

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

Judgment delivered on: 9th February, 2016

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CRL.A.No.1006/2002

SATPAL SINGH

..... Appellant

Represented by: Mr. Raj Kumar, Mr. Abhishek
Sonkar, Mr. Harsh Chaudhari and
Mr. Ashok Kumar, Advocates.

Versus

STATE OF DELHI

..... Respondent

Represented by: Mr. Kamal Kumar Ghei,
Additional Public Prosecutor for
the State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. This appeal is directed against the judgement dated 29.11.2002 passed by the learned Special Judge, Delhi, in C.C. No.86/1999, convicting the appellant under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter to be referred as 'PC Act') and the order on sentence dated 30.11.2002 directing him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, on each count respectively. In default of payment of fine, he shall further undergo rigorous imprisonment for a period of four months.

2. The case of the prosecution is that appellant Satpal Singh, Head Constable in Delhi Police, Vigilance Branch, was functioning as a Reader to Mr.B.L.Bhardwaj, ACP/Vigilance, PHQ, who was conducting an enquiry into the allegations of acceptance of Rs.20,000/- from one Ram Kumar (PW3), i.e., complainant of this case by one HC Suraj Bhan for getting PW3 employed in Delhi Police. As alleged, on 24.11.1995, the appellant told PW3 and his wife Saroj (PW7) to give him Rs.1,000/- as bribe for getting the said enquiry decided otherwise the same would be decided against him. Accordingly, asked him to meet on 25.11.1995 with money and some documents in front of Richi Rich Hotel at Ring Road, Wazir Pur, Delhi, at 6.00 PM. As PW3 was not willing to give bribe to the appellant so, on 25.11.1995 at about 4.00 PM, he went to the office of Anti-Corruption Branch (for short 'ACB') and lodged his complaint Ex.PW2/A stating therein the afore-noted facts.

3. Thereafter, it was decided to lay a trap for the appellant. Accordingly, a trap team under supervision of Inspector Rajinder Singh Manku (PW4), panch witness R.C. Antil (PW2), complainant (PW3) and other officers was constituted. After completing all necessary formalities for trap, at about 5.00 PM, the trap team left for the spot, i.e., Richi Rich Restaurant, in an official vehicle and reached there at about 5.45 PM. Then, complainant and the panch witness R.C. Antil (PW2) were sent ahead to meet the appellant. Other members of the raiding team

took their positions around that place. On noticing the pre-decided signal given by the panch witness, Inspector Rajinder Singh Manku (PW4) and other members of the raiding team rushed to the spot and after disclosing his identity, challenged the appellant that he had accepted Rs.500/- as bribe from the complainant, which he was holding in his hand. On which the appellant became perplexed and threw the tainted notes on the ground.

4. Further case of the prosecution is that on the instruction of Inspector Rajinder Singh Manku (PW4), panch witness (PW2) lifted the tainted notes Ex. P-1 to P-5 from the ground and tallied their numbers with the numbers already noted down in the pre-raid report Ex.PW2/B. The currency notes were seized vide memo Ex. PW2/C and the wash of both hands of the appellant was taken in separate Sodium Carbonate solution, which turned pink. On the basis of rukka Ex. PW4/B, sent by PW4, FIR in question Ex. PW4/C was registered. Further investigation was handed over to Inspector Ranjit Iqqa (PW5) at the spot alongwith custody of the appellant and seized the articles. Thereafter, a charge sheet was filed in the Court for offences punishable under Sections 7/13 PC Act, after taking sanction Ex.PW1/A as required under Section 19(1) of P.C. Act.

5. The learned Special Judge framed charges under Sections 7 and 13(1)(d) read with Section 13(2) PC Act against the appellant, to which he pleaded not guilty and claimed trial. The prosecution

examined as many as nine witnesses in support of its case. Vide impugned judgement and order of sentence, the learned Special Judge found the appellant guilty for the offences under Sections 7 and 13(1)(d) read with Section 13(2) PC Act and sentenced as stated above. Hence, this appeal.

