

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRA No. 06/2004

Reserved on: 26.12.2025

Pronounced on: 27.01.2026

Uploaded on: 27.01.2026

**Whether the operative part or full
judgment is pronounced**

Muhammad Shaban Wani
S/o Ghulam Qadir Wani
R/o Kurshoo Nowgam, Padshahi
Bagh

.... Petitioner/Appellant(s)

Through: - Mr. Nisar Ahmad Bhat, Advocate and
Mr. A. Hanan, Advocate

V/s

State of Jammu & Kashmir,
Through Senior Superintendent of
Police, Vigilance Organization
Kashmir, Old Secretariat,
Srinagar

.....Respondent(s)

Through: - Mr. Mohsin Qadri, Sr. AAG with
Mr. Waseem Gul, GA

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

01. This appeal is directed against the judgment of conviction and sentence dated 29.09.2004 passed by the Court of Special Judge, Anti-Corruption Srinagar, Kashmir, whereby the appellant was prosecuted in FIR No. 40/1986 under Section 5/2 of the Jammu and Kashmir Prevention of Corruption Act (for short, *P.C. Act*). Vide the impugned judgment, the appellant was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹20,000/- for the offence under Section 5/2 of the P.C. Act. Besides, the appellant was also held guilty of the offence

under Section 161 RPC and was sentenced to undergo rigorous imprisonment for one year with a fine of ₹10,000/-.

02. Briefly stated, FIR No. 40/1986 was registered on 15.09.1986 by the Vigilance Organization Kashmir (hereinafter referred to as *VOK*) on the basis of a complaint lodged by the complainant. It was alleged that the appellant was approached by the complainant for issuance of a revenue extract, as the complainant intended to transfer 1½ kanals of land. It is alleged that for issuance of the said revenue extract, the appellant demanded a bribe of ₹1,000/-, which was ultimately scaled down to ₹800/-. On the strength of the said complaint, a trap was laid and, in the presence of shadow witnesses, the *VOK* alleged that the appellant demanded the bribe amount, which the complainant handed over to him. During the trap proceedings, ₹700/- was recovered from the person of the appellant, whereas ₹100/- was recovered from a fellow Patwari, namely Karan Singh, to whom the appellant is alleged to have handed over the said amount towards satisfaction of some past liability.

03. Consequently, during the trap proceedings conducted on 15.09.1986, the alleged recovery was effected, leading to the arrest of the appellant. Subsequently, the offence under Section 5/2 of the P.C. Act was stated to have been proved against him, on the basis of which, the Trial Court held the appellant guilty and sentenced him as aforesaid. The said findings are assailed in the present appeal on the ground that the learned Trial Court failed to correctly appreciate the settled legal position. It is contended that neither the demand of bribe was proved nor was there any clinching evidence to establish recovery from the person of the appellant.

The complainant did not support the alleged demand, and even the presence of the shadow witness (PW-6) is doubtful, as the said witness nowhere deposed that he had seen the complainant handing over the bribe amount to the appellant. In the absence of proof of demand and recovery, the conviction and sentence recorded against the appellant are manifestly erroneous. It is further contended that the charge-sheet was not proved beyond reasonable doubt and that the Trial Court, without indicating any cogent basis, proceeded merely on surmises and speculation. The mandatory requirements of law were not fulfilled and, therefore, the impugned judgment is unsustainable.

04. The respondent, while supporting the judgment rendered by the Trial Court, argued that not only was the presence of the shadow witness duly proved, but even the complainant, during cross-examination, materially stated that the demand for payment of bribe was made through a broker, namely Habibullah Alaei of Rawalpora. The said broker appeared in the witness box and deposed that the accused had made a specific demand. It was further contended that the appellant had prepared a defective revenue extract, on account of which the complainant faced difficulty in selling his land. Thereafter, on 15.09.1986, the complainant himself approached the appellant and requested issuance of a fresh revenue extract, for which the appellant demanded illegal gratification, initially amounting to ₹1,000/-, which was later scaled down to ₹800/-. The said amount was recovered during the trap proceedings. It was also argued that there is no contradiction in the testimony of the trap witnesses, as not only was the tainted money recovered, but during the hand-wash

proceedings as well, the appellant failed to point out any lacuna. Consequently, it was submitted that the trap proceedings do not suffer from any infirmity. It was further contended that the appellant failed to tender any plausible explanation as to how the tainted money landed in his pocket, particularly when the pocket wash gave positive results of phenolphthalein powder.

05. *Per contra*, counsel for the appellant placing reliance on 2014 (13) SCC 55, argued that the prosecution was required to prove beyond reasonable doubt that the appellant had voluntarily accepted the bribe amount, and that in the absence of proof of demand for illegal gratification, the offence under the Act does not stand proved. Learned counsel further relied upon 2015 (10) SCC 230 to submit that once the complainant turned hostile, and his evidence during cross-examination failed to elucidate any incriminating circumstance, it cannot be said that the demand was proved. It was argued that allegations of bribery must be examined in the light of all surrounding circumstances and, in the present case, even the shadow witness failed to disclose the actual transfer of money from the complainant to the pocket of the appellant.

06. Learned counsel for the appellant further drew the attention of this Court to a similar case wherein conviction recorded by the learned Trial Court of CBI, Jammu, was set aside by this Court in Criminal Appeal No. 13-A/2004 decided on 21.07.2008, holding that there was no sufficient material to sustain the conviction. It was pointed out that in the said case also, the statement of the complainant was not corroborated by any independent witness, and once acceptance pursuant to demand was not

proved by the shadow witness, the same was sufficient to create a doubt in the prosecution case.

07. Heard learned counsel for the parties and perused the record of the case.

08. The Trial Court, though having taken the view that the complainant had turned hostile, held that the recovery of tainted money stood proved beyond shadow of doubt and that the appellant had failed to explain as to how the money had landed in his pocket. The Trial Court further found that the allegation of false implication was without any basis, as the independent witnesses had corroborated the transaction of money between the complainant and the appellant. Though the complainant did not fully support the prosecution case, the Trial Court rejected the defence contention that the shadow witness had not witnessed the transaction. On the contrary, the shadow witness categorically deposed that a transaction of money had taken place between the complainant and the appellant. There was no contradiction with regard to the fact as to who had smeared phenolphthalein powder on the currency notes. The defence argument that the police had smeared powder on the hands of the appellant after his arrest and thereafter conducted the hand-wash proceedings was found to be devoid of any legal substance, as no such inference was suggested during the cross-examination of the prosecution witnesses. The allegation that members of the Sikh community had hatched a conspiracy to falsely implicate and trap the appellant was also found to be without any evidentiary support. Trial Court further observed that though certain discrepancies had emerged in the testimony of the complainant, the same

were attributable to the long delay in recording the evidence, as most of the witnesses had candidly admitted that due to lapse of time their memory had faded.

09. Trial Court, therefore, observed that “*when the prosecution evidence is considered as a whole, a picture emerges which favours the prosecution story and not the defence version. The criticism of the defence counsel to the evidence of PW-6, the shadow witness, is not fully justified. It cannot be said with certainty that the said PW was not present during the proceedings merely because he has not been made to sign the documents prepared in this case, which does not necessarily point to his absence. His statement, when read as a whole, is convincing. Therefore, I am not in a position to agree with the defence counsel and to hold that PW-6 Abdul Gani Head SG Constable was not associated with the team for conducting the trap.*”

10. The Trial Court further observed that “*however, the accused Mohammad Shaban alleges that the said money was thrust into his pocket by one of the members of the team. I am not convinced with this defence of the accused. In view of his defence, the prosecution case that the bribe money was taken out from the pocket of the shirt of the accused gets corroborated. Had it been a case of conspiracy and concoction, and had it been proved that Patwari Mohammad Shaban was falsely implicated in the manner projected by him, he would not have remained silent and would have agitated the matter along with the members of the Patwari Organization.*”

11. The plea put forth by the appellant that accused No.2, Karan Singh, was involved to get the appellant implicated with the active assistance of the Vigilance Organization Kashmir, was also found to be unsupported by evidence. The learned Trial Court, therefore, concluded that the appellant had made a demand for bribe, accepted the money, and that the same was recovered from his possession. Though the complainant, Rahim Khan, did not fully support the prosecution case, it was observed that he might have been won over. The witnesses categorically deposed that the complainant had met the accused-Patwari and requested issuance of the necessary revenue extract, for which the accused demanded money that was paid by the complainant. The learned Trial Court relied upon the testimonies of PW-Abdul Gani Lone, the complainant, PW-6 PW-Opinderjeet Singh, Accounts Officer (shadow witness).

12. Since the appellant had taken exception to the appreciation of prosecution evidence, it was found necessary to re-examine the evidence on record. According to the prosecution, the complainant PW-Rahim Khan owned land at Rawalpora, out of which he intended to sell 1½ kanals and, for that purpose, required the revenue extract and map. Initially, he attempted to procure the same through a property dealer; however, the concerned Patwari, the appellant herein, did not issue the proper extract. Thereafter, the complainant personally approached the appellant, who allegedly demanded a bribe of ₹1,000/- for issuance of the requisite record. On insistence of the complainant, the amount was scaled down to ₹800/-, which was allegedly demanded to be paid on 15.09.1986. The complainant approached the Vigilance Organization and narrated the

incident, pursuant to which a case was registered and investigation commenced. A trap was arranged by associating PW-6 Opinderjeet Singh, Accounts Officer, as the shadow witness. In the presence of PWs-2, 4, 5, 6 and 11, the vigilance team proceeded to the spot, where the appellant was residing in a rented room. The complainant entered the room and, upon demand, paid ₹800/-, which had already been treated with phenolphthalein powder in the VOK office. Thereafter, the appellant allegedly issued the revenue extract and map. Upon receipt of the pre-arranged signal, the raiding party entered the room and questioned the appellant regarding the money received by him. During the search, ₹700/- was recovered from the pocket of the shirt worn by the appellant, while ₹100/- was recovered from co-accused No.2. The appellant was arrested on the spot and, after completion of necessary formalities, the investigation was concluded. Upon obtaining sanction under Section 6 of the J&K Prevention of Corruption Act, the appellant was charged for offences under Section 5(2) of the P.C. Act read with Sections 161 and 120-B RPC. At the stage of charge, it was found that though ₹100/- had been recovered from co-accused No.2, the complainant had alleged that only the appellant had demanded and received the bribe. The co-accused had explained that the amount of Rs 100/- was paid to him by the appellant towards satisfaction of a past liability, which explanation stood corroborated by independent witnesses. Although the revenue extract was prepared by the co-accused, it was signed by the appellant in his capacity as Patwari. The Trial Court, therefore, held that no act of conspiracy was made out between the appellant and co-accused No.2 and, consequently,

the charge under Section 120-B RPC was dropped against the co-accused.

The appellant alone was tried for the offences under Section 5(2) of the P.C. Act read with Section 161 RPC.

13. For a just decision of the appeal, the statements of the complainant and the shadow witness, being the most material evidence, deserve close scrutiny and are, therefore, reproduced and discussed. PW-Rahim Khan, the complainant, stated that he never went to meet the appellant for obtaining the revenue extract and that it was only the mediators who had approached the appellant for the said purpose. He categorically denied having lodged any complaint against the appellant alleging demand of ₹800/- as bribe. Upon being declared hostile, he deposed that he intended to sell 1½ kanals of land and for that purpose had engaged PW-Habibullah Alaei, who alone had obtained the revenue extract from the appellant. He further stated that he neither knew the appellant nor had ever met him. He admitted that he was taken to the Vigilance Organization, where he was handed over ₹800/-, which was later taken back by the Vigilance officials, and his signatures were obtained on a receipt. According to him, the said amount of ₹800/- was adjusted towards the final sale consideration of the land. He reiterated that he neither met the appellant nor paid any money to him and denied having any knowledge of the alleged occurrence, though he claimed to have later learnt about the arrest of the appellant. On being examined by the Court, he stated that after the sale of land, the mediators did not return ₹800/- to him and that the said amount was included in the sale price. He further stated that he was told to issue a receipt for ₹800/- and was assured that the remaining sale consideration would be paid after

the Patwari issued the revenue extract. He also stated that he was told that ₹800/- had to be paid to the Patwari.

14. PW-Habibullah Alaei stated that he knew both the complainant and the appellant but denied having paid any money to the appellant. He was declared hostile and, during cross-examination, denied the suggestion that he was sent by the complainant to obtain the revenue extract from the appellant.

15. PW-Abdul Gani Lone stated that he was posted as SG Constable in the Vigilance Organization and that in the year 1986 a complaint was lodged alleging that the Patwari was demanding money for issuance of a revenue extract, initially ₹1,000/-, later settled at ₹800/- He stated that he participated in the raid and that on the basis of the complaint, a trap was laid. According to him, the complainant asked the appellant whether his work had been done, to which the appellant replied in the affirmative, whereafter the complainant handed over ₹800/- to the appellant in the presence of witnesses. Thereafter, the complainant went outside and informed the raiding team, which then entered the premises and recovered the amount.

16. PW-Opinderjeet Singh, Accounts Officer in the Divisional Fund Office, Srinagar, deposed that he was called to the Vigilance Organization where a demonstration was given prior to laying the trap. He stated that he had no knowledge whether the complainant had accompanied the Vigilance party to the raiding spot. He did not admit the preparation of a demonstration memo, though his signatures appear on record. He stated that when he reached the premises of the appellant, one of the persons

present was a Sikh, and ₹700/- were recovered from the appellant while ₹100/- were recovered from another Patwari. The recovery memo, marked EXPW-3, bears his signatures. He confirmed that the recovered currency notes bore the same numbers as noted during the demonstration. In cross-examination, he stated that though he does not read or write Urdu, he understands it and had signed documents written in Urdu. He stated that when the raiding party entered the room, the complainant and co-accused Karan Singh were also present. He further stated that the appellant informed the team that ₹100/- were with Karan Singh. He could not recall who actually recovered the amount from Karan Singh and admitted that the statement of the appellant regarding handing over of ₹100/- to the co-accused was not recorded. He stated that one Inspector recovered ₹700/- from the shirt pocket of the appellant. He further deposed that he and two Inspectors had stayed about 300 meters away from the spot and that it was the complainant who came out and gave the pre-arranged signal, upon which they rushed to the place of occurrence.

17. From the testimony of the shadow witness, it emerges that it was only the complainant who had gone inside the house where the appellant and the co-accused were present. It is pertinent to note that the trap was not laid in the office premises of the appellant but in a private house. The owner of the said house denied that the appellant was his tenant at the relevant time and also denied that any such incident had occurred in his house. From the evidence of the shadow witness, it is evident that he neither witnessed any demand being made by the appellant nor saw the complainant handing over any bribe amount to the appellant. The shadow

witness, who is otherwise an independent witness having no affiliation with the Vigilance Organization, expressed ignorance as to whether the complainant had accompanied the raiding party, though at one point he stated that the complainant came out of the house and gave the signal to the raiding party. The presence of the complainant at the scene of crime has been completely denied by the complainant himself, who has pleaded ignorance of the entire incident. The Trial Court presumed that the complainant had been won over by the appellant, though such presumption is not supported by any tangible evidence. The complainant consistently stated, both in examination-in-chief and cross-examination, that he had no contact or proximity with the appellant. His only reliance was that he was called to the Vigilance Organization by a mediator, whom he identified as PW-Habibullah Alaei, on the assertion that the appellant was demanding money. However, the evidence of the said mediator does not support the prosecution case. The complainant further stated on oath that he neither accompanied the raiding party nor was present at the time of recovery. His testimony is thus in direct contradiction to that of the shadow witness, who himself was uncertain as to whether it was the complainant or some other person who gave the signal.

18. PW-Abdul Gani Lone, being an official of the Vigilance Organization, described the presence of the complainant and the shadow witness at the time of laying the trap, yet he too was not specific regarding the presence of the complainant at the scene of crime. The prosecution sought to rely upon the testimony of PW-Mohd. Shaban Tan tray to establish that the complainant had approached the appellant through him

for obtaining the revenue extract and that the appellant deliberately avoided issuing the extract in order to demand bribe. However, this witness stated on oath that when he approached the appellant, he was told that the appellant was unwell and would deputize his fellow Patwari to prepare the sketch and get it signed. This version finds support from the statement of the appellant recorded under Section 342 Cr.P.C., wherein he stated that due to illness he had deputed co-accused Karan Singh to prepare the extract, which he later signed in good faith, and that there was no transaction of money. Thus, the testimony of PW-Mohd. Shaban Tantray does not advance the prosecution case.

19. The learned Trial Court proceeded on the premise that once the money was recovered from the pocket of the appellant and there was no contradiction in the recovery evidence, it must be presumed that the same was in pursuance of demand. Such conclusion is contrary to the settled legal position. For proving a trap case, four essential ingredients are required: (i) demand of illegal gratification, both initial and at the time of trap; (ii) acceptance of money pursuant to such demand; (iii) recovery of tainted money; and (iv) motive or consideration for demanding such money.

20. Insofar as the alleged initial demand of ₹1,000/- is concerned, the same is not supported by the complainant, who merely stated that he was asked to issue a receipt for ₹800/-, which amount was arranged by a middleman and adjusted towards the sale consideration. What transpired between the complainant and the appellant is not discernible from the record. The testimony of the complainant clearly indicates absence of any

direct nexus between him and the appellant regarding demand of bribe. The prosecution itself alleges that the demand was routed through a middleman, yet the identity of such middleman is not established. Neither PW-Habibullah Alaei nor PW-Mohd. Shaban Tantray admits to being such intermediary. As regards post-trap demand and acceptance, though the presence of PW-Abdul Gani Lone and PW-6 Opinderjeet Singh is shown, the shadow witness categorically stated that he did not witness any exchange of money between the complainant and the appellant. Thus, neither demand nor acceptance has been proved by any prosecution witness.

21. A learned Single Judge of this Court in *P. N. Dogra v. C.B.I., Jammu* in Criminal Appeal No. 13-A/2004 decided on 21.07.2008, held that where the prosecution itself relies upon the statement of an independent witness to prove demand and acceptance of illegal gratification by the accused, and such witness denies having witnessed any such act, the burden squarely shifts upon the prosecution to establish demand and acceptance through some other independent evidence. It was further held that when, according to the prosecution case, independent witnesses were available and could have been examined in this regard, failure to do so casts a serious doubt on the prosecution version. The officials of the department of the accused, who were examined as witnesses to the Panchnama, were the most reliable and independent witnesses and could have deposed with regard to demand and acceptance. The omission to examine such witnesses creates a shadow of doubt over

the prosecution story concerning demand and acceptance of bribe by the accused.

22. In *B. Jayaraj v. State of Andhra Pradesh, 2014 (13) SCC 55*, the Hon'ble Supreme Court, while dealing with a similar fact situation where the complainant did not support the prosecution case insofar as demand of bribe was concerned, held as under:

“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 were 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. 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...”

“9. Insofar as the presumption under Section 20 of the Act is concerned, such presumption can be drawn only on proof of acceptance of illegal gratification, which necessarily presupposes proof of demand. In the absence thereof, the foundational facts for raising such presumption are wholly absent.”

23. In *Selvaraj v. State of Karnataka 2015 (10) SCC 230*, the Hon'ble Apex Court, reiterating the settled legal position, held as under:

“17. In *A. Subair v. State of Kerala*, this Court laid down that illegal gratification has to be proved like any other criminal offence and where the evidence produced by the prosecution lacks quality and credibility, it would be unsafe to base a conviction thereon.”

“31. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence... The evidence on record is not sufficient to bring home the guilt of the appellant. The appellant is entitled to the benefit of doubt.”

“18. In *State of Kerala v. C.P. Rao*, it has been held that mere recovery of tainted money is not sufficient to convict the accused. There must be corroboration of the complainant's testimony regarding demand of bribe and the charge must be proved beyond reasonable doubt.”

The Court further reiterated the settled principles governing interference with orders of acquittal, as laid down in *Sanwat Singh v. State of Rajasthan*, emphasizing that proof of demand and acceptance is the sine qua non for conviction in bribery cases.

23. The consistent legal position that emerges from the aforesaid judgments is that the prosecution must prove the charge beyond reasonable doubt, like any other criminal offence, and the accused is presumed innocent until proven otherwise by cogent evidence of demand and acceptance of illegal gratification, which constitutes the most vital ingredient for securing conviction in bribery cases. Allegations of bribery must be examined in the backdrop of all attendant circumstances and demand must be established by clear and clinching evidence.

24. Applying the settled law to the facts of the present case, the appellant has been convicted for offences under Section 5(2) of the Prevention of Corruption Act read with Section 161 RPC, despite the fact that neither the demand of bribe in discharge of official duty nor its acceptance has been proved from the evidence on record. Even the recovery itself is rendered doubtful, as PW-Opinderjeet Singh categorically stated that he was not present when the alleged exchange of money took place between the complainant and the appellant. The trap was not laid in the office premises of the appellant but in a private house, the owner whereof has not supported the prosecution case. Considerable emphasis has been placed on the alleged recovery of ₹700/- from the appellant and ₹100/- from the co-accused, though the co-accused already stands discharged, which has not been questioned. The prosecution case throughout was that the appellant acted in conspiracy with the co-accused, yet such conspiracy has failed to be established. Above all, the

complainant has completely negated the prosecution case, having neither supported the alleged demand of bribe nor the recovery thereof.

25. Much reliance has been placed by the prosecution on the hand-wash and pocket-wash proceedings to contend that the exchange of money stood proved, particularly because the sodium carbonate solution turned pink and the shirt pocket of the appellant also showed phenolphthalein residue. However, the law is well-settled that mere recovery of tainted currency or positive phenolphthalein test is not sufficient to sustain conviction unless the demand for illegal gratification is proved beyond reasonable doubt. In *B. Jayaraj v. State of A.P.*, 2014 (13) SCC 55, the Hon'ble Supreme Court has categorically held that proof of demand is sine qua non for constituting an offence under the Prevention of Corruption Act and that recovery by itself cannot give rise to a presumption under law.

26. In the present case, even the recovery itself is rendered doubtful. PW-Opinderjeet Singh clearly deposed that when the raiding party rushed to the spot, the appellant was already being restrained by a Vigilance Inspector with both hands tied behind his back. This version has been corroborated by PW-Abdul Gani Lone, an official of the Vigilance Organization. In such circumstances, the possibility of phenolphthalein powder being transferred to the hands or clothing of the appellant during apprehension cannot be ruled out. The Supreme Court in *B. Jayaraj* (supra) has cautioned that phenolphthalein test is only corroborative in nature and cannot substitute proof of demand.

27. Significantly, the prosecution has not disputed or questioned the discharge of the co-accused. The testimony of Mohd. Shaban Tantray establishes that the appellant was ill and had deputed Patwari Karan Singh to prepare the revenue extract and obtain signatures. This explanation stands reinforced by the appellant's own version that he has been falsely implicated. In the absence of independent corroboration showing voluntary acceptance of money by the appellant, the benefit of doubt must necessarily follow.

28. Once the demand itself becomes doubtful or improbable, the alleged recovery loses its legal significance. Although it is stated that the tainted money was recovered from the right pocket of the appellant's shirt, there is no direct evidence showing transfer of money from the complainant to the appellant. Even the shadow witness has failed to clearly depose as to the actual act of acceptance. In *Selvaraj* (supra), the Supreme Court has reiterated that acceptance must be proved as a conscious and voluntary act, failing which the presumption under Section 20 of the Act cannot be invoked.

29. The prosecution case further suffers from serious infirmities inasmuch as it is nowhere stated as to who actually recovered the money from the pocket of the appellant. All materials such as the tainted notes, phenolphthalein powder, and test solutions remained within the exclusive control of the trap-laying agency. Given that the appellant was apprehended with both hands restrained, the possibility of manipulation or planting of recovery cannot be ruled out. The explanation offered by the

appellant regarding his illness and deputation of the Patwari appears plausible and finds support from the prosecution evidence itself.

30. At the cost of repetition, though the presence of the complainant at the pre-trap demonstration stands established, his presence thereafter is neither discernible nor proved. Insofar as the payment of the alleged bribe amount is concerned, the complainant has categorically denied having produced the same before the VOK and, on the contrary, has stated that its payment might have been made by a middleman, an assertion which does not form part of the prosecution case. The finding recorded by the learned Trial Court that the complainant may have been won over is purely conjectural and is not supported by any cogent evidence. The Hon'ble Supreme Court in *Selvaraj* (supra) has categorically held that courts cannot draw adverse inferences against the accused on mere assumptions, particularly when the prosecution itself has failed to establish the foundational facts of demand and acceptance.

31. Even the members of the raiding party, including the so-called independent witness, have not been consistent in their testimonies, thereby weakening the prosecution case. The learned Trial Court proceeded on assumptions rather than legally admissible proof, which is impermissible in criminal jurisprudence. As held in *B. Jayaraj* (supra), suspicion, however strong, cannot take the place of proof.

32. In view of the above discussion, it is evident that neither demand nor voluntary acceptance of illegal gratification by the appellant has been proved beyond reasonable doubt. The prosecution case is riddled with inconsistencies and shrouded in suspicion. Consequently, the conviction

and sentence recorded by the Trial Court cannot be sustained in law and are hereby set aside. The appellant is acquitted and shall stands discharged of his bail bonds and the file is ordered to be consigned to records. Trial court record in original if called for, shall be sent back with copy of the judgement.

33. Accordingly, the appeal is allowed.

(SANJAY PARIHAR)
Judge

JAMMU
RAM MURTI
27.01.2026

