

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

Date of Decision: 23rd May, 2016

+ CRL.A. 639/2011
DINESH CHAND GUPTA Appellant
Through Mr. D.N. Goburdhan and Mr. Vivek
Chandra Jaiswal, Advocate

versus

STATE Respondent
Through Mr. Akshai Malik, APP

+ CRL.A. 656/2011
SUDHIR KUMAR Appellant
Through Mr. K.B. Andley, Sr. Advocate with
Mr. M. Shamikh, Advocate

versus

STATE Respondent
Through Mr. Akshai Malik, APP

%

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. These criminal appeals are directed against the impugned judgment dated 10th May, 2011 in CC No. 64/2011 arising out of FIR 61/2003 u/s 7/13 Prevention of Corruption Act, 1988 (hereinafter referred to as PC Act) and

Section 120 B IPC registered at Police Station Anti Corruption Branch, Delhi passed by learned Special Judge-07, (Central), Delhi vide which Dinesh Chand Gupta(A-1) was convicted for offence u/s 7 and 13(2) r/w Section 13(1)(d) of PC Act and accused Sudhir Kumar(A-2) was convicted for offence u/s 7 of PC Act. Vide order dated 11th May, 2011, A-1 was sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.10,000/- for offence punishable u/s 7 of the PC Act and in default to undergo simple imprisonment for a period of three months. He was further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.10,000/- for offence punishable u/s 13(2) r/w Section 13(1)(d) of PC Act, in default to undergo simple imprisonment for a period of three months. Both the sentences were ordered to run concurrently. A-2 was sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.10,000/- for offence punishable u/s 7 of PC Act in default to undergo simple imprisonment for a period of three months.

2. Aggrieved by the decision of learned Special Judge, separate appeals bearing No. 639/2011 and 656/2011 were preferred by the appellants. Since both the appeals arise out of a common judgment, hence they are taken up together.

3. The case of the prosecution as unfolded during the trial is that the complainant-Ajay Gupta was employed as an accountant earlier in Delhi Automobiles situated in Jhandewalan and was terminated from his service in the year 1985 for which he filed a case in the Labour Court which was decided in his favour and order for issuance of Recovery Certificate was passed by the Assistant Labour Officer on 23rd June, 2003. Since the said Certificate was not issued, complainant met A-2, the dealing Clerk in his office who demanded bribe of Rs.1000/- for delivering the said Recovery Certificate. The first instalment of Rs.500/- was to be paid on 9th December, 2003. However, he was against giving bribe so he approached the office of Anti Corruption Branch and gave a written complaint regarding the demand of bribe by A2 from him. The said written complaint was given to PW8-Inspector B.S. Yadav in the presence of PW4 Sh. Ghanshyam.

4. The complainant had brought 5 government currency notes (hereinafter referred to as 'G.C. Notes') in the denominations of Rs.100/- each and handed over the same to Inspector B.S. Yadav who noted down the serial number of the said G.C. Notes. Thereafter phenolphthalein powder was applied to the said GC Notes and the same were recorded in the pre-raid proceedings and its effect was demonstrated. The tainted GC Notes were given to the complainant-Ajay Kumar who kept the same in left pocket of

his jacket. As per instructions, panch witness- Ghanshyam-PW4 was directed to remain close to the complainant-Ajay Kumar to overhear conversation between the complainant and the appellant. He was further instructed to give a signal to the raiding party by hurling his hand over his head when the bribe amount had actually been given by the complainant.