6. The point to be considered in this appeal is whether the conviction and sentence passed by the learned Special Judge, Delhi, is sustainable?

7. Mr. Raj Kumar, learned counsel appearing on behalf of the appellant advanced his arguments on the following grounds:

(i) the allegations of demand of bribe are false and fabricated to get favourable result in enquiry from the ACP Vigilance;

(ii) neither there is any proof of alleged visit of the complainant (PW3) and his wife (PW7) in the office of ACP, Vigilance, on 24.11.1995 nor the alleged demand made by the appellant outside the office of ACP, Vigilance, on 24.11.1995 was proved;

(iii) mere possession of the tainted money without demand is not a conclusive proof for an offence under the Act especially when recovery thereof was not effected from the person of the appellant;

- (iv) there are discrepancies in the evidence of PWs 2, 3, 4 and 7 regarding the demand and receipt of money;
- (v) the appellant has given a satisfactory explanation for the positive reading of his fingers in the phenolphthalein test;
- (vi) there is no explanation on behalf of the prosecution as to why Mr. B.L. Bhardwaj, ACP Vigilance, was not examined by the Investigating Officer of the case;
- (vii) when Mr. Vijay Chauhan, ACP (ACB), was present on that very day, why he himself had not conducted the investigation in the complaint, which is mandated as per the provisions of Section of 17 PC Act and;
- (viii) neither Raiding Officer (PW4) nor Investigating Officer (PW5) sought his permission before laying raid in the present case.

8. On the contrary, Mr. Kamal Kumar Ghei, learned Additional Public Prosecutor, submitted that PWs 2, 3 and 7 proved the alleged demand and receiving of tainted money; there is no explanation as to why the appellant was present at the spot; the phenolphthalein test answered positive for the appellant and that the appellant had not examined any witness in his defence. Therefore, the learned Trial Court had rightly convicted the appellant.

9. I have heard the learned counsel for the parties at length and have perused the record.

10. Before dealing with the issues noted above, it would be relevant to examine the testimony of PW3.

11. The complainant (PW3) deposed that in July, 1994, his Bua's son (cousin brother) Suraj Bhan, employed as a Head Constable (Police Control Room), Delhi, had taken a sum of Rs.20,000/- from him for getting PW3 recruited in Delhi Police as a Driver, but till May/June, 1995, Suraj Bhan could not get him recruited in the Police, therefore, PW3 asked him to return the money, but he refused to return the same. Therefore, PW3 made a complaint against Suraj Bhan on 30.06.1995 to the Commissioner of Police and other Officers. Accordingly, an enquiry was initiated against said Suraj Bhan and Mr. B.L. Bhardwaj, ACP, Vigilance, was appointed as the Enquiry Officer.

12. He further deposed that appellant HC Satpal Singh introduced himself as Reader to ACP Vigilance, and during the course of enquiry, appellant recorded his statement as well as statement of his wife (PW7) and asked for certain documents from him on 24.11.1995, however, he told that the said documents were not available with him at that time. Upon which, ACP Bhardwaj asked PW3 to hand over the papers to the appellant on 25.11.1995 at the bus stop in front of Richi Rich Restaurant at 6.00 PM. Thereafter, PW3 and his wife (PW7) came out of the room,

appellant followed him and told to bring Rs.1,000/- on 25.11.1995 at 6.00 PM at Richi Rich Restaurant.

