return of loan which was given by the Appellant by way of part payment of ₹550/- on 24th April, 1987 and the balance ₹450/- on the 27th April, 1987. In the present case, the defence of the Appellant may have probably to some extent strengthened the defence, had the balance ₹500/- not been recovered from the PW2. From the testimony of PW2 it is clear that the total demand of the Appellant was ₹1,500/- out of which he had taken ₹550/- on 24th April, 1987 and on the 27th April, 1987 he had come to take the balance of ₹950/- and he had taken the same also. However, as PW2 further bargained with him and

showed his inability, the Appellant gave him back ₹500/-. The evidence of PW5 in this regard is relevant wherein he states that the Appellant told him in the gallery while coming out that he shall take ₹500/- every month. Thus, it is possible that to extract ₹500/- every month, the Appellant on that day returned back ₹500/- out of trap money to PW2.

8. I do not find any merit in the contention of the learned counsel for the Appellant that the learned Trial Court wrongly came to the conclusion that in terms of CCS (Conduct) Rule, the Appellant was not permitted to give loan to the Complainant. On perusal of the proviso to Rule 16(4) (i) (a) & (b) of CCS (Conduct) Rule, 1964 it shows that a government servant is permitted to accept or give a purely temporary loan of a small amount free of interest to a relative or a personal friend. The relation between the Appellant and the Complainant was neither of a relative nor of a personal friend. The reliance of the Appellant on the decisions rendered in *Punjabrao (supra)* and *T. Subramanian (supra)* is wholly misconceived. In *Punjabrao (supra)* their Lordships accepted the plea of the Appellant therein as it was undisputed that from the 24th to 26th the Patwari was collecting loans in a collection campaign and it was also admitted that the Complainant was liable to pay the loan amount. It was under these circumstances, the explanation of the accused under Section 313 Cr.P.C. was held to be reasonable. In *T. Subramanian*

(supra) their lordships held that mere receipt of ₹2000/- by the Appellant from PW1 will not be sufficient to fasten the guilt under Section 5(1) (a) or 5(1) (d) of the POC Act in the absence of any evidence of demand or acceptance of the amount as illegal gratification. If the amount has been paid as lease rent arrears due to temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable then the Appellant had to be acquitted.

9. The present is a case covered by the decision in *State of Maharashtra vs. Rashid B. Mulani* (supra) wherein their lordships held:

“8. Section 4 of the Act, inter alia, provided that where in any trial of an offence punishable under Section 161 IPC or Section 5 (1) (a) or (b) punishable under Section 5 (2) of the Act, it is proved that an accused person has accepted by gratification (other than legal remuneration), it shall be presumed, unless the contrary is proved, that he accepted that gratification as a motive or reward, such as is mentioned in the said Section 161. This would mean that a mere explanation in the statement under Section 313 that the amount was received towards a loan will not be sufficient. The contrary position should be established by the accused either from inferences legally drawn from the evidence on record let in by the prosecution, or by letting in direct evidence in regard to the explanation. The statutory presumption raised under Section 4 will not stand rebutted merely by offering an explanation under Section 313 if such explanation does not find support from the evidence let in by the prosecution.

9. In *Dhanvantrai Balvantrai Desai v. State of Maharashtra*, 1964 Cri LJ 437, this Court observed thus: SCR pp. 497-99)

"Therefore, 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 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 under Section 114, 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 rebutted 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....

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."

10. Though, it is well-settled that the accused is not required to establish his explanation by the strict standard of 'proof beyond reasonable doubt', and the presumption under Section 4 of the Act would stand rebutted if the explanation or defence offered and proved by the accused is reasonable and probable, the following words of caution in *Chaturdas Bhagwandas Patel v. The State of Gujarat*: 1976 CriLJ 1180 should be kept in mind before it can be said that the presumption stood rebutted:

"Thus it had been indubitably established that the appellant, a public servant accepted a gratification that is a sum of Rs. 500/- which was not his legal remuneration, from Ghanshamsinh (PW1). On proof of this fact, the statutory presumption under Section 4(1) of the Prevention of Corruption Act was attracted in full force and the burden had shifted on to the appellant to show that he had not accepted this money as a motive or reward such as is mentioned in Section 161, Penal Code....

It is true that the burden which rests on an accused to displace this presumption is not as onerous as that cast on the prosecution to prove its case. Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Section 161."

