AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2618 of 1999

Judgment Reserved on : 22.2.2021

Judgment Delivered on : 9.6.2021

Rohit Kumar Sahu, son of Jhunauram Sahu, aged about 52 years, Patwari Halka No.104, Revenue Circle Lawan, Village Badjar, District Raipur, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh, through the Lokayukt, Special Police Establishment, M.P., Bhopal, M.P.

--- Respondent

For Appellant : Dr. N.K. Shukla, Senior Advocate with Shri Arjit Tiwari, Advocate

For Respondent : Shri Priyanshu Gupta, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 20.9.1999 passed by the Special Judge, Raipur in Special Case No.7 of 1993, whereby the Appellant has been convicted and sentenced under the Prevention of Corruption Act, 1988 (henceforth 'the Act') as under:

Conviction	Sentence
Under Section 7 of the Act	Rigorous Imprisonment for 1 year and fine of Rs.1000/- with default stipulation
Under Section 13(1)(d) read with Section 13(2) of the Act	Rigorous Imprisonment for 1 year and fine of Rs.1000/- with default stipulation Both the jail sentences are directed to run concurrently

2. According to the case of prosecution, at the relevant time, the Appellant was working as a Patwari of Patwari Halka No.104, Village Lawan. In favour of Complainant Baburam (PW6), the Tahsildar passed an order for correction in the relevant mutation record. On 28.10.1988, the Complainant met with the Appellant and talked for the correction. The Appellant demanded bribe of Rs.250 and asked him to bring the bribe money by 1.11.1988. Since the Complainant did not want to give the bribe, on 1.11.1988, he made a written complaint (Ex.P3) to the Superintendent of Police, Lokayukta, Raipur. On the basis of Ex.P3, Dehati Nalishi (Ex.P11) was registered. Investigating Officer C.K. Tiwari (PW11) called panch witnesses Ajay Awasthi (PW3) and R.P. Sharma (PW4). The panch witnesses verified the contents of the complaint (Ex.P3) from the Complainant. The Complainant produced 2 currency notes each in the denomination of Rs.100 and 1 currency note in the denomination of Rs.50 for giving as bribe. Their numbers were noted and they were smeared with phenolphthalein powder. The panch witnesses and the Complainant were given a demonstration of trap proceedings. Thereafter, a trap party proceeded to Village Bagbooda. Ajay Awasthi (PW3) and Complainant Baburam (PW6) went to the house of the Appellant situated at Village Bagbooda. In his house, the Appellant was sitting in the outside courtyard. A conversation took place between Complainant Baburam (PW6) and the Appellant and thereafter Baburam (PW6) gave the bribe money to the Appellant to which the Appellant kept in the pocket of his kurta. Complainant Baburam (PW6) came out of the courtyard and gave a signal to the trap party

on which the trap party went to the spot and caught the Appellant. The bribe money was recovered from the pocket of the kurta of the Appellant. Hands of the Appellant were washed in a solution of sodium carbonate on which colour of the solution turned into pink. The kurta of the Appellant and the recovered tainted money were also dipped into different solutions of sodium carbonate on which their colour turned into pink. On completion of other formalities, the trap party returned to the Lokayukta office. During investigation, sanction (Ex.P10) for prosecution of the Appellant was obtained from the Department of Law and Legislative Affairs, Bhopal. On completion of the investigation, a charge-sheet was filed. The Trial Court framed charges.

3. To bring home the offence, the prosecution examined as many as 11 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. It was the defence of the Appellant before the Trial Court that he never demanded any bribe nor did he accept the money as bribe. Virtually, the demand of bribe was made by the Revenue Inspector and to save the Revenue Inspector a false and fabricated case has been prepared against him. At the time of trap, the Complainant had deliberately put the bribe money into the pocket of his kurta and soon thereafter the trap party entered there and caught him. It was the further defence of the Appellant that the sanction (Ex.P10) issued against him is not a valid sanction for prosecution. No witness has been examined by the Appellant in support of his

defence.

4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.

5. Learned Senior Advocate appearing for the Appellant first submitted that the sanction (Ex.P10) for prosecution of the Appellant obtained from the Law and Legislative Affairs Department, Bhopal is invalid and, therefore, the entire case of the prosecution vitiates. It was argued that according to the provisions of Section 19 of the Act, it is necessary that the sanction for prosecution must be given by the authority competent to remove the person appointed. A Patwari is appointed under Section 104 of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the LR Code') by the Collector and, therefore, the Collector is the competent authority to remove a Patwari. In this regard, reliance was placed upon the judgments of Madhya Pradesh High Court in **(1994) 2 MPJR 58 (Chandramani Prasad v. State of Madhya Pradesh), (2010) 4 MPLJ 439 (Ravindra Kumar Gupta v. State of M.P.)** and **(2003) 5 MPLJ 545 (Ashok Kumar v. Balmukund)**. Since in the instant case, the sanction (Ex.P10) for prosecution was obtained from the Law and Legislative Affairs Department, Bhopal, who was not the appointing and removing authority of the Appellant/Patwari, the sanction (Ex.P10) is not valid. According to the Senior Advocate, before the Trial Court also, this objection was raised, but the Trial Court, while passing the impugned judgment, overlooked this fact and, therefore, there is a failure of justice.