13. PW3 further deposed that on 25.11.1995, he brought the relevant papers relating to the registry of his house and could arrange Rs.5,00/- and then after lunch went to Anti Corruption Branch (ACB) office and lodged his compliant Ex.PW2/A. PW3 produced five GC notes of denomination of Rs.100/- each, i.e., Ex. P-1 to P-5. The serial numbers of the same were noted down in pre-raid report Ex.PW2/B. The notes were treated with phenolphthalein powder by PW4 and he also gave a practical demonstration to PW3 and the panch witness. The tainted GC notes were then returned back to the complainant, who kept the same in the upper pocket of his shirt. The instructions to PW3 were that he had to hand over the tainted GC notes to the appellant only on specific demand; he had to take PW2 along with him so that PW2 could see and overhear the conversation between PW3 and the appellant while the bribe transaction was being completed. PW2 was also instructed to give signal to the raiding party by scratching his head with his hand on being satisfied that the appellant had accepted the bribe money. Thereafter, at about 5.00 PM, the trap team left for the spot, i.e., Richi Rich Restaurant, in an official vehicle and reached there at about 5.45 PM. Then, complainant and the panch witness came at the bus stop near the said Restaurant. Members of the raiding team followed them and took convenient positions around that place.

14. PW3 also deposed that appellant was standing at the bus stop, he did *Parnam* to the appellant and touched his feet. The appellant asked PW3 whether he had brought the papers, PW3 took out the papers from his pocket and gave the same to the appellant, who checked the same for about 10 to 12 minutes and then enquired about the identity of panch witness (PW2) from PW3, who introduced PW2 to the appellant as son of his acquaintance. Thereafter, the appellant took PW3 towards Azadpur, panch witness followed them but stopped on the way at a distance of about 6-7 steps as appellant objected to his following. PW3 further deposed that appellant then demanded money and asked how much money he had brought to which he told the appellant that he could arrange Rs.500/- with difficulty and took out the currency notes from his shirt pocket and gave the same to the appellant, who had accepted the same in his left hand and put the papers in his right side pant pocket and thereafter, counted the tainted noted with his both hands.

15. Thereafter, PW2 gave the pre-arranged signal, on which members of raiding party rushed at once and apprehended the appellant, who threw the currency notes on the ground. PW3 further stated that on instructions of the Raiding Officer, PW2 lifted the tainted notes from the ground and checked their numbers, which tallied with the numbers already noted in pre-raid report Ex. PW2/B. GC notes Ex. P-1 to P-5 were seized vide memo Ex.PW2/C. Thereafter, washes of both hands of the

appellant was taken in separate Sodium Carbonate solution, which turned pink.

16. Perusal of the testimony of PW3 makes it clear that he had categorically stated that on 24.11.1995 when he alongwith his wife (PW7) visited the office of Mr. B.L. Bhardwaj, ACP Vigilance their statements were recorded by the appellant and asked for certain documents, whereupon he told that the said documents were not available with him at that time. Upon which, ACP asked PW3 to hand over the papers to the appellant on 25.11.1995 at the bus stop in front of Richi Rich Restaurant at 6.00 PM which was also supported by wife of PW3, Ms. Saroj (PW7). Hence, it is the said ACP who directed the appellant to remain present at the spot for the purpose of receiving the documents relating to the enquiry. Thus, contention of the learned APP as to why the appellant was present at the spot is fully explained.

17. It is quite astonishing that the officers of ACB conducting investigation for the offence under the Prevention of Corruption Act and laying raid etc. had not even bothered to examine the said ACP to ascertain the truth of the statements of the complainant and his wife and despite having specific allegations against ACP that he did not use to write enquiry correctly without taking money. Admittedly, there is neither any record nor any statement of any officer or staff of the Vigilance Department to prove and

support that PW3 and PW7 visited the office of the Vigilance on 24.11.1995 and the appellant had recorded their statements. Thus, the Investigating Agency blindly relied upon the complaint Ex. PW2/A made by PW3 as they did not even try to call for the relevant documents and statements establishing whether PW3 and PW7 were called by aforesaid ACP on 24.11.1995 in connection with the enquiry or that they had actually visited the said office or not.

