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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 534 of 2008

Vijay Kumar Ahir S/o Shri Chaitu Ram, aged about 43 years, at present working as a (under suspension) Assistant Grade-III, Korar Sub Division Office, Bhanupratappur, Police Station- Korer, District- Kanker (C.G.)

... Appellant

versus

State of Chhattisgarh, Anti Corruption Bureau, Raipur, through Special Police Establishment Branch Lokayukt, Jagdalpur, District- Baster, Chhattisgarh.

--- State

|               |   |                                       |
|---------------|---|---------------------------------------|
| For Appellant | : | Mr. Shobhit Koshta, Advocate.         |
| For State     | : | Mrs. Shubha Shrivastava, Panel Lawyer |

Hon'ble Smt. Justice Rajani Dubey

C A V Judgement

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 17.11.2015 passed by learned Special Judge (Prevention of Corruption Act, 1988) Dhamtari, District- Dhamtari (C.G.) in Special Criminal Case No. 02/2011, whereby the appellant has been convicted for the offence punishable under Sections 7 and 13 (1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988, (for short, "the Act, 1988") whereby the learned

trial Court has sentenced the appellant in the following manner with a direction to run both sentences concurrently:

| <b>Conviction</b>                                                           | <b>Sentence</b>                                                                                 |
|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| U/S 7 Prevention of Corruption Act, 1988                                    | RI for 01 year, pay a fine of Rs. 1000/-, in default, to undergo additional R.I. for 04 months. |
| U/S 13 (1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 | RI for 02 years, pay a fine of Rs. 1000/-, in default, to undergo additional R.I. 04 months.    |

(Both sentences are directed to run concurrently)

2. The case of the prosecution, as unfolded from the impugned judgment and the records of the case is that the complainant- Rizvwanul Haq had applied to the office of the Sub-Divisional Officer (Revenue) for diversion of his land Plot No. 872, admeasuring 0.08 hectare situated at Antagarh, District- Kanker (C.G.) for residential purpose. Upon receiving a notice to appear on 02.11.2004, he appeared on the said date in the office and where the Reader/accused of the said office wrote in the back side of notice that for the diversion, premium with penalty deposited by the challan of Rs. 794/- in the bank and along with the copy of the challan, demanded Rs. 500/- for himself and Rs. 1,000/- for the Sub-Divisional Officer, only then would the land diversion order be granted. The accused demanded the above bribe amount from the complainant for diversion of the land and therefore, on 20.12.2004, the complainant Rizvwanul Haq made a written complaint before the Anti Corruption Bureau, Jagdalpur against the appellant. On the basis of written complaint of complainant, tape recorder and cassette were provided to him by the A.C.B. for recording conversation between the appellant and the complainant regarding the demand of bribe and also

produced the complaint's application. A script of the cassette of the conversation demanding bribe was prepared. On the said complaint, an offence under Section 7 of Prevention of Corruption Act was registered and a trap team was constituted and on 23.12.2004 after reaching Bhanupratappur, the complainant was sent to the accused/ Vijay Ahir in the Office of Sub-Divisional Officer (Revenue), Bhanupratappur. After some time, the complainant returned and apprised the trap team that the accused was demanding the bribe amount in an envelope. In the presence of witnesses, a separate panchanama was prepared. The complainant was made to take out the tainted currency notes and then the said notes were rubbed it on a plain envelope, thereafter the same was placed inside it and the complainant was carrying the envelope in his shirt pocket before being sent to the accused. After handing over the money to the accused, the complainant returned and signaled the trap team that the accused had kept the envelope in his left pant's pocket. Then, the members of the trap team entered the accused/ Reader's room, introduced themselves to the accused as the members of the trap team. The accused fingers' were dipped in an aqueous solution of sodium carbonate and the colour of the solution turned pink. The bribe amount of Rs. 1,500/-, a blank envelope, full pant turned light pink coloured after washing and the official file of the case related to the land diversion of the complainant were seized from the accused. After completing necessary formalities, the charge-sheet was led before the learned trial Court for the offences under Sections 7, 13(1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 against the appellant followed by framing of charges by the learned trial Court accordingly, which were abjured by the appellant and he pleaded for

trial.