5. At about 12:30 pm, Inspector BS Yadav along with complainant-Ajay Gupta, panch witness-Ghanshyam, Inspector M.A. Salam, SI Vijay, Constable Raju and other members of the raiding party left Anti Corruption Branch for 5, Shamnath Marg in a Govt. vehicle and reached there at about 12:45 pm. The complainant and panch witness were reminded about the instructions given to them in the pre-raid proceedings and were sent inside 5 Shamnath Marg. Inspector BS Yadav along with members of raiding party followed them and took suitable positions. At about 1:00 pm, on receipt of pre determined signal from panch-witness, Inspector B.S. Yadav along with raiding team reached inside the office of the Labour Court and on inquiry, panch witness informed him that A-1 had demanded and accepted the bribe amount of Rs.500/- from his left hand and kept the same in his left pant pocket. The raid officer disclosed his identity as Inspector of Anti Corruption Branch. On instructions of raiding officer, GC Notes of Rs.500/- were recovered from the pant pocket of A-1. The serial number of the

recovered GC notes were got compared with those notes in pre-raid proceedings. The wash of left side pant pocket of A-1 was taken in colourless solution of Sodium Carbonate which turned into pink. Post-raid proceedings Ex.PW4/D were done. A-1 was arrested. After completing investigation, charge sheet was submitted against both the appellants.

6. Prosecution examined as many as 12 witnesses to substantiate its case. All the incriminating evidence was put to both the appellants while recording their statement u/s 313 Cr.P.C. A-1 admitted that on 9th December, 2003, he was employed as UDC in Labour Department and was posted in the office of Labour Commissioner, 5, Shamnath Marg, Delhi, however, he denied the case of prosecution. According to him, he never demanded, accepted or obtained any bribe from the complainant as there was no occasion or opportunity to demand any bribe from him. The alleged tainted money is planted upon him by the officials of the Anti-Corruption Branch. All the proceedings were conducted in the Anti Corruption Branch and no documents were prepared at the spot. He was apprehended and was immediately taken to Anti-Corruption Branch and thereafter in the lock up of police station Civil Lines.

7. A-2 admitted that he was working as UDC, Labour Department on 9th December, 2003 and was posted in the office of Labour Commissioner, 5,

Shamnath Marg. However, he denied having demanded any illegal gratification from the complainant and submitted that he was sick on 8th December, 2003 and was advised rest by the doctor from 8th December, 2003 to 19th December, 2003. Medical certificate and fitness certificate were submitted by him in the office when he joined the office.

8. A-1 examined D1W1-Mahesh Chand in support of his defence whereas A2 examined DW1 Jagdish Prasad and DW2 Naresh Kumar Sharma to prove that he was on medical leave from 8th December, 2003 to 19th December, 2003.

9. After appreciation of evidence and considering the submissions made by the counsel for the parties, the learned Trial Court, vide impugned judgment held both the appellants guilty of the offence and sentenced them accordingly. Feeling dissatisfied, present appeals have been preferred by them.

10. Learned counsel for the appellant Dinesh Chand Gupta submitted that the complaint made by the complainant to the Anti-Corruption Branch was against Sudhir Kumar, however, Sudhir Kumar was transferred one day prior to this complaint. Moreover, complainant was not examined as he had died during the interregnum. It was not the part of the job of the appellant to issue recovery certificate. Moreover, he had joined the office only on the

date of incident. Even as per the testimony of the prosecution witnesses, there was no demand from the side of the appellant and no recovery was affected from him. In fact, the same was planted upon him which is apparent from the fact that there is inconsistencies in the testimony of panch-witness who deposed that he took money from right hand and put the same in the right pocket whereas according to the Investigating Officer of the case, he dipped left hand in the solution and the left pocket of his pant. In view of these inconsistencies, it is not proved that any recovery was effected from this appellant. In any case, demand and recovery are *sine qua non* for proving the offence under the Prevention of Corruption Act and in the instant case, absolutely no evidence has come to show that any demand was made by this appellant.

11. Reliance was placed on *State of Maharashtra vs. Dhyaneswar Laxman Rao Wankhede*, 2009(4) CC Cases (SC) 31; *A. Subair vs. State of Kerala*, 2009 VII AD (SC) 117; *L.K. Jain Vs. State*, 2005 (3) JCC CC 1677; *Subhash Parbat Sonvane vs. State of Gujarat*, 2002 CrI. LJ 2787; *Raghubir Singh vs. State of Punjab*, (1976) 1 SCC 145; *Suraj Mal vs. The State (Delhi Administration)*, AIR 1978 SC 1408; *Pradeep Narayan Madgaonkar and Ors. vs. State of Maharashtra*, (1995) 4 SCC 255.