18. It is categorically submitted by PW3 and PW7 that the appellant demanded bribe from them to get favourable result in enquiry from the ACP Vigilance. It is worth mentioning that the said ACP was conducting the enquiry and not the appellant, therefore, the appellant was unable to influence the inquiry, in any manner, which was being conducted by the ACP Vigilance. Even the appellant did not ask the complainant to produce the relevant documents and to come to the spot, however, it was the ACP who asked for the documents and directed the appellant to meet the complainant at the spot for receiving the documents.

19. As observed above, the Investigating Agency, for the reasons best known to it, chose not to examine the said ACP, the main string of the whole complaint.

20. So far as the demand of bribe is concerned, the prosecution was to establish its case beyond reasonable doubt that the

appellant demanded the bribe on 24.11.1995 and 25.11.1995 from the complainant, who in turn accepted the same on 25.11.1995.

21. Perusal of the testimonies of PW3 shows that PW3 had categorically stated in his statement under Section 161 Cr.P.C. as well as in his statement before the Court that the appellant demanded bribe of Rs.1,000/- from him to get the favourable result of the enquiry. Whereas, PW7, wife of the complainant deposed before the police in her statement recorded under Section 161 Cr.P.C. as well as before the trial Court that appellant demanded Rs.5,000/- from her husband on the pretext that ACP was to retire soon and some enquiry cases were pending and that the said ACP did not use to write enquiry correctly without taking money. PW7 further deposed that thereafter appellant asked them to bring Rs.1,000/- near Richi Rich Restaurant on 25.11.1995 whereas in her statement under Section 161 Cr.P.C., she specifically stated that appellant had taken Rs.1,000/- from her husband on 24.11.1995 itself.

22. Moreover the panch witness (PW2) did not support the prosecution case on material points, therefore, he was cross-examined by the learned Additional Public Prosecutor. During his cross-examination, PW2 specifically deposed that the appellant had not demanded money from the complainant within his hearing and he did not state so to the police. This fact finds corroboration from the cross-examination of Raiding Officer (PW4), who

deposed that panch witness told that he could not hear the conversation between the appellant and the complainant, accordingly PW4 recorded the same in the post-raid report Ex.PW2/G. Thus, there is no corroborative evidence produced by the prosecution for such demand.

23. As per the prosecution case, the alleged amount of demand was for getting the favourable result of the enquiry from the ACP Vigilance, however, it is an admitted fact that the said enquiry was being conducted by ACP Vigilance and the appellant being Head Constable could not influence the inquiry, in any manner. Moreover, the appellant did not ask the complainant to produce the relevant documents and to come to the spot, it was the ACP who asked for the documents and directed the appellant to meet the complainant at the spot for receiving the documents. Thus, one of the essential ingredients of Section 7 PC Act, regarding motive for accepting illegal gratification of Rs.500/- has not been proved by the prosecution beyond reasonable doubt.

24. As regards the contention that appellant has given a satisfactory explanation for the positive reading of his fingers in the phenolphthalein test, the learned counsel for the appellant has drawn the attention of this Court to the testimonies of the panch witness (PW2), complainant (PW3) and the Raiding Officer (PW4).

25. It is relevant to narrate the testimonies of the aforesaid witnesses in verbatim.

26. In his examination-in-chief, PW2 stated as under:-

“The tainted GC notes were returned to the complainant to kept the same in left upper front pocket of his shirt.”

“Complainant wished the accused with “Namaste” and showed him some papers to the accused after taking those papers out of his pocket.”

“Complainant took out the money from the pocket and gave the money to the accused who accepted the money in both his hands”

27. Even the complainant (PW3) in his examination-in-chief admitted as under:-

“The tainted GC notes were returned to me and I kept the same in the upper pocket of my shirt.”

“I took out the papers out of my picket and gave the same to the accused.”

“I took out the GC notes from my pocket and gave the same to him (accused).”

28. The Raiding Officer (PW4) stated that:-

“Tainted GC notes were returned to complainant who kept the same in the upper pocket of his shirt.”