3. In order to bring home the guilt, the prosecution has examined as many as 10 witnesses to prove its case against the accused person. Statement of the accused was also recorded under Section 313 of Cr.P.C., in which he denied all the incriminating circumstances appearing against him in the prosecution case and pleaded his innocence and false implication in the case.
4. The learned trial Court after hearing the counsel for the respective parties and considered the material available on record thereby convicted and sentenced the accused/appellant as mentioned in inaugural para of this judgment. Hence, this appeal.
5. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant submits that the impugned judgment assessed against the appellant is *per se* illegal and contrary to the material available on record. The prosecution has failed to prove the necessary ingredients of the offence beyond all reasonable doubt. Statements of the prosecution witnesses are full of contradictions and omissions, but the learned trial Court did not consider the same minutely. Learned trial Court has failed to see the oral evidence of PW-2 M.S. Dhruw and PW-4 M.C. Netam, who are the members of the trap team as per the direction of Collector of Bastar and they have clearly stated in their evidence that when first time the complainant entered in the office of S.D.O. for giving a bribe amount to appellant, the complainant after some time returned along with the bribe amount and they specifically stated that when they trapped the appellant during that time another 2-3 employees were present and they did not know what conversation was done between the appellant

and the complainant and therefore, no *prima facie* case is made against the appellant. The presumption, under section 20 of the P.C. Act is also not at all applicable in the present case, for want of recovery of bribe amount from the possession of the appellant. PW-3 Ghanshyam and PW-7 Ram Sevak Sinha who are the constable, specifically stated when the complainant reached S.D.O. office, he entered the office and after half an hour, he returned without giving the bribe amount to the appellant and apprised to the trap team that appellant will take bribe amount in the envelope. PW-6 K.P. Dewangan, who was the S.D.O. at the time of incident had specifically stated when his office received the diversion's application of the complainant and same sent to on 09.03.04, but the same was not returned in the office. PW-7 Lalit Kumar Deshmukh who is the Revenue Inspector and was present at the time of incident and he specifically stated that the the complainant's diversion case was pending due to not depositing premium with penalty amount by challan on the part of the complainant. PW-10 M.L. Negi, who was the Investigating Officer admitted this fact that the script of the tape recorder was not cleared.

6. Learned counsel for the appellant would further submit that the story of demand of bribe by the appellant from the complainant is not proved, but even the story of payment of the money by the complainant is not established beyond reasonable doubt of that being so, the rule of presumption engrafted in Section 4(1) of the PC Act, cannot be made use of for convicting the appellant. Hence, there being no valid proof of demand, the essential ingredients of offence Under section 7 of the Prevention of corruption Act regarding demand of bribe and acceptance

of bribe money has not established by the prosecution. The prosecution has failed to establish that what conversation had been happened between the appellant and complainant while giving or taking bribe money and transaction of the said money also could not be seen by the shadow witness, whereas the law always favored to the evidence of the shadow witness/The trap witnesses is an interested witnesses in the sense that he is interested to see that the trap laid by him succeeded and it could not be advisable to rely upon his evidence without corroboration. Learned trial Court did not minutely appreciate the oral and documentary evidence on record which make it clear that the prosecution has utterly failed to prove demand and acceptance of bribe by the appellant. Hence, the impugned judgment is liable to be set aside and the appellant be acquitted of all the charges leveled against him. In support of his contention, he relied upon the judgment passed by Hon'ble the Apex Court in the matters of **P. Somaraju vs. State of Andhra Pradesh**<sup>1</sup> and in the matter of **Saddam Prasad Thakur, through legal heirs vs. State of Chhattisgarh Chhattisgarh,**<sup>2</sup> & **Radheshyam vs. State of Chhattisgarh**<sup>3</sup> passed by this Court.

7. *Ex adverso*, learned counsel for the respondent/State supporting the impugned judgment submits that the learned trial Court minutely appreciated the oral and documentary evidence and thereby rightly convicted the appellant. Therefore, the impugned judgment does not suffer from any irregularity or infirmity warranting interference by this Court in the instant appeal.