12. Learned counsel for the appellant Sudhir Kumar submits that no evidence has come on record to connect this appellant with the crime. The only allegation qua him is regarding the demand of illegal gratification which also is not proved as the complainant was the best person to depose about the same but he was not examined. Moreover, the allegations in the complaint are vague as he does not disclose as to when that money was demanded. Further, there was no occasion for this appellant to demand any illegal gratification because he was transferred from the concerned department vide transfer Order dated 3rd December, 2003 and was relieved from his office on 8th December, 2003. He was on medical leave from 8th December to 19th December, 2003. The prosecution relies upon the testimony of the panch witness as well as Investigating Officer of the case in order to prove the complaint, however, as per their own version, a written complaint was brought by the complainant which was handed over to the Investigating Officer of the case. Merely on the basis of a complaint handed over by the complainant which was exhibited in the statement of panch witness in whose presence no demand was made by the appellant, factum of demand of illegal gratification by the appellant is not proved. The Investigating Officer admitted in cross-examination that he did not make any inquiry about the authenticity of the complaint. Apart from the

complaint Ex. PW4/A, there is no other incriminating material to connect the appellant with crime. As such, the prosecution has miserably failed to bring home the guilt of this appellant. It is further submitted that the departmental inquiry was conducted against the appellant in which he was duly exonerated.

13. Reliance has been placed on *Mangru Ram vs. The State (NCT of Delhi)*, CrI. A. 186/2011 decided on 8.11.2012; *Shahabuddin (Mohd.) vs. State (GNCT) of Delhi*, 2012 VII AD (DELHI) 711.

14. Per contra, learned Additional Public Prosecutor for the State submits that the complainant could not be examined since he has died. Since the recovery of money was affected from the possession of the appellant-Dinesh Kumar Gupta, as such, the burden shifts upon him to prove as to how the recovery was affected from his possession, however, no such explanation has been given by him. Moreover, his own witness D1W1-Mahesh Chand has deposed that the complainant took Dinesh Gupta with him outside the room. According to the panch witness, the appellant told the complainant that he will do his job. The money was handed over by the complainant which was kept by the accused in his pocket, as such, demand and acceptance of illegal gratification stands proved. The impugned judgment does not suffer from any infirmity which calls for interference.

15. I have bestowed my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

16. Section 7 of the Act is as follows -

7. Public servant taking gratification other than legal remuneration in respect of an official act. - *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or government company referred to in clause) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.*

17. Section 13(1)(d) and (2) reads -

13. Criminal misconduct by a public servant. ; (1) *A public servant is said to commit the offence of criminal misconduct, -*

(a)

(b)

(c)

(d) if, he, -

(i) *by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*

(ii) *by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*

(iii) *while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or*

(e)

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

18. The essential ingredients of Section 7 are: (i) that the person accepting the gratification should be a public servant; (ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.

19. Insofar as Section 13(1)(d) of the Act is concerned, its essential ingredients are: (i) that he should have been a public servant; (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

20. In the case of ***C.K. Damodaran Nair v. Government of India***, 1997 Cri LJ 739, Hon'ble Supreme Court had an occasion to consider the word "obtained" used in Section 5(1)(d) of the Prevention of Corruption Act, 1947 (now Section 13(1)(d) of Act, 1988), and it was held:-

"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 Section 5(1)(a) and (b) -- and not under Section 5(1)(c), (d) or (e) of the Act. "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"."

21. 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.

22. The core question that must be answered in these appeals is: whether there is sufficient legal evidence on record to bring home the guilt of the appellant for the offence under Sections 7 and 13(1)(d) read with 13(2)?