29. Though in his cross-examination, PW3 stated that he kept the sale deed consisting of 12 pages after folding it inside his shirt

by opening the buttons. Also stated that he kept the tainted GC notes of Rs.500/- Ex. P-1 to P-5 in his upper left side shirt pocket by his right hand. However, panch witness had categorically stated that after greeting the appellant, the complainant handed him over the documents after taking out the same from his pocket.

30. From the above discussion, the possibility that the documents and the tainted notes were kept in the same pocket by the complainant cannot be completely ruled out. Therefore, in the absence of cogent evidence on this point and considering the discrepancies crept out in the testimonies of the material witnesses of the prosecution, the contention of the learned counsel for the appellant that phenolphthalein powder came to the hands of the appellant through the documents which were handed over by the complainant at the spot do find substance.

31. As the learned counsel for the appellant urged that mere possession of the tainted money without demand is not a conclusive proof for an offence under the Act especially when recovery thereof was not effected from the person of the appellant.

32. Before advertng to the factual matrix of the case on this point, it would be relevant to note the proposition of law on this subject.

33. For easy reference, Section 20 PC Act is reproduced as follows:-

"20. Presumption where public servant accepts gratification other than legal remuneration:-(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause(b) of sub section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable things 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 the valuable things, 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.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give 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.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-

sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn".

34. In the case of ***Suraj Mal Vs. State (Delhi Administration) (1979) 4 SCC 725***, it was held by the Supreme Court that mere recovery of money, divorced from the circumstances under which it is paid, is not sufficient to convict the respondent when the substantive evidence in the case is not reliable. Mere recovery of money cannot prove the case of the prosecution against the respondent in the absence of any instance to prove the payment of bribe or to show that the respondent voluntarily accepted the money knowing it to be bribe.

35. In the case of ***C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779***, the Supreme Court observed that:-

"19. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratification.

20. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is

not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.....”

36. In the case of ***Banarsi Dass Vs. State of Haryana, 2010 (4) SCC 450***, the Supreme Court observed as under:-

“20. It is settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in the regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence.....”

37. In the case of ***Prem Singh Yadav Vs. Central Bureau of Investigation, 178 (2011) DLT 529***, the Coordinate Bench of this Court noted that testimonies of PWs 2, 3, 5 and 6 were not reliable and that the defence version had created some doubt in the prosecution case, accordingly held that recovery of tainted money alone was not sufficient to record conviction. Consequently, the accused was given the benefit of doubt.

38. Coming back to the case in hand, as per the prosecution case when Inspector Rajinder Singh Manku (PW4) challenged the appellant that he had accepted Rs.500/- as bribe from the complainant, which he was holding in his hand, the appellant became perplexed and threw the tainted notes on the ground. Further case of the prosecution is that on the instruction of PW4,

panch witness (PW2) lifted the tainted notes Ex. P-1 to P-5 from the ground and tallied their numbers, which is also supported by the complainant (PW3). Whereas, PW2 had categorically deposed that the same was lifted by some other member of the raiding party. It is also the case of the prosecution that the tainted notes were recovered from the ground and not from the person of the appellant. Moreover, there are contradictions in the deposition of PW2, PW3 and PW4 as to who lifted the tainted money from the ground as noted above.

39. Considering the above facts, it can safely be inferred that PW2 was neither the eyewitness to the demand nor to the acceptance of money by the appellant from the complainant (PW3). Be that as it may, the fact remains that there is no witness corroborating the demand and recovery of the tainted money, however, the same was not recovered from the person of the appellant.

40. In so far as the offence under Section 7 PC Act is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under this Section unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. It is also settled law that where it is possible to have both the views, one in favour of the prosecution and the other in favour

of the accused, the later should prevail. The above position has been succinctly laid down in several judgments by the Supreme Court.