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1 2025 SCC OnLine SC 2291

2 CRA No. 1283 of 2003

3 CRA No. 283 of 2005

8. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.
9. It is evident from record of learned Trial Court that it framed charges against the appellant for offence punishable under Sections 7 & 13(1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988. learned trial Court after appreciating the oral and documentary evidence, convicted and sentenced the appellant for the aforesaid offences.
10. It is not disputed in this case that at the time of incident i.e., 02.11.2004, the accused/appellant was posted in the office of Sub-Divisional Officer (Revenue), Bhanupratappur.
11. PW-1, the complainant- Rizwanul Haq, stated that at the time of the incident the accused/appellant was posted as a Reader in the office of the Sub-Divisional Officer (Revenue), Bhanupratappur. He had applied for diversion of his agricultural land bearing Khasra No. 872, Rakba 20 decimal. After receiving notice from the S.D.O. office, he appeared before the S.D.O. and the accused/ Reader. The accused, after calculating the diversion charges, informed him that Rs. 794/- was required towards diversion fee with the penalty and the complainant deposited the said amount through challan on 21.12.2004. The accused further demanded illegal gratification of Rs. 500/- for himself and Rs. 1,000/- for the Sub-Divisional Officer for processing and completing the diversion work. Pursuant thereto, he deposited a sum of Rs. 794/- towards diversion fee with penalty through challan, probably on 21.12.2004. He did not want to give the bribe amount to the accused and therefore, he filed the written complaint against the accused before

Deputy Superintendent of Police, Anti Corruption Bureau, Branch-Jagdalpur. His written complaint is Ex. P/1, wherein admitted his signature on A to A part. Thereafter, Inspector M.L. Negi handed over a tape recorder to him and instructed him to record the conversation between him and the appellant regarding the demand of bribe. He was also guided by Inspector Negi on how to operate and start the tape recorder. On 22.12.2004, he went to the Court of the S.D.O. (Revenue), Bhanupratappur and met the accused- Vijay Ahir. As instructed, he switched on the tape recorder kept in his pocket to record the conversation. He entered the office, where 2–3 persons were already present and waited until they came out and thereafter, he approached the accused, handed over the copy of the challan of Rs. 794/-, and asked how much more money was required to be paid. The accused replied that not less than Rs. 1,500/- would be required, out of which Rs. 500/- was for himself and Rs. 1,000/- for the officer. The said conversation was recorded by him. Thereafter, he returned to the office of the Anti-Corruption Bureau, Jagdalpur along with the tape recorder, met Inspector M.L. Negi again and the recorded conversation was transcribed into a script in the office. After completion of the preliminary proceedings, on the next day the complainant went along with the trap team to the office of the S.D.O. (Revenue), Bhanupratappur where the bribe amount so demanded by the accused was accepted by him in an envelope. Upon such demand and acceptance, the complainant, as instructed earlier, signaled the trap party by making a predetermined gesture. Thereafter, the trap team immediately apprehended the appellant along with the bribe amount and the envelope. He admitted his signature in F.I.R. (Ex. P/2) intimation (Ex. P/3) given by him to

A.C.B, memo (Ex. P/4), seizure memo of transcription (Ex.P/5), preliminary memo (Ex. P/6), memo (Ex.P/7), proceeding memo (Ex. P/8), application for diversion (Ex.P/9), notice issued by Revenue Inspector vide Ex. P/10 and in challan copy (Ex. P/11). In his cross-examination, he stated that at the time when he submitted the application for diversion, he did not remember whether he had met Verma Sir or the appellant. He further stated that whenever he visited the office, the appellant used to meet him. However, he also stated that neither he remember the exact occasion when the appellant allegedly demanded the bribe amount, nor could he recall the date of such demand. He admitted the suggestion that when he initially got down from the jeep and approached the accused to hand over the money, as directed by Mr. Negi and the officer, the accused did not accept the same at that time. He himself stated that the accused had asked him to bring the money by keeping it in an envelope.