23. Pertinently, Ajay Kumar (complainant) could not be examined by the prosecution as he is reported to have died. As regards A-2, the case of prosecution rests on the complaint-Ex.PW4/A handed over by the complainant to PW8 Inspector B.S. Yadav in the presence of PW4-Ghanshyam wherein there are allegations that for the purpose of facilitating the recovery certificate, A-2 demanded a sum of Rs.1000/- from him out of

which Rs.500/- was to be given as first instalment on that day. There are no specific averments as to when this demand was made by A-2 as it is simply recorded in the written complaint that for the purpose of getting the recovery certificate, he had gone to the Labour Office several times and requested A-2 to give the certificate and the demand was made. Accordingly, on the fateful day, a raiding party was organized which went to the office of Labour Commissioner, however, A-2 was not found present in the office. This is precisely for the reason that much prior thereto he was transferred from the Implementation Branch vide transfer order Ex. PW5/C and was relieved of his duties on 8th December, 2003 vide relieving order Ex. PW5/D. He was also on medical leave from 8th December, to 19th December, 2003, therefore, there was no question of acceptance of any illegal gratification by this appellant. In the absence of examination of the complainant, even factum of demand of bribe is not proved. **A. Subair** (supra) was also a case where it was alleged that illegal gratification was demanded by a public servant, however, the complainant was not examined and, therefore, it was held that in the absence of examination of the complainant, the best evidence to prove the demand was not made available before the Court. Primary requisite of an offence u/s 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 the absence of examination of the complainant, it is unsafe and dangerous to rest conviction upon the testimony of the panch witness.

24. Under the circumstances, as regards A2, the prosecution has failed to establish the factum of any demand by him. There was no allegations that any illegal gratification was accepted by him. That being so, the conviction of the appellant for offence u/s 7 of PC Act cannot be sustained.

25. The conviction of A-1 rests on the oral evidence of Sh. Ghanshyam (PW4), Inspector B.S. Yadav (PW8) and M.A. Salam, (PW10). This evidence has been accepted by learned Special Judge but a close scrutiny of the evidence in the light of other evidence on record goes to show that the evidence is not of such a character as to inspire confidence in the mind of the Court, and moreover, there are various other circumstances which clearly militates against the veracity of the prosecution case.

26. In the first place, initial complaint Ex.PW4/A made by the complainant-Ajay Gupta was not against this appellant. There is no allegation that he ever approached this appellant for issuance of recovery certificate or he demanded any illegal gratification. Even the riding party had not gone for conducting any raid upon this appellant.

27. Further it appears clearly from the evidence that the appellant had nothing to do with grant of recovery certificate. As per office order No. 986 dated 20th January, 2003, Ex.PW8/DA, he was assigned following duties:-

Preparation of notices of all files, look after the court cases, put up writ petitions, to make to and fro journeys to the court, put up VIP letters with their respective files, put um time-barred files, contact the Advocates, put up concerned legal heirs (court) files and to ensure that the letters regarding appearance on the dates fixed have been issued in time to the concerned employees and the management, entering in the register of the files received back from the offices of the different Collectors' offices with various reasons and putting them up and to take appropriate action thereon and to work according to the directions of the undersigned.

28. There was, therefore, clearly no motivation for Ajay Gupta to give bribe to the appellant for obtaining recovery certificate. This circumstance weakens the foundation on which the edifice of the prosecution story rests and introduces an element of infirmity in it.

29. But more than anything else, the evidence of PW4, Ghansham, panch witness makes a serious inroad in the prosecution case. The complainant could not be examined as he has died. According to PW4 when the complainant went to the seat of A-1 he was busy in his official work. The complainant informed him about his work whereupon A-1 told him that he has just joined the office and would do his work thereafter. Complainant, on his own, took out those treated GC Notes and gave in the hands of the

accused which were kept in his pocket. Panch witness admits that no demand of money was made by A-1. Under the circumstances, factum of demand of illegal gratification by the appellant is not proved.