41. In the case of ***C.M. Sharma Vs. State of A.P. (2010) 15 SCC 1***, the Supreme Court observed as under:-

“10.....Reference has been made in this connection to a decision of this Court in the case of Panalal Damodar Rathi v. State of Maharashtra (1979) 4 SCC526 and which attention has been drawn to paragraph 9 thereof which reads as follows:

“9. It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and that the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to by the panch witness PW 3. According to panch witness on the complainant asking the appellant whether his work will be achieved, the appellant assured him in the affirmative and the appellant told the complainant what was to be given to the second accused. It is significant that PW 3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by PW 3 to refer to any mention of money by the appellant would show that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it

has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on.”

11. Yet another decision on which reliance is placed is the decision of this Court in the case of Meena (Smt.) W/O Balwant Hemke v. State of Maharashtra (2000) 5 SCC 21 in which it held as follows:

“The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case. Even the other panch witness, PW 5 categorically admitted that even as the Inspector of Police, PW 6 arrived, the appellant gave the same version that PW 1 tried to force into her hands the currency note which she turned down by pushing it away, and his evidence also does not lend credibility to the case of the prosecution. The contradictory version of PW 1 of the very incident when earlier examined in departmental proceedings renders his testimony in this case untrustworthy. PW 3, the Head Copyist, seems to be the brain behind all this and that PW 1 as well as Jagdish Bokade appear to be working as a group in this affair and despite the blunt denial by PW 3, his closeness to PW 1 and Jagdish Bokade stands well substantiated. All these relevant aspects of the case seem to have been completely overlooked by the courts below.”

42. Therefore, the very foundation of the prosecution case is shaken to a great extent. The question as to the handing over of any bribe and recovery of the same from the accused should be

considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. As per the complainant the demand was made by the appellant for deciding the enquiry favourably, however, it is established that the appellant being Head Constable was not concerned in any manner and could not influence the enquiry, being conducted by Mr. B.L. Bhardwaj, ACP Vigilance, and there is no explanation as to why the said ACP who played the key role and against whom the complainant (PW3) and his wife (PW7) had made specific allegations was not examined by the prosecution. Thus, in this background, I have no hesitation to say that there is lacunae in the investigation, so, the Court will view the allegation of payment of the bribe to and recovery thereof with suspicion.

43. Generally, the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

44. In the case of *Upendra Pradhan Vs. State of Orissa*, 2015VI AD (S.C.) 151, the Supreme Court observed that:-

“10. Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets Page 14 14 stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court.

xxx xxx xxx xxx xxx

*33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery **but benefit***

thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld. (Emphasis Supplied)”

45. Therefore, it is well settled by a catena of decisions of this Court as well as of the Supreme Court that mere possession of tainted money is not enough to prove the guilt of the accused in the absence of proof of demand and acceptance of money as illegal gratification.

46. Reverting back to the case in hand, I note that when the tainted money is not seized from the appellant, the burden is heavily upon the prosecution to prove that there was a demand by the appellant and the same was met out by the complainant and the tainted money was in fact received by the appellant.

47. Moreover, as per the prosecution case, recovery of the tainted money from the ground has been effected in the presence, amongst others, of the panch witness as the complainant (PW3) and the Raiding Officer (PW4) have specifically deposed that the tainted money scattered on the ground was lifted by the panch witness however, PW2 does not support the prosecution case and is categorical in his deposition that the same was lifted by some other member of the raiding party. The fact remains that there is no witness corroborating the recovery of the tainted money from the ground. Thus, the prosecution has failed to prove its case beyond reasonable doubt.

48. In view of the above discussion and the facts and circumstances of the case, the appeal is allowed and the impugned conviction and sentence orders passed by the learned Special Judge in C.C. No.86/1999 are hereby set aside.

49. The sentence of the appellant has been suspended vide order dated 03.01.2003 till the pendency of this appeal. Accordingly, the appellant is set at liberty forthwith. The bail bond, if any, executed by him, stands cancelled.

50. Trial Court Record be sent back to the trial Court.

**SURESH KAIT
(JUDGE)**

FEBRUARY 09, 2016
Sb/jg