In para 15, he stated as under:-

" 15....यह कहना गलत है कि जब मैं जाकर बताया कि आरोपी ने पैसा नहीं लिया तब उन्होंने मुझे डांटकर लिफाफा में पैसा रखकर आरोपी को देकर आने को कहा। स्वतः कहता है कि मेरे द्वारा पैसे नहीं लेने की बात बताने पर श्रो नेगी ने अपने अधिकारियों से चर्चा कर मुझे निर्देश दिया। फिर अधिकारी लोग स्वतः पास के स्टेशनरी दुकान से लिफाफा लेकर आये। यह सही है कि जब मैं लिफाफा लेकर एस. डी. ओ. आफिस में घुसा तब 5 मिनट बाद अधिकारी लोग भी आ गये। मैंने लिफाफा उसकी जेब में नहीं डाला था। स्वतः कहा कि उसने पेपर में उक्त लिफाफा को लिया। था। मुझे नहीं मालूम कि पैसे देते समय आर.आई.देशमुख एवं प्रकाश तिवारी थे या नहीं।"

In paragraph 17 of his cross-examination, the complainant

stated that he did not lodge or submit any complaint before the office of the S.D.O. regarding the alleged demand of bribe amount by the appellant and he could not explain why he failed to do so.

12. PW-2 M.S. Dhruw stated that following the Collector's directions, he was a member of the trap team. He testified that on the complainant's gesture, they seized the envelope containing the bribe amount from the appellant and he admitted his signatures on Ex.P/7 to Ex.P/14.

In para 8 of his cross-examination, he admitted as under:-

"8... यह सही है कि हम लोग एस.डी. ओ. आफिस भानुप्रतापपुर के आसपास खड़े हो गये, कमरे में क्या हो रहा था दिखाई नहीं दे रहा था। जब प्रार्थी एस.डी.ओ. आफिस के कमरे में गया था उस समय लोगों का कमरे के अंदर आना जाना चल रहा था, कमरे में भी लोग रहे होंगे। यह सही है कि रिजवानुअल हक प्रार्थी शुरू में पैसे देने के लिये एस. डी. ओ. आफिस गया था, किंतु वह तुरंत पैसे लेकर वापिस आ गया। यह कहना गलत है कि रिजवानुअल हक ने बताया कि आरोपी ने पैसा लेने से इंकार कर दिया। यह कहना गलत है कि नेगी साहब प्रार्थी पर नाराज हो गये और लिफाफा में भरकर देकर आओ। लिफाफा पर पावडर गार्ड द्वारा लगवाया गया था। सही है कि जब लिफाफा लेकर दुबारा प्रार्थी गया उस समय अभियुक्त और प्रार्थी के बीच क्या बात हुई मैं नहीं बता सकता। प्रार्थी जैसे लिफाफा रखकर बाहर आया तब हम अंदर गये । सही है कि लिफाफा अभियुक्त के जेब में था। मुझे आज याद नहीं है कि जैसे ट्रैप दल के सदस्य एस. डी. एम. कार्यालय के अंदर घुसे एवं परिचय बताए तो वहाँ पर उपस्थित अभियुक्त के अलावा दो और कर्मचारी ने कहा कि रिजवानुअल हक जबरजस्ती लिफाफा रखकर चला गया है।"

13. PW-3 Ghanshyam Sahu, Constable, Anti-Corruption Bureau, Jagdalpur, stated that he prepared the transcription (Ex.P/15) with the help of complainant- Rizvwanul Haq. He further stated that he seized the cassette (Ex.P/5) and participated in the preliminary proceedings. He testified that they apprehended the accused in his office, seized the tainted currency notes from his pant, prepared an aqueous solution of sodium carbonate, conducted a wash of the accused's hands which turned the solution pink and he admitted his signatures on Ex.P/13 to Ex.P/18.

In paras 12 of his cross-examinations, he admitted that after listening to the tape recorder, he prepared the transcript based on the complainant's description of the voice. He further admitted that in many places of the tape recorder were unclear. In our office, Mr. Dhaghat was in charge. DSP- Mr. Dhaghat accompanied them from Jagdalpur to Bhanupratappur and all proceedings were conducted in his presence.

In para 13 of his cross-examination, he deposed that the complainant proceeded to the SDO's office on the instructions of the trap team and remained there for approximately half an hour. He stated that he cannot say what transpired between the complainant and the accused during that time and that the complainant returned with the bribe amount after half an hour.

14. PW-4 M.C. Netam, Assistant Registrar, Co-operative Society, Jagdalpur, stated that as per the Collector's directions, he was also a member of the trap team. He deposed that when the complainant entered the SDO's office to give the bribe amount to the accused, he returned shortly thereafter with the money and apprised to Mr. Negi that the accused- Ahir had demanded the bribe amount in an envelope. Mr.

