

(2013) 05 MP CK 0078

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 139 of 1997

Gaya Prasad Telgam

APPELLANT

Vs

State of Madhya Pradesh (now Chhattisgarh)

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 114, 4

Penal Code, 1860 (IPC) — Section 161, 165

Prevention of Corruption Act, 1988 — Section 11, 13, 13(1)(d), 13(1)(d)(ii), 13(2)

Citation : (2013) CriLJ 3831

Hon'ble Judges : Radhe Shyam Sharma, J

Bench : Single Bench

Advocate : B.M.K. Bajpai, for the Appellant; Anand Verma, Panel Lawyer, for the Respondent

Judgement

Radhe Shyam Sharma, J.—This appeal is directed against judgment dated 10-1-1997 passed by 1st Additional Sessions Judge/Special Judge under the Prevention of Corruption Act, 1988 (henceforth "the Act, 1988"), Bilaspur in Special Case No. 3/92. By the impugned judgment, accused/appellant Gaya Prasad Telgam has been convicted and sentenced in the following manner with a direction to run the sentences concurrently:

Case of the prosecution, in brief, is as under:

On 14-12-1989, accused/appellant Gaya Prasad Telgam was posted as a Patwari of Halka No. 23, Village Tifra District Bilaspur. On