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SB(cri)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

CRIMINAL APPEAL NO. 967 OF 1998.

APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE.

APPELLANT ACCUSE .. RAGHUNANDAN PRASAD PANDEY, son of Devendra Prasad Pande, aged 55 years, Resident of village Paroti, P.S. Champa, District Bilaspur, Ex-Head Master, Middle School, Barpali, Champa, (Bilaspur).

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Filed on 20.11.98

by Shri P.S. Das Advocate

Ch. A.R.

Versus

RESPONDENT .. THE STATE OF M.P. Through Special Police EStablishment, Lokayukta Karyalaya, BHOPAL.

AFR

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HIGH COURT OF CHHATTISGARH : BILASPUR

SB : HON'BLE SHRI MANINDRA MOHAN SHRIVASTAVA,J.

Criminal Appeal No.964 of 1998

APPELLANT Raghunandan Prasad Pandey

Versus

RESPONDENT State of M.P. (*now Chhattisgarh*)

Present:

Shri Adil Minhaj, counsel for the appellant.

Shri Sangharsh Pandey, Dy. Govt. Advocate for the State.

J U D G M E N T

(Delivered on 23rd January, 2015)

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 31.3.1998 passed by learned Special Judge, Raipur in Special Case No.62/1991, whereby and whereunder, the appellant has been held guilty of commission of offence under Section 161 of the IPC and Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act, 1947 (hereinafter referred to "*as the Act of 1947*") and sentenced as under:

Conviction	**Sentence**
U/s. 161 of the IPC	R.I. for 2 years and fine of Rs.1000/-, in default of payment of fine, additional S.I. for 3 months
U/s. 5 (1) (d)/Section 5 (2) of the Prevention of Corruption Act, 1947	R.I. for 2 years and fine of Rs.1000/-, in default of payment of fine, additional S.I. for 3 months.

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2. During the pendency of the appeal, original appellant-**Raghunandan Prasad Pandey** died and his wife was permitted to prosecute the appeal.

3. **Prosecution story**- The appellant, at the relevant time. was posted and working as Head Master, Middle School, Barpali. A complaint was lodged in Ex.P-7 by Mangal Prasad Agrawal (P.W.4) before the Vigilance Officer, Bilaspur, wherein it was alleged that complainant Mangal Prasad Agrawal and his colleague- Laxmi Kumar Tiwari, Head Master, both had applied for drawl of part final amount from their GPF accounts. The amount was sanctioned and lying with the appellant for disbursement. The appellant demanded Rs.200/- from Mangal Prasad and Rs.300/- from Laxmi Kumar as bribe and stated that if bribe is not given, the appellant will harass and will not make payment, therefore, complaint is being lodged to take action and the complainant has come along with a total of Rs.500/-. The amount was to be paid on that date i.e. 6.12.1986 and the bribe was also to be handed over to the appellant on that date. Upon receipt of report, a dehati nalishi in Ex.P-11 was recorded by the Investigating Officer D.L. Markam, DSP, Bilaspur and thereafter the currency notes brought by Mangal were collected. Witnesses were called and a pre-trap panchnama in Ex.P-3 was prepared. Currency notes were smeared with phenopthalien power and demonstration of reaction of sodium carbonate with phenopthalien powder was also given to the complainant in the presence of panch witnesses and solution was kept and sealed in a bottle.

4. The demonstration of reaction of sodium carbonate with phenopthalien powder, given to the complainant in the presence of panch witnesses, was recorded in pre-trap panchnama, in which, the entire proceedings were reduced in writing, singed by panch witnesses. Thereafter, a trap team led by Investigating Officer, along with the shadow witnesses, proceeded to the office of the appellant. It is said that two complainants Mangal Prasad (P.W.4) and Laxmi