Negi then instructed the complainant to procure a blank envelope from a stationery shop, which he did, inserted the currency notes into it and was directed to hand it over to the accused.

In para 12 of his cross-examination, he admitted that “ यह सही है की जब प्रार्थी शुरु में पैसा देने गया था उस समय वह अकेला गया था यह सही है की जब प्रार्थी प्रथम बार पैसा लेकर गया उस समय कौन कौन कर्मचारी बैठे थे मैंने नहीं देखा था । यह कहना सही है कि उस वक्त प्रार्थी एवं आरोपी के बीच क्या बातें हुईं नहीं बता सकता। यह सही है की प्रथम बार फरियादी पैसा लेकर गया था उसको वापिस ले आया था उसके बाद नेगी साहब को बताया । उस वक्त मैं और नेगी साहब 10 कदम दुरी पर रहे होंगे फरियादी जब निकलकर आया उस समय नेगी साहब से क्या बात हुईं नहीं सुना । फिर दोबारा लिफाफा मंगवाकर पैसा लिफाफे में डालकर प्रार्थी को दिया । यह कहना गलत है की धगड़ साहब जगदलपुर से भानुप्रतापपुर तक साथ में गए थे । साक्षी एम. एल. साहू आरक्षक उपस्थित थे यह कहना सही है की आरक्षक एम. एल. साहू हमारे साथ जगदलपुर से ही रवाना हुआ था यह कहना सही है की घनश्याम साहू भी ट्रैप दल के साथ मौजूद था । ”

Further in para 14 of his cross-examination, he admitted that “ यह कहना सही है की फरियादी की शर्ट में रिश्वती रकम रखा गया उस शर्ट को न जप्त किया और न ही धुलवाया गया था...”

15. PW-6 K. P. Dewangan, Joint Collector has stated that at the time of incident he was posted as Sub-Divisional Officer, Bhanupratappur.

In paras 5, 6 and 7 of his cross-examinations, he admitted as under:-

“5. यह सही है कि रिजवान खान का जो डायवर्सन प्रकरण था, वह मेरे कार्यालय से 9.3.04 को डायवर्सन सेक्शन भेज दिया गया था। उसके बाद से उक्त प्रकरण ट्रैप होते तक हमारे कार्यालय में वापिस नहीं आया। यह सही है 9.3.04 के बाद से जिस दिन लोकायुक्त वालों ने ट्रैप किया, एवं आरोपी को गिरफ्तार किये, तब तक रिजवानुल हक का डायवर्सन केस हमारे कार्यालय में

किसी कारण वे लंबित नहीं था, और न ही किसी कर्मचारी ने लंबित रखा था ।

6. यह सही है कि आरोपी मूल कर्मचारी तहसील का है। यह सही है कि चुनाव कार्य के कारण कुछ दिन मेरे कार्यालय में अस्थायी तौर पर श्रीमती मरकाम के सहायक के रूप में रखा गया था। यह सही है कि अभियुक्त मई 04 से श्रीमति मरकाम को कार्यभार सौंप चुके थे। परंतु मरकाम मेडम को सहायता करते थे। यह सही है कि पहले मेरा रीडर श्री शंकर सिंह वर्मा थे। यह सही है कि श्री वर्मा के बाद, राजकुमारी मरकाम को सहा. ग्रेड. दो के पद पर नियुक्त किया था । श्रीमति मरकाम उस समय चुनाव कार्यालय में कार्यरत् थी, और व्यस्त होने के कारण आरोपी को बोला गया कि मरकाम के चार्ज लेते तक अस्थायी रूप से कार्य करते रहो। यह सही है कि अभियुक्त उस अवधि में श्रीमति मरकाम के सहायक के रूप में कार्य करते थे। उपरोक्त पत्र प्र.डी. । है जो फोटो कापी है डी-1 जिसमें गवाह का अ से अ भाग पर हस्ताक्षर है।

7. यह सही है कि श्री नेगी ट्रेप करने के बाद मेरे चैम्बर में आए थे, और उन्होंने बताया कि आरोपी का हाथ धुलाने से रंग नहीं निकला था यह सही है कि मुझे बताया गया था कि रिजवान जब सरपंच थे उस समय राशि गबन की थी, जिस संबंध में जांच के आदेश एवं रिपोर्ट दर्ज करने हेतु भी लिखा था। "

16. PW-9 Lalit Kumar Deshmukh, Revenue Inspector, categorically deposed that he had issued notice to the complainant, Rizvwanul Haq, and thereafter prepared the report pertaining to diversion proceedings. He unequivocally admitted his signature on document Ex. P/37.