Thus, the impugned judgment passed by the Trial Court is not sustainable. It was further submitted that in this case the demand of bribe is also not proved. None of the panch witnesses has supported the case of the prosecution regarding demand and acceptance of bribe by the Appellant. Mere recovery of tainted money from the Appellant is not sufficient to prove the offence in question.

6. Opposing the above arguments, Learned Counsel appearing for the Respondent/State supported the impugned judgment.

7. I have heard the rival contentions urged on behalf of the parties and perused the entire material available including the statements of witnesses and the documents relied upon by the prosecution with due care.

8. It is not in dispute that at the relevant time, the Appellant was posted as a Patwari in Patwari Halka No.104, Village Lawan. It is also not in dispute that the sanction (Ex.P10) for prosecution was accorded by the Additional Secretary, Law and Legislative Affairs Department, Bhopal. With regard to the sanction, it would be appropriate to reproduce herein the provisions of Section 19 of the Prevention of Corruption Act, 1988, which read thus:

> "**19. Previous sanction necessary for prosecution.—**(1) No court shall take cognizance of an offence punishable under Sections7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013,—
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> (a) in the case of a person who is employed in connection with the affairs of the Union and is not

removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purpose of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be

> at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

9. With regard to the appointment of a Patwari, the provisions of Section 104 of the Chhattisgarh Land Revenue Code, 1959 read as under:

> "**104. Formation of patwaris' circles and appointment of patwaris thereto—**(1) The Collector shall from time to time arrange the villages of the tahsil in partwari circles and may, at any time, alter the limits of any existing circle and may create new circles or abolish existing ones.
>
> (2) The Collector shall appoint one or more patwaris to each patwari circle for the maintenance and correction of land records and for such other duties as the State Government may prescribe.
>
> (3) Notwithstanding any usage or anything contained in any treaty, grant, or other instrument, no person shall have any right or claim to continue or to be appointed as a patwari on the ground of right to succeed to such office by inheritance."

10. In **Chandramani Prasad case** (supra), it was held that the power to appoint a Patwari is conferred upon the Collector under Section 104(2) of the LR Code. It was also held that the Patwari so removed shall have right to appeal and revision under the provisions of the LR Code.

11. Learned Single Judge of the Madhya Pradesh High Court in **Ravindra Kumar Gupta case** (supra) held that the Sub-Divisional Officer has the authority to exercise powers of the Collector under Section 104(2) of the LR Code regarding appointment of a Patwari. It was further held that apparently as the Sub-Divisional Officer has the power to appoint a Patwari, he subsequently also has the

power to dismiss services of a Patwari.

12. In **Ashok Kumar case** (supra), it was held by the Learned Single Judge of the Madhya Pradesh High Court as under:

> "**9.** Admittedly, the respondent No.1 is a Patwari. The appointment of Patwari is being made u/s 104(2) of the M.P. Land Revenue Code, 1959, which reads as under:
>
> "104. Formation of Patwaris' circles and appointment of Patwaris thereto—
>
> (1) *****
>
> (2) The Collector shall appoint one or more Patwaris to each Patwari circle for the maintenance and correction of land records and for such other duties as the State Government may prescribe.
>
> (3) *****"
>
> Thus, the appointing authority of Patwari is the Collector and not the State Government. Though, it has not been specifically mentioned that who can remove the services of the Patwari, but by virtue of Section 16 of the M.P. General Clauses Act, the power to appoint includes the power to suspend or dismiss. Therefore, the power vests in Collector to remove and terminate the services of the Patwari.
>
> **10.** So as to attract the provision contained in sub-section (1) of Section 197, Cr.P.C, three conditions are pre-supposed. Firstly, the person should be a public servant, secondly, he should not be removable from his office save by or with the sanction of the Government, and thirdly the offence should have been committed by him while acting or purporting to act in the discharge of his official duty. All these three conditions should co-exist. In the present case, the respondent No.1 who is a Patwari is neither appointed by the State Government nor can be removed by it and thus the exemption under sub-section (1) of Section 197, Cr.P.C. is not attracted."