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Kumar Tiwari (P.W.5) entered the office of the appellant. One of them, Mangal came out after sometime and gave a signal whereupon the trap team entered the office of the appellant. Further case of the prosecution is that the appellant was caught hold from his wrist and his hands were washed which turned pink and hand wash was kept in a bottle and sealed. It is said that thereafter wearing apparel (*kurta*) of the appellant was searched by one of the witnesses and from his *kurta*, a total of Rs.500/- were recovered. After completion of the proceedings of washing *kurta*, hands of the appellants, smeared currency notes, hands of the witnesses, trap panchanma in Ex.P-4 was prepared by D.L. Markam, DSP (since dead). Sealed bottles, currency notes, clothes of the appellant were sent for chemical analysis to FSL wherefrom, report was received in Ex.P-14. Upon completion of investigation, charge sheet was filed alleging commission of offence under Section 161 of the IPC and Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act, 1947 as also under Section 13 (1) (d)/ 13 (2) of the Prevention of Corruption Act 1988 (hereinafter referred to as "*the Act of 1988*"). The appellants abjured guilt and denied having demanded or accepted bribe. The appellant was, therefore, put to trial.

5. In order to prove its case, prosecution examined as many as 9 witnesses. Thereafter, the appellant was examined against incriminating circumstances and evidence appearing against him. The defence of the appellant was that he had neither demanded nor accepted nor any bribe was recovered from his possession. He also stated that he was not the competent authority to sanction part payment of GPF amount. In support of his defence that he has neither raised any demand, nor accepted nor any recovery made, the appellant examined Jagdish Prasad Dewangan as D.W.1, the clerk who was sitting in the office at the time of trap and Kranti Prasad Tiwari (D.W.2) in order to prove that there was enmity and it was a case of false implication because the appellant had taken disciplinary action against the two complainants Mangal Prasad P.W.4) and

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Laxmi Kumar Tiwari (P.W.5). The Investigation Officer of the case could not be examined as during the pendency of trial, he died.

6. Relying upon the evidence of the prosecution and disbelieving the defence of the appellant, the learned Court below held the appellant guilty of alleged commission of offence and sentenced him as described hereinabove.

7. Assailing correctness and validity of judgment of conviction and order of sentence, learned counsel for the appellant submits that the entire story of demand and acceptance of bribe is a false implication. He submits that the deceased appellant and the then Assistant Inspector of School had inspected the school on 18.10.1986 where two complainants Mangal Prasad (P.W.4) and Laxmi Kumar Tiwari (P.W.5) were posted. Action was taken against the two complainants and warning was given for initiating disciplinary action. Their pay was also deducted. Therefore, in order to take revenge, the two complainants falsely implicated the appellant. It is next contended that the prosecution has failed to prove demand, acceptance or recovery by leading clinching and cogent evidence. The time of demand is not specific with regard to the date on which such demand was made. The approximate time of demand as stated in the complaint, is contradictory to what has been stated by Mangal Prasad (P.W.4) and Laxmi Kumar Tiwari (P.W.5) in their Court statement. There are contradictory statements with regard to demand as motive or as reward. He further submits that after receipt of the amount for disbursement , the two complainants never met the appellant and one of them straightway went to Vigilance Office with a complaint prepared in his name and in the name of Laxmi Kumar though not signed by him, only to falsely implicate the appellant in order to take revenge. It is further submitted that at the time of alleged tendering of bribe money and its acceptance and recovery an independent witness Jagdish Prasad Dewangan, Clerk (D.W.1) and three teachers were also present. Out of these persons, Jagdish was examined in defence