In para 05 of his cross-examination, he admitted as under:-

"5. यह सही है कि घटना दिनांक जिस दिन लोकायुक्त वाले आये थे उस दिन सरपंचनों का आरोपी के ही कमरा मैं रजि०जांच कर रहा था, वहाँ पर उस समय प्रकाश तिवारी को भी ड्यूटी लगी हुई थी। उसी समय प्रार्थी आया, और हमलोगों से हाथ मिलाया और कहा कि मैं शादी में जा रहा हूँ, थोड़ा देर मैं आऊंग बोला था । उस समय मैंने प्रार्थी एवं आरोपी के मध्य क्या बात हुई, मैं नहीं सुना दुबारा कुछ देर बाद आया और चला गया। प्रकाश तिवारी भी घटना के समय वहां पर

था । जब लोकायुक्त वाले कमरा में आया, तो मैं सुना था । यह सही है कि लोकायुक्त आये तो आरोपी बोला कि क्या है मैं नहीं जानता, किन्तु प्रार्थी उसके जेब में कुछ डालकर चला गया है। यह सही है कि डायवर्सन का जो काम था, वह प्रार्थी के चालान नहीं पटाने से रुका था, किसी कर्मचारी द्वारा रोका नहीं गया था। मैं आरोपी का हाथ धुलवाने के समय था। लोकायुक्त वाले करीब चार आदमी थे। मैं पुलिस के बड़े साहब थे कि नहीं मैं नहीं पहचानता। "

17. PW-10 M.L. Negi, Inspector in the Anti Corruption Bureau, Jagdalpur, emphatically deposed that he conducted all the proceedings in the matter and unequivocally admitted his signature on all the relevant documents.

In para 19 of his cross-examination, he admitted as under:-

"19. यह सही है कि शुरू मैं प्रार्थी शिकायत करने आया था, उस शिकायत को लेने के बाद उसे टेप दिया गया था। टेप रिकार्ड का स्क्रीप्ट श्री धनश्याम साहू द्वारा तैयार किया गया है। यह सही है कि उक्त स्क्रीप्ट मैं बहुत जगह पर अस्पष्ट लिया हुआ है। यह सही है कि उस अस्पष्ट वाली जगह मैं क्या लिया है, मैं नहीं बता सकता, क्योंकि क्लियर बात नहीं होने से अस्पष्ट लिखा जाता है। यह कहना गलत है कि जहाँ पर अभियुक्त द्वारा इंकार कर दिया गया हो, उस स्थान पर अस्पष्ट लिखा गया है। यह सही है कि उस दौरान श्री धगट एस० डी०ओ०पी० हमारे कार्यालय में पदस्थ थे। स्वतः कहा कि वे अवकाश पर थे ।

In para 22 of his cross-examination, he stated as under:-

"22. ....प्रार्थी लिफाफा में जब पैसा लेकर गया, उसके दो-तीन मिनट बाद आया, जिस समय प्रार्थी इशारा नहीं किया, सीधे आकर बताया कि दे दिया हूँ उस समय उस कक्ष में दो-तीन कर्मचारी और भी थे, जिसमें देशमुख भी था ।... "

18. Ex. P/15 is a transcript of the conversation between the complainant and the accused, recorded on a tape recorder. However, it is clear from

Ex. P/15 that in various places, the words are marked as “unclear” (अस्पष्ट), showing that some parts of the conversation could not be properly heard or written down.

19. PW-3 Ghanshyam Sahu, Constable in the office of Anti-Corruption Bureau, Jagdalpur that he prepared the transcript of the conversation between the complainant- Rizawanul Haq and the accused- Ahir.