11. The evidence of PW-1 (Complainant), PW-2 (Panch witness) and PW-3 (Police Inspector) clearly prove the ingredients of a valid trap case. The evidence of the Complainant (PW-1) shows that there was a demand by the accused, payment of Rs. 300/- as illegal gratification by the Complainant to the accused and acceptance thereof by the accused. The evidence of PW-2 (Gulab) who accompanied the Complainant, fully corroborates the evidence of the Complainant. PW-2 has stated that the Police Inspector Mulani called him and disclosed to him about the trap, that four currency notes of Rs. 50 each and one note of Rs. 100 were kept in the shirt pocket of the Complainant, after being treated with chemicals; that he accompanied the Complainant to the Circle Office; that the Office was closed and when they came near the bus-stand, the accused met them and took them to his house; that in his presence, the Complainant asked the accused about the fate of his work and the accused enquired whether the Complainant had brought the money and told that he had to obtain the signature of the Circle Officer; that thereafter the Complainant took out a sum of Rs. 300 and gave it to the accused who took it, counted it and kept it in his pocket; and that was followed by the Police party and Panch witnesses entering the house and seized the amount.

12. If the accused has received the money towards a Government loan or at least being under a bona fide impression that it was towards repayment of the Government loan, he will not be guilty. Let us examine whether the explanation by the accused is reasonable and plausible. The evidence clearly shows that no amount was due from Complainant to the State. Even the case of the defence is that certain amount was due from Baban (Complainant's brother) and the Tehsildar had instructed the accused by letter dated 3.9.1996 to recover the amount due from Baban. When no amount was due from Complainant, and when the instruction of the Tehsildar was that the amount outstanding from Baban should be recovered, there is no explanation as to why the accused should send a demand notice to the Complainant and not Baban on 6.9.1986. In fact, the trial court has referred to the partition between Baban and Complainant three years before the incident. Be that as it may. When nothing is shown to be due from the Complainant, the case put forth by the defence that a notice of demand dated 6.9.1996 was sent to Complainant to pay the dues cannot be accepted. It is obviously an afterthought. If no amount was due to the government from the Complainant, the question of accused accepting it as payment towards a government loan does not arise. The evidence relating to demand, payment and acceptance of illegal gratification, is clear. The Trial Court had considered the entire evidence in detail and drawn proper inferences. On the other hand, the High Court accepted as explanation, an unsupported submission of counsel for the accused that the payment was in response to a notice of demand dated 6.9.1986 sent by accused to Complainant by registered post, (thereby ignoring the entire evidence regarding demand, payment and acceptance of a bribe) and held that the accused should be given benefit of doubt.

13. The entire story of sending a notice dated 6.9.1996 by the accused to the Complainant is a clumsy belated attempt to explain away the receipt of the illegal gratification on 6.10.1986. Firstly, the direction dated 3.9.1996 by the Tehsildar, as noticed above, was to recover the amount due from Baban and there is no direction to recover the amount from the Complainant. Accused could not have, therefore, issued any notice of demand to the Complainant. Secondly, the notice of demand on 6.9.1986 was

not sent by registered post to the Complainant, nor delivered personally against acknowledgement. The High Court appears to have accepted the explanation of the accused (that the payment was towards government dues) as probable, because it was submitted on behalf of the accused that a notice of demand dated 6.9.1986 was sent to the Complainant by the accused by registered post. On a specific query by us with reference to the list of documents dated 3.2.1990 filed by the accused before the Special Judge, learned Counsel for the Respondent conceded that the notice dated 6.9.1986 was not sent by registered post. She submitted that the notice was posted on 6.9.1986 at Pune and a certificate of posting was obtained. It is strange that the notice dated 6.9.1986, if really sent, was not posted at the place where the accused was working, but from Pune which is at a distance of about 40 kms. from his place of work. In the written submissions filed before us on 3.10.2005, the accused has confirmed that the notice was not sent by registered post and has attempted to offer some lame explanation as to why the notice dated 6.9.1986 was posted at Pune. It is clear that no notice dated 6.9.1986 was issued to the Complainant and the accused has tried to create an explanation by securing a certificate of posting dated 6.9.1986 from Pune after the event.

10. For the reasons aforesaid, I do not find any infirmity in the impugned judgment. The appeal is, accordingly, dismissed. The bail bond and the surety bond of the Appellant are cancelled. The Appellant be taken into custody to undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

February 14, 2011
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