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and he has clearly stated that neither any demand was raised nor any amount was accepted, but the complainant had thrown the currency notes on the table and then members of trap teem arrived. The other teachers who are present as per the uncontroverted testimony of Jagdish (D.W.1) were not examined. It is further submitted that appellant was not the sanctioning authority and therefore he had no occasion to demand money before sanction at the time when the application was made, as stated by complainant in their complaint. He further submits that the story of the prosecution is highly improbable that towards demand of Rs.200/- and Rs.300/- as bribe, the appellant would separately accept the money while disbursing cash of Rs.4,000/- to the complainant Mangal and Rs.7,500/- to complainant Laxmi Kumar. This he could have done by deducting these amount while tendering the cash amount to these two complaints. It is next submitted that as the demand is highly doubtful, the allegation of acceptance of bribe amount, required independent corroboration from shadow whiteness namely R.D. Diwan (P.W.7) & Hemraj Singh (P.W.9). However, both of them have stated that they have neither heard any conversation between the complainants and the appellant nor have seen the complainants giving the amount and the appellant accepting the amount and keeping in his pocket. It is next submitted that the story of accepting bribe in presence of Jagdish (D.W.1) and three other teachers in his office by the appellant is highly improbable and smacks of the false story. The next contention of learned counsel for the appellant is that there are material contradictions in the evidence of prosecution witnesses with regard to recovery which renders the recovery of cash amount highly doubtful. He submits that the testimony of S.S. Gaur (P.W.3), Mangal Prasad (P.W.4), Laxmi Kumar Tiwari (P.W.5), R.D. Diwan (P.W.7) and Hemraj (P.W.9) in this regard is not only contradictory to each other, but smacks of false implication. Learned counsel for the appellant argues that while S.S. Gaur (P.W.3) and R.D. Diwan (P.W.7) states that appellant was searched and cash was taken out form his pocket by Hemraj (P.W.9), Hemraj (P.W.9) clearly

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denies having made out any search or taken out any money from appellant's pocket. There are discrepancies whether the appellant's pocket was searched and cash was taken out or *kurta* which the appellants was wearing itself was taken out and then cash was removed from pocket. He further argued that a clear suggestion was given to the prosecution witness that bribe amount was thrown on the table and immediately the trap team arrived. It is next contended that the version of independent witness Jagdish Prasad (D.W.1) inspires confidence who was present at the spot as Clerk and he has stated that neither any payment was made nor any bribe was accepted by the appellant, but the complainant threw the money on the table to falsely implicate. It is quite improbable that on demand being made, the complainant would not make any complaint to the higher officer, the sanctioning authority, but straightway make a complaint to the Vigilance Section. It is lastly contended that the recovery cannot be made the sole basis for conviction and it has to be considered with other surrounding circumstances. If demand and acceptance is not proved, mere recovery cannot form basis for conviction. In support of his submissions, learned counsel for the appellant relies upon the judgments in the cases of **Kaur Sain Vs. State of Punjab**[1], **G.V. Nanjundiah Vs. State (Delhi Administration)**[2] and **Bal Krishan Sayal Vs. State of Punjab**[3].

8. Per contra, learned counsel for the State supported the judgment of conviction and order of sentence and submitted that the evidence which has come on record proves that the appellant was the disbursing officer and he could have withheld the amount from being disbursed. Therefore, he had motive for demand. It is next submitted that entire trap proceedings have been drawn by the officer of special police establishment in the presence of independent panch witnesses R.D. Diwan (P.W.7) and Hemraj (P.W.9) who have fully corroborated the prosecution story that currency notes were kept in the pocket of

[1] AIR 1974 SC 329
[2] AIR 1987 SC 2402
[3] AIR 1987 SC 689

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the complainants. They went inside the office of the appellant and when one of them came out and a signal was given, immediately thereafter, the trap team including two panch witnesses entered the office and there, the hands of the appellant were caught and were washed in solution of sodium carbonate which turned pink, meaning thereby that appellant had handled the tainted currency notes. Thereafter, the pocket of appellant's *kurta* was also washed in the solution of sodium carbonate, which also turned pink, which established that notes were kept in the pocket. The appellant has failed to offer any satisfactory explanation as to under what circumstances, the appellant handled the currency notes and kept in his pocket. It is further argued that there is clinching evidence to prove that from the pocket of the appellant, the currency notes were recovered which proves beyond all doubt that the currency notes were kept in the pocket of the appellant and recovered there from. Therefore, in these circumstances, presumption under Section 4 of the Act can be drawn that the appellant had accepted the bribe as illegal gratification. He next submitted that minor contradictions which have been pointed out have to be ignored because the witnesses were examined after several years of the date of incident and therefore, only on the basis of minor contradiction with regard to manner of recovery of currency notes from the appellant, would not render improbable, the story of the prosecution. He further submits that the complainants clearly stated regarding demand in their complaint and in their Court testimony, which cannot be said to be contradictory but only suffering from minor discrepancy, which are not very material. In support of his submissions, learned counsel for the State relies upon the judgment in the case of **Niranjan Patnaik Vs. Sashibhusan Kar and another**[4].

9. I have considered the rival submissions made by learned counsel for the parties and perused the records.

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[4] AIR 1986 SC 819

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10. In the case of **Panalal Damodar Rathi Vs. State of Maharashtra**[5] the Supreme Court observed as under:-

> "8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon."......

The status of person offering bribe and the caution required while assessing his evidence implicating a Govt. servant was examined by the Supreme Court in its subsequent decision in the case of **M.O. Shamsudhin Vs. State of Kerala**[6], wherein, it was held as under :

> "12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous tests which are generally applied to a case of an approver. Though bribe-givers are generally treated to be in the nature of accomplices but among them there are various types and gradations. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a

[5] AIR 1979 SC 1191
[6] 1995 (3) SCC 351

giving the trap cannot succeed. When there is such a demand by the public servant from a person who is unwilling, and if to do public good approaches the authorities and lodges a complaint, then in order that the trap succeeds he has to give the money. There could be another type of bribe-giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a *particeps criminis* in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of 'accomplices' by reason of their being bribe-givers, in the first instance, the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances."

What therefore, emerges from the principles enunciated by the Supreme Court is that the complainant's evidence has to be scrutinized carefully and the Court has to consider the degree of complicity and then look for corroboration, if necessary, as a rule of prudence. The extent and nature of corroboration that may be needed in a case, may vary, having regard to the facts and circumstances.

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Evidence on record led by the prosecution, as also by the defence, therefore, is required to be scrutinized in order to find out as to whether the prosecution has been able to prove beyond reasonable doubt the demand, acceptance and recovery.

11. There is one more important and established circumstance of the case which warrants little more cautious approach to story of demand and the version of the two complainants, Mangal Prasad (P.W.4) and Laxmi Kumar Tiwari (P.W.5).

12. In para-15 of his cross-examination, Mangal Prasad (P.W.4), one of the complainant has admitted that on 18.10.1986, inspection of his school was carried out by A.D.I. Schools along with the appellant. He has admitted that the school had started and till that time, he and Laxmi Kumar Tiwari had not reached the school and, therefore, an explanation notice was issued to them for such absence during school hours . A suggestion that as the appellant had sought an explanation for such absence, threat was held out by this witness to the appellant, has been denied. A clear suggestion given to this witness in his cross-examination that due to the incident of inspection, which happened in the school, the appellant has been falsely implicated.

13. The other complainant Laxmi Kumar Tiwari (P.W.5) has also been suggested that he along with Mangal (P.W.4) has falsely implicated the appellant.

14. The details of the inspection carried out in the school on 18.10.1986 and its impact on the two complainants Mangal Prasad (P.W.4) and Laxmi Kumar Tiwari (P.W.5) has been reliably stated by one of the defence witness Kranti Prasad Tiwari (P.W.2). He has stated that in the year 1986, he was posted as Assistant District Inspector of Schools and it was his power and authority to carry out inspection of schools within his territorial jurisdiction. He has deposed that on 18.10.1986, on his instructions, the appellant had carried out

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inspection of Sadar Primary School, Champa where the teachers were found absent and the complainant Laxmi Prasad (P.W.5) arrived after 45 minutes, complainant Mangal arrived after 65 minutes. Due to complaint of the students also and that the teachers including the two complainants were not present, disciplinary action was initiated against teachers including the two complainants and by way of penalty, the date of absence was treated as leave without pay. The complainants were also warned of strict disciplinary action. He has further stated that as the two complainants carried impression that the appellant brought him to the school for inspection, they threatened the appellant to see him. In his cross-examination, the suggestion that he did not go for inspection of the school on 18.6.1986 has been denied and he has reiterated that he along with the appellant had gone for inspection.