30. Prosecution is, however, relying upon the recovery of tainted GC notes from the possession of the appellant. As per the prosecution version, on receipt of signal from PW4-members of raiding party apprehended appellant and recovery of tainted money was effected from him. Appellant examined D1W1 who was seated on another seat. He too denies the demand of bribe having been made by the appellant. According to him, Dinesh Chand Gupta joined that Cell on 9th December, 2003. One Ajay Kumar who frequently used to come in the Implementation Cell, came to Dinesh Chand on 9th December, 2003 and demanded a certificate, however, Dinesh Chand Gupta told him that he had joined only that day, thereafter arguments started between them. Thereafter Ajay Kumar Gupta took Dinesh Chand Gupta outside the office room. At that time, Ajay Kumar Gupta was alone. When he came out, he saw that Dinesh Chand Gupta was not there and when he telephoned him, he came to know that he had been taken to Anti-Corruption Branch. A telephone was received in the office from the Anti-Corruption Branch for arranging a pant and, accordingly, information was sent to the house of the accused and thereafter brother-in-law of the accused went to

Anti- Corruption Branch. He also went to Anti Corruption Branch. No talk took place between Ajay and Dinesh Chand Gupta in his presence apart from certificate.

31. It is the case of the appellant that he was taken to Anti Corruption Branch where GC Notes were planted upon him. PW4 has also deposed that appellant was taken to ACB Branch where remaining proceedings were conducted. Furthermore, there is inconsistency in the statement of PW4 and PW8 regarding the place from where the recovery was effected as according to PW4, the money given by the complainant was taken by this appellant in his right hand and then kept in the right pocket of his pant whereas according to PW8, the same was recovered from the left pocket of his pant and even the left hand of the appellant was dipped in solution which turned pink. In view of the inconsistencies in the testimony of the witnesses, it is not established beyond reasonable doubt that any recovery was affected from this appellant.

32. In *Surajmal* (supra) and *Dnyaneshwar Laxman* (supra), the Apex Court observed that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence

of special circumstances no conviction can be based on the evidence of such witnesses.

33. In *SurajMal* (supra), it was further held that:-

*“Mere recovery of 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. Mere recovery of money cannot prove the case of the prosecution against the accused in the absence of any instance to prove the payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. In the case of C.M. Girish Babu (supra). The Supreme Court held that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance. In this case the reliance was also placed on a three-Judge Bench judgment in **M. Narsinga Rao v. State of A.P.** wherein it was held as under:*

“20. A three-Judge Bench in M. Narsinga Rao v. State of A.P. while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p.700, para 24)

24. ...we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned Counsel: (See P.577, Para 12)

12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

22. 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.

4. ...It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (See **V.D. Jhangan v. State of U.P.** at AIR p. 1764, para 4).

34. In the case of **Dnyaneshwar Laxman** (supra) also the Supreme Court held as under:-

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

35. Although, it is true that under Section 20 of the Act, burden rests on the accused to displace the statutory presumption by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability that the money was accepted by him other than as a motive or reward but while invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution.

36. In the instant case, from the cross-examination of prosecution witnesses and by examining D1W1, the appellant has satisfactorily discharged the burden laid upon him. The complainant could not be examined. There is no allegation of demand of any bribe by him and even at the relevant time when the raiding party went to the office of A-1, as per the testimony of PW4, there was no demand by this appellant. As such, it is difficult to raise an inference of any demand merely on the ground that the complainant took this appellant outside the room as submitted by the learned Additional Public Prosecutor for the State. Even if the complainant of his

own gave the tainted money to the appellant which he put in his pocket, it cannot be inferred that accused demanded any amount from the complainant or that he had obtained the same. *Subhash Parwat Sonwani* (supra) was also a case where the allegations were that when the accused started to go towards toilet the complainant followed him and gave something from his pocket to the accused who took the same and put that in his pocket. It was held that the Trial Court and the High Court misread the evidence in holding that there was demand by accused and the amount was paid to him by the complainant. It was unreasonable to hold that accused demanded money from the complainant, as such, the appeal was partly allowed.

37. It needs no emphasis that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, the vital ingredients, necessary to be established to procure a conviction for the offences under consideration. The evidence on record in this case is not sufficient to bring home the guilt of the appellants. As such, they are entitled to benefit of doubt.

38. Consequently, the appeals are allowed. The conviction and sentence of the appellants are set aside and fine if paid, shall be refunded to them. The bail bonds executed by them will stand discharged.

(SUNITA GUPTA)
JUDGE

MAY 23, 2016/rs