13. On perusal of the provisions of Section 104(2) of the LR Code and having regard to the above view taken by the Madhya Pradesh High Court, it is clear that with regard to appointment of a Patwari,

the Collector is the competent authority and, therefore, the Collector only is the competent authority for grant of sanction for prosecution against a Patwari. But, in the instant case, the prosecution has not obtained the sanction for prosecution of the Appellant/Patwari from the concerned Collector. Rather, the prosecution has obtained the sanction (Ex.P10) from the Additional Secretary, Law and Legislative Affairs Department, Bhopal. Therefore, the sanction (Ex.P10) is not a valid sanction for prosecution of the Appellant/Patwari. From perusal of the impugned judgment, it is also clear that this point was raised by the defence also before the Trial Court, but, ignoring this point, the Trial Court, discussing that how a sanction for prosecution can be proved, has arrived at a conclusion that the prosecution has proved the sanction (Ex.P10) in accordance with law. Whether the Additional Secretary, Law and Legislative Affairs Department, Bhopal was the competent authority to grant the sanction for prosecution of the Appellant/Patwari or not, no discussion has been made by the Trial Court in this regard nor has any finding been given by it in this regard. Therefore, I am of the considered view that a failure of justice has occurred in this case.

14. While dealing with the issue of demand and acceptance of bribe money, in **(2009) 3 SCC 779 (C.M. Girish Babu v. CBI, Cochin, High Court of Kerala),** the Supreme Court held thus:

> "**18**. In *Suraj Mal* v. *State (Delhi Admn.),* (1979) 4 SCC 725, this Court took the view that (at SCC p. 727, para 2) 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 any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

15. In **(2014) 13 SCC 55 (B. Jayaraj v. State of Andhra Pradesh),** it was held by the Supreme Court as under:

"**7**. Insofar as the offence under Section 7 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 Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma* v. *State of A.P.*, (2010) 15 SCC 1 and *C.M. Girish Babu* v. *CBI*, (2009) 3 SCC 779.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or

abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

16. In **(2015) 10 SCC 152 (P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh),** the Supreme Court held as follows:

"**22**. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55, in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

> **23**. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

17. Further, in **(2015) 11 SCC 314 (C. Sukumaran v. State of Kerala),** it was held by the Supreme Court as under:

> "**13**. With reference to the abovementioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of the fact on the charge made against the appellant. It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sections 7 and 13(1)(d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution."

18. Reiterating the judgment of **B. Jayaraj case** (supra) and **P. Satyanarayana Murthy case** (supra), again, in **(2016) 3 SCC 108 (Krishan Chander v. State of Delhi)**, it was held by the Supreme Court thus:

> "**35**. It is well-settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55, *A. Subair* v. *State of Kerala*, (2009) 6 SCC 587 and *P.*

Satyanarayana Murthy v. *State of A.P.,* (2015) 10 SCC 152 upon which reliance is rightly placed by the learned Senior Counsel on behalf of the appellant."

In paragraph 39, it was further held by the Supreme Court thus:

"**39**. In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant Jai Bhagwan (PW2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant Jai Bhagwan (PW2), which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Thus, the impugned judgment and order [*Krishan Chander* v. *State of Delhi,* 2014 SCC OnLine Del 2312] of the High Court is not only erroneous but also suffers from error in law and therefore, liable to be set aside."

19. Recently, in **(2021) 3 SCC 687 (N. Vijayakumar v. State of Tamil Nadu),** reiterating the judgment of **C.M. Girish Babu case** (supra) and **B. Jayaraj case** (supra), it was held by the Supreme Court as follows:

"**26**. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in *C.M. Girish Babu* v. *CBI,* (2009) 3 SCC 779 and in *B. Jayaraj* v. *State of A.P.,* (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and

acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

27. The relevant paras 7, 8 and 9 of the judgment in *B. Jayaraj* v. *State of A.P.,* (2014) 13 SCC 55 read as under: (SCC pp. 58-59)

> "7. Insofar as the offence under Section 7 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 Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in *C.M. Sharma* v. *State of A.P.,* (2010) 15 SCC 1 and *C.M. Girish Babu* v. *CBI,* (2009) 3 SCC 779.
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> 8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before LW9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from

> the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.
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> 9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [*State of T.N.* v. *N. Vijayakumar,* 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same