In para 12 of his cross-examination, he admitted as under :-

“12. सही है कि टेप का आवाज सुनने के बाद प्रार्थी द्वारा आवाज के बारे में बताने पर मैंने स्क्रिप्ट तैयार की थी। यह कहना सही है कि टेप में बहुत सी बातें अस्पष्ट हैं.....।”

20. The complainant, Rizvwanul Haq along with both shadow witnesses, admitted that the accused did not receive the bribe amount on the first attempt. They stated that the bribe was demanded in an envelope by the accused and it was suggested by defence that members of the trap team had instructed the complainant to place the tainted currency notes in an envelope. As per all witnesses, the envelope was purchased from a stationery shop and before placing the tainted currency notes inside, the notes were rubbed on an envelope. The complainant then approached the accused again to hand over the bribe amount along with the envelope.
21. The defence of the accused is that at the relevant time, no case was pending of the complainant before his office.
22. PW-6 K.P. Dewangan admitted the defence's suggestion that the complainant's diversion case had been forwarded to the Diversion Section on 09.03.2004 and had never returned to his office until the

trap was conducted.

23. The learned trial court convicted the accused for the recovery of currency notes, but failed to consider whether the demand for the bribe amount had been established.
24. It has been held by the Hon'ble Apex Court in the matter of **P. Somaraju** (*supra*) in paras 18 and 19, which read as under:-

*“18. The statutory presumption under [Section 20](#) of the PC Act is not automatic and arises only once the foundational facts of demand and acceptance are proved. The same has been reiterated time and again by this Court; in the recent decision of [Rajesh Gupta vs. State](#)<sup>4</sup> through Central Bureau of Investigation,<sup>9</sup> it was held:*

*“17. For an offence under [Section 7](#) of PC Act, the demand of illegal gratification is a sine qua non to prove the guilt. Mere recovery of currency notes cannot constitute an offence under [Section 7](#) of PC Act, unless it is proved beyond reasonable doubt that accused voluntarily accepted the money, knowing it to be a bribe. The proof of acceptance of illegal gratification can follow only if there is proof of demand.”*

*19. It is therefore vital to examine these elements before the circumstance of recovery can assume any significance. We once again rely on the observation of this Court in [Rajesh Gupta](#) (*supra*):*

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4 2022 INSC 359

***“16. ....The law is well-settled by the judgments of this Court in Panna Damodar Rathi vs. State of Maharashtra (1979) 4 SCC 526 and Ayyasami vs. State of Tamil Nadu (1992) 1 SCC 304, whereby it has been clarified that the sole testimony of the complainant, who is the interested witness, cannot be relied upon without having corroboration with the independent evidence.”***

25. It has been held by this Court in the matter of ***Radheshyam*** (*supra*) in para 11 which reads as under:-

***“11.The Hon'ble Apex Court held in the matter of Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdas Mehra, LAWS (SC) 1975 48, in paragraphs 19 & 24 which reads as under: -***

***“19. We think that the High Court was quite right in holding that the tape records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:***

- (a) The voice of the person alleged to be speaking must be duly Identified by the maker of the record or by others who know it.***
- (b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial had to be there so as to rule out possibilities of tampering with the record.***

*(c) The subject matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.*

*These requirements were deduced by High Court from R. v. Maqsud Ali, [1965] 2 All ER 464.*

*24. As regards the shorthand transcripts of the tape records, the evidence of their makers is there. It is certainly corroborative inasmuch as it only goes to confirm what the tape records contained. The tape records were the primary evidence of what was recorded. The transcripts could be used to show what the transcriber had found recorded there at the time of the transcription. This operated as a check against tampering. They had been rightly used by the High Court only as corroborative evidence."*

26. It has been held by this Court in the matter of **Saddam Prasad Thakur** (*supra*) in paras 13, 14 & 15 which read as under:-

*"13. In this case, transcription of tape recorder is Ex.-P/12, tape recorder was given to the complainant for verification of his complaint as record of the documentary evidence. As regards the documentary evidence i.e. transcription of tape-recorder (Ex.-P/12), the High Court of Madhya Pradesh, in the matter of Rajaram (Supra) has held in para 14 and 15, which read thus:-*

*"14. Any documentary evidence by way of an electronic record under the Evidence Act, in*

*view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act.*

*(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process*

*information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*

*(ii) The Information of the kind contained in electronic record or the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;*

*(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and*

*(iv) The information contained in the record should be a reproduction or derivation from the Information fed into the computer in the ordinary course of the said activity.*

*15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:*

*a) There must be a certificate which identifies the electronic record containing the statement;*