15. In view of clear admission of Mangal Prasad (P.W.4) that the school was inspected on 18.10.1986 by the appellant along with Kranti Prasad Tiwari (P.W.2) and disciplinary action was taken against the two complainants, the evidence of Kranti Prasad Tiwari (P.W.2) in this regard is reliable and credible. The complaint in the present case has been lodged by Mangal Prasad (P.W.4) on 6.12.1986 i.e. within a period of less than 2 months from the date of inspection and disciplinary action.

16. Once, it is held as proved that disciplinary action was taken by the appellant and Inspector of Schools against the two complainants Mangal Prasad (P.W.4) and Laxmi Kumar Tiwari (P.W.5) on 18.10.1986, the story of demand, as stated in the complaint, lodged on 6.12.1986 that the appellant demanded bribe for disbursal of the amount of part final withdrawal from the GPF accounts of two complaints requires corroboration. It is important to note that the complaint was submitted by Mangal Prasad (P.W.4) under his signature, but stating therein that bribe of Rs.200/- was demanded from him and Rs.300/- from Laxmi, yet the complaint was not signed by Laxmi Kumar (P.W.5). This witness never approached the Vigilance

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Office nor was he present at the time of making complaint or preparation of pre-trap panchnama on 6.12.1986.

17. In the complaint dated 6.12.1986 (Ex.P-7), it has been stated that the two complainants submitted applications for part final withdrawal from their respective GPF accounts. Their applications were accepted and the amount has been withdrawn and kept for distribution by the appellant. It has been stated that for disbursal of this amount to the two complainants, the appellant demanded Rs.200/- from Mangal Prasad (P.W.4) and Rs.300/- from Laxmi Kumar Tiwari (P.W.5). According to this complaint, the demand was raised by the appellant from the two complainants after the amount was sanctioned, withdrawn and kept for disbursement. The date and place of complaint, however, has not been stated in the complaint.

However, in his Court statement, Mangal Prasad (P.W.4) has stated that in the month of November, 1986, he along with the other complainant-Laxmi Kumar, had submitted application for withdrawal of part final amount and at the time of submission of application, the appellant demanded bribe, in response to which, it was stated that they do not have money and when they receive part final, payment would be made. In this evidence also, no specific date of demand has been made, but there is serious contradiction with regard to time when demand was made, as stated in the complaint.

While in the complaint, the bribe is alleged to have been demanded after sanction of part final amount of GPF that it was kept for disbursal with the appellant, in the Court statement, the demand is alleged to have been made when application for withdrawal was submitted. In both the cases, no specific date has been stated. Mangal Prasad (P.W.4) has further deposed that on 5.12.1986, he came to know from Laxmi that the appellant is going to disburse the amount to them on 6.12.1986 and then he prepared a complaint on 5.12.1986 and collected Rs.300/- from Laxmi in that evening itself. He further states that next morning, he reached Bilaspur in the Vigilance Office and submitted application. This means that after the

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amount was sanctioned and available for disbursement with appellant, Mangal Prasad (P.W.4) did not approach and no sooner he learnt on 5.12.1986 from Laxmi Kumar Tiwari (P.W.5) that the amount is going to be disbursed on the next date, he immediately prepared complaint and rushed to the Vigilance Office to submit the same.

In his cross-examination, he has stated the news regarding disbursement of the part final amount on 6.12.1986 was given to him by Laxmi (P.W.3) but he did not state that they have been called with the bribe amount. He states that as the demand was made in the month of November, 1986, therefore, upon receipt of information that the amount is going to be disbursed on 6.12.1986, he did not meet the appellant. He fails to recollect the date on which such demand was made.

18. Thus the aforesaid evidence with regard to time and place of demand is contradictory and is, therefore, doubtful, rendering it unsafe to rely upon the story of demand without independent corroboration.