> time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

20. In the light of above view taken by the Supreme Court, now, I shall examine the facts and statements of the witnesses of the present case. With regard to the initial demand, Complainant Baburam (PW6) deposed that for correction in the mutation record when he met with the Appellant, at that time, the Revenue Inspector was also present there. At that time, the Appellant/Patwari asked him to come after 2-4 days. When he again met with the Appellant, he demanded a sum of Rs.250. On this, he made the written complaint (Ex.P3) in the Lokayukta Office. In his cross-examination, this witness further deposed that the demand of Rs.250 made by the Appellant was for him was not known to him. He did not know the demand was for the Appellant himself or for the Revenue Inspector. Nowhere in his deposition this witness stated that for what purpose the demand was made by the Appellant. In his examination-in-chief, this witness further deposed that the written complaint (Ex.P3) submitted by him was not read by any of the panch witnesses. But, both panch witnesses Ajay Awasthi (PW3) and R.P. Sharma (PW4) deposed that they had read the complaint (Ex.P3) and verified its content from Complainant Baburam (PW6).

21. According to the case of the prosecution, at the time of trap proceeding, panch witness Ajay Awasthi (PW3) along with

Complainant Baburam (PW6) entered the house of the Appellant and there Complainant Baburam (PW6) gave the bribe money to the Appellant and at that time Ajay Awasthi (PW3) was present there. On this point, Investigating Officer C.K. Tiwari (PW11) and other panch witness R.P. Sharma (PW4) stated that along with Complainant Baburam (PW6), panch witness Ajay Awasthi (PW3) had also entered the house of the Appellant. But, Complainant Baburam (PW6) deposed that he alone had entered the house of the Appellant and Ajay Awasthi (PW3) had stayed outside about 100 metres away from him. Ajay Awasthi (PW3) also supported the above statement of Complainant Baburam (PW6) and deposed that Complainant Baburam (PW6) alone had entered the house of the Appellant and he had stayed about 70-80 feet away from the house of the Appellant. Ajay Awasthi (PW3) further deposed that neither any conversation regarding transaction of bribe money took place in his presence nor did he witness the alleged transaction of bribe money between the Complainant and the Appellant. Thus, it is clear that on this point, statements of all the above prosecution witnesses are totally contradictory. From the Court statements of the above witnesses, it is clear that none of the panch witnesses had entered the house of the Appellant nor did any of them witness the alleged transaction of bribe money between the Complainant and the Appellant or hear any conversation took place between the Complainant and the Appellant regarding bribe.

22. In paragraph 5 of his cross-examination, Complainant Baburam (PW6) admitted the fact that when he entered the courtyard of the

house of the Appellant, at that time, Hansu Sahu, Resham Satnami, Jethu Sahu and Khilawan Vishwakarma were also sitting there along with the Appellant. Investigating Officer C.K. Tiwari (PW11) also admitted this fact. But, none of the above 4 persons sitting along with the Appellant in the courtyard of his house have been made a witness in this case nor has their statements been recorded. In paragraph 5 of his cross-examination itself, Complainant Baburam (PW6) further deposed that he himself had gone to the Appellant and told him that he had brought money. At that time, the Appellant had not demanded money from this witness. This witness further deposed that he took the Appellant to a room and there he gave him the money. At that time also, the Appellant had made any demand from this witness, nothing has been stated by this witness in this regard in his Court statement.

23. On a minute examination of the above evidence, it is clear that with regard to the initial demand, there are material contradictions in the statements of Complainant Baburam (PW6) and panch witnesses Ajay Awasthi (PW3) and R.P. Sharma (PW4). Further, with regard to the demand in presence of panch witness Ajay Awasthi (PW3) at the time of trap also, there are material contradictions in the statements of Investigating Officer C.K. Tiwari (PW11), panch witnesses R.P. Sharma (PW4) and Ajay Awasthi (PW3) and Complainant Baburam (PW6). From the evidence adduced by the prosecution itself, it is clear that at the time of trap, only Complainant Baburam (PW6) had entered the house of the Appellant. At that time, inside the house, the Appellant himself

made the demand of bribe from the Complainant, Complainant Baburam (PW6) has not stated anything in this regard in his Court statement. From the statements of Complainant Baburam (PW6) and Investigating Officer C.K. Tiwari (PW11), it is clear that at the time of trap, along with the Appellant, 4-5 persons were also sitting along with the Appellant, but despite that, the prosecution has not made any of those persons a witness in this case nor has recorded their statements. It is suspicious that the Appellant would have demanded and accepted bribe money in presence of those persons. Therefore, in my considered view, the prosecution has not been able to prove its case of demand and acceptance of bribe money against the Appellant. The Appellant is entitled to get benefit of doubt.

24. Consequently, the appeal is allowed. The judgment of the Trial Court is set aside. The Appellant is acquitted of the charges framed against him.

Sd/-

(**Arvind Singh Chandel**)
JUDGE

Gopal