*(b) The certificate must describe the manner in which the electronic record was produced;*

*(c) The certificate must furnish the particulars of the device involved in the production of that record;*

*(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and*

*(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

*14. Hon'ble Supreme Court in the matter of Ram Singh (supra), held that a tape-recorder statement is admissible in evidence, subject to the following conditions:-*

*(1) The voice of the speaker must be identified by the maker of the record or other persons recognising his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.*

*(2) The accuracy of the tape-recorder statement must be proved by the maker of the record by satisfactory evidence; direct or circumstantial.*

*(3) Possibility of tampering with, or erasure of any part of, the tape-recorder statement must be totally excluded.*

*(4) The tape-recorder statement must be relevant.*

*(5) The recorded cassette must be sealed and must be kept in safe or official custody.*

*(6) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances.*

*15. Further, in para 32, It has been held, which reads thus:-*

*32. Thus, so far as this Court is concerned, the conditions for admissibility of a tape-recorder statement may be stated as follows:*

*(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.*

*(2) The accuracy of the tape-recorder statement has to be proved by the maker of the record by satisfactory evidence-direct or circumstantial.*

*(3) Every possibility of tampering with or erasure of a part of a tape-recorder statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.*

*(4) The statement must be relevant according to the rule so far Evidence Act.*

*(5) The recorded cassette must be carefully sealed and kept in safe or official custody.*

*(6) The voice of the speaker should be clearly audible*

***and not lost or distorted by other sounds or disturbances.***

27. In light of the above judgments and in the present case, it is observed that PW-3- Ghanshyam Sahu deposed that he prepared the transcript of the conversation between the complainant and the accused. However, from the statement of PW-3 and the judgment of the learned trial court, it remains unclear whether the tape recording itself was actually played and heard by the trial court during the proceedings. PW-3 further stated that he identified the voice of the accused based on the identification made at the instance of the complainant. This raises a significant concern regarding the evidentiary value of the transcript under the provisions of the Prevention of Corruption Act, as the identification of the voice was not independently verified by the court and relies primarily on the complainant's assertion. Moreover in Ex. P/15, various places written as unclear (अस्पष्ट).
28. It is also evident from the statement of the complainant (PW-1) and other witnesses that the accused initially denied receiving any bribe amount. Subsequently, the complainant handed over the bribe amount in an envelope to the accused.
29. Minute examination of the above evidence adduced by the prosecution, the entire case of the prosecution is suspicious as there is no corroborative evidence of demand. Trap witnesses and the Investigating Officer have admitted the suggestion of the defence that other persons were present in the office of the accused when the bribe amount was delivered; however, the prosecution did not examine any independent witnesses. It also remains unproven whether a diversion

case was pending before the Court of S.D.O., Bhanupratappur at the relevant time. Moreover, the prosecution witnesses admitted that the accused was not posted as a Reader in the said office at that time, and except for the complainant, no other witnesses were produced to substantiate the alleged demand of the bribe amount.

30. It has been held by the Hon'ble Apex Court in the matter of **State of Punjab vs. Madan Mohan Lal Verma**<sup>5</sup> in para 11 as under:-

**"11.The law on the issue is well settled that demand of Illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, 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 as referred to in Section 7 of the 1988 Act.**

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5 (2013) 14 SCC 153.

*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. 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. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other Interested witness. In a proper case, the court may look for Independent corroboration before convicting the accused person.*

31. So far as recovery is concerned, the defence of the accused/ appellant is that he denied accepting any bribe amount and claimed that the complainant- Rizwanul Haq (PW-1) later handed it over under compulsion in an envelope. So looking to the whole story of the prosecution, statement of the complainant, defence witness and search witness, the entire story narrated by the prosecution becomes doubtful. Therefore, the conviction imposed upon the accused/appellant by the learned trial Court is not sustainable and the appellant is entitled to get the benefit of doubt.
32. *Ex consequenti*, the appeal is **allowed**. The impugned judgment is set

aside and the appellant is acquitted of the aforesaid charges.

33. The appellant is reported to be on bail. Keeping in view the provision of Section 481 of BNSS, 2023., the appellant is directed to furnish the personal bond a sum of Rs. 25,000/- before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.
34. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

**Sd/-**

**(Rajani Dubey)**

**JUDGE**