This is more so because even according to the two complainants, when Laxmi received information that on 6.12.1986, amount is going to be disbursed, he informed Mangal Prasad (P.W.4) and immediately thereafter a complaint was prepared even without going to collect the amount on 6.12.1986. Laxmi Kumar Tiwari (P.W.5) has not stated that the appellant informed that two complainants should come with the bribe amount for collection of their respective part final withdrawal amount on 6.12.1986. The statement of Mangal Prasad (P.W.4) that the demand was made in the month of November, 1986 itself is highly doubtful. He straightway prepared complaint and submitted it in the Vigilance Office renders story of demand doubtful and lays credence to the defence of false implication, as an act of vengeance, on account of the two complainants having been subjected to disciplinary action by the appellant & Inspector of School on 18.10.1986, an incident which

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took place within a period of less than two months before the date of submission of complaint.

19. The evidence of Laxmi Kumar Tiwari (P.W.5) regarding story of demand needs corroboration because he has deposed in the Court that he and Mangal Prasad (P.W.4) had submitted an application in November, 1986 and the appellant was not preparing their bills and used to demand bribe. According to him, the appellant had demanded Rs.200/- from Mangal and Rs.300/- from this witness. The evidence of this witness on the point of demand, is too vague. He submits that the appellant was not preparing bills. Present is a case where it is alleged that when the application was submitted, at that time, demand was made, as stated by Mangal Prasad (P.W.4) in his Court evidence. It is not a case of the prosecution nor is their any evidence on record to prove that the appellant was the Sanctioning Authority for clearance of part final amount from GPF. Though learned counsel for the appellant argues that it is the District Education Officer who was the Sanctioning Authority, there is no evidence on record nor any suggestion given to the witness by the appellant . But then it was the burden of the prosecution to prove that the appellant was the competent sanctioning authority in the matter of withdrawal from GPF account of a teacher. The only evidence which has come on record is that it was kept with the appellant for disbursal under the arrangement of disbursement of amount. Therefore, the testimony of Mangal Prasad (P.W.4) and Laxmi Kumar Tiwari (P.W.5) that at the time when application for part withdrawal was submitted, demand was raised, become highly doubtful, more so when the prosecution has not come with any evidence that such application was required to be submitted before the appellant and either he was sanctioning authority or was forwarding authority without whose recommendation, such demand could not be made. Even the sanction order has not been placed on record by the prosecution.

20. According to Mangal Prasad (P.W.4) and Laxmi Kumar Tiwari (P.W.5), after receipt of the amount of part final for disbursement and having

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come to know that the appellant is going to disburse the amount on 6.12.1986, they did not contact the appellant at all, so as to say that at that at that stage, before disbursement, the appellant demanded bribe. Therefore, the story narrated in the complaint that after receipt of the amount for disbursal, demand was raised by the appellant from the two complainants becomes highly doubtful and smacks of false implication.

21. Mangal Prasad (P.W.4) as well as Laxmi Kumar Tiwari (P.W.5), both have admitted that at the time when they had gone to meet the appellant on 6.12.1986 in connection with collection of their respective amount of part final, Jagdish Dewangan (D.W.1) was present in the office. Jagdish Prasad Dewangan (D.W.1) is also a Teacher. He has stated that two complainants- Mangal Prasad and Laxmi Kumar Tiwari, had come to the office for collecting their respective part final amount and that amount was paid to them also. While leaving, both of them took out money from their pocket and kept on the table. When the appellant stated that why this money is being given; they should take this money back and despite he having repeated, one of the two complainants murmured that revenge has been taken from one, now the other is to be seen and both of them left the office and soon thereafter Vigilance Team arrived. Shirt of the appellant was removed in which Rs.1600/-, the salary of the month, was recovered. The shirt and the hands both of the appellant were washed but the colour did not change. He has emphatically stated in his evidence that the appellant did not raise any demand and has further gone to the extent by saying that the appellant had never made any such demand from any teacher. He further deposes that the Vigilance Team has taken his statement also. It has been stated that at that time, 2 to 3 teachers were also present, whose statement were also taken by the Vigilance Officer. Those were the teachers of pay center at Champa had come to collect their money. In his cross-examination, he has denied suggestion of recovery of currency notes from his pocket. The evidence of this witness, whose presence is

admitted by both the complainants, is contradictory to the story of the demand and does not support the story of demand. Moreover, the prosecution has not examined the other teachers who were present in the office at the time of demand.

22. None of the prosecution witnesses including panch witnesses /shadow witnesses, who had gone along with the trap team, have either overheard any conversation between the appellant and the two complainants nor have seen the appellant collecting the amount of bribe from the two appellants.

23. In view of above discrepancies, material contradiction, improbabilities and likelihood of false implication, it would be highly unsafe to accept the prosecution story of demand of bribe by the appellant from the complainants without any reliable and cogent corroboration of demand.

24. In **C.K. Damodaran Nair v. Govt. of India, (1997) 9 SCC 477**, the Supreme Court had an occasion to consider the meaning and import of the word "obtained" used in Section 5(1)(*d*) of the Prevention of Corruption Act, 1947 [now Section 13(1)(*d*) of the Act, 1988], and it was held: (SCC p. 483, para 12)

> "*12.* The position will, however, be different so far as an offence under Section 5(1) (*d*) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused 'obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Sections 5(1)(*a*) and (*b*)—and not under Sections 5(1)(*c*), (*d*) or (*e*) of the Act.

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'Obtain' means to secure or gain (something) as the result of request or effort (*Shorter Oxford Dictionary*). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(*d*) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either 'acceptance' or 'obtainment'."

Relying upon the aforesaid decision, in another decision in the case of **A.Subair Vs. State of Kerala, (2009) 6 SCC 587,** in para 15 at page 591, Supreme Court held:

"15.....The legal position is no more *res integra* that primary requisite of an offence under Section 13(1)(*d*) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1) (*d*) cannot be held to be established."

Therefore, in order to come to the conclusion as to whether a case of conviction is made out, it is required to be seen as to whether the prosecution has proved beyond reasonable doubt, the demand and acceptance of bribe by the accused.

25. The prosecution story of acceptance of bribe amount by the appellant also does not inspire confidence and is doubtful from the attending circumstances and evidence on record.

26. Further more, it is improbable that while releasing the cash amount of Rs.4000/- and Rs.7,500/- to the two complainants, instead of deducting the bribe amount of Rs.200/- and Rs.300/- from the cash to be disbursed, the appellant would first get the money disbursed to them and then separately take cash of Rs.200/- and Rs.300/- from the two complainants. If the appellant was to collect the bribe amount while disbursing cash amount, most convenient and clandestine manner was to deduct Rs. 200/- and Rs.300/- from the cash which was actually paid to the two complainants on that date. The two complainants and Jagdish Prasad Dewangan (D.W.1) have stated and it is not dispute in that both the complainants had collected their respective amount of Rs.7,500/- and Rs.4000/-. Un-controverted testimony of Jagdish Prasad Dewangan (D.W.1) shows that in the office of the appellant, there were number of persons which included appellant, Jagdish Prasad Dewangan (D.W.1), two complainants and 2 to 3 more teachers. The evidence of Jagdish Prasad (P.W.1) that at the time of incident, there were 2-3 other teachers present is un-controverted. It, therefore, becomes highly improbable that in the presence of so many persons, the appellant would accept the amount of bribe in the manner stated by the complainants rather than adopting a more convenient and clandestine manner of collecting the amount of bribe by deducting the bribe amount at the time of disbursement. Jagdish Prasad Dewangan (D.W.1) has deposed that after having received their respective amount, the two complainants offered bribe which was refused by the appellant and then they left the amount on the table and left the office.

27. Recovery of bribe amount from the possession of the appellant is rendered doubtful because of contradictory version of the members of the trap team and the two complainants. Panch witness R.D. Diwan (P.W.7) has stated that upon search being made out by Hemraj Singh Parihar (P.W.9), tainted currency notes were recovered from the pocket of his long shirt (*kurta*) but then Hemraj Singh Parihar (P.W.9) the other panch witness, clearly denies having recovered the currency

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notes from possession of the appellant. He has stated in para-9 of his evidence that as to who had searched the appellant, he is not able to recollect and he has also stated that he is not able to correctly recollect whether tainted amount were recovered from pocket of appellant's shirt or the shirt itself was taken out from his body and then tainted currency notes were recovered. He denies recovery of Rs.1600/- (salary) from the pocket of the appellant.

Mangal (P.W.4) has come out with another story that SHO D.L.Markam, DSP searched the appellant and recovered the tainted currency notes. He also states that along with tainted currency notes, other currency notes were also recovered. However, the independent panch witnesses Hemraj Singh Parihar (P.W.9) does not talk of any other amount recovered from appellant. Jagdish Prasad Dewangan (D.W.1) stated that from the pocket of the appellant, Rs.1600/- of salary were found. In trap panchnama (Ex.P-4), it has been stated that pocket of the appellant was searched by Hemraj Sing Parihar (P.W.9). Thus, there is serious contradiction with regard to the person who searched the body of appellant and how currency notes were recovered. The testimony of independent panch witnesses does not support the complainants' story and the evidence of Jagdish Prasad Dewangan (D.W.1) proves that a cash amount of Rs.1600/- which was the appellant's salary, was found in his pocket. The trap proceeding were not conducted fairly because none of the members of the trap team nor the trap panchnama records that during search, cash amount of Rs.1600/- was also found in the pocket of appellant. Therefore, there is serious doubt whether the appellant had handled the currency notes or it was kept in his pocket and recovered therefrom.

28. In any case, once the story of demand has been rendered highly doubtful, lacking independent corroboration of demand or acceptance by any independent witnesses or dependable and established circumstances, doubtful recovery, as discussed above, cannot be made a basis to hold the appellant guilty of commission of offence.

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29. In the case of **V. Venkata Subbarao Vs. State** represented by Inspector of police, **A.P.**[7], it has been held that in order to prove the charges under Section 7, 13(1)(d) of the Prevention of Corruption Act, it is obligatory on the part of the prosecution to prove that the accused made any demand of bribe and the statutory presumption under Section 20 of the Prevention of Corruption Act that the accused has accepted the money towards bribe cannot be accepted unless and until it is proved that there was some motive or reward for which the demand of bribe was made and the demand of bribe is proved. In the case of **T. Subramanian Vs. State of T.N.**[8], it has been held that mere proof of receipt of money by the accused in absence of proof of demand and acceptance of money as illegal gratification would not be sufficient to establish the guilt of the accused. In the case of **Sita Ram Vs. State of Rajasthan**[9], the Supreme Court held that when story of demand of bribe by the accused appellant from the complainant was not proved and even story of demand of money by the complainant was not established beyond reasonable doubt, the rule of presumption that the money was accepted as bribe could not be resorted in order to convict the accused. In the case of **Suraj Mal Vs. State (Delhi Administration)**[10], it has been held that in case of bribery, mere recovery of money divorced from the circumstances under which it is paid, it would not sufficient to convict the accused when the substantive evidence in the case, is not reliable. In **Jagdish Chandra Makhija Vs. State of Madhya Pradesh**[11], it has been held that in a trap case when initial part of the story of demand and offer is found to be untrustworthy, testimony of the complainant cannot be accepted.

30. View taken in the case of ***Suraj Mal*** (supra), was reiterated in the case of **C. M. Girish Babu Vs. CBI, Cochin, High Court of Kerala**[12],

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[7] (2006) 13 SCC 305
[8] (2006) 1 SCC 401
[9] (1975) 2 SCC 227
[10] AIR 1979 SC 1408
[11] 1990 M.P.L.J. 239
[12] (2009) 3 SCC 779

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holding that mere recovery of tainted 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. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of reliable evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

31. The submission of learned counsel for the State that presumption is required to be drawn of accepting the bribe amount as illegal gratification, deserves rejection as the demand itself has not been proved. The presumption under Section 4 of the Act of 1947 could be drawn only upon proof of demand and acceptance and not otherwise.

32. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is liable to be set aside and is hereby set aside. Bail bonds stand discharged.

Sd/-
Manindra Mohan Shrivastava
Judge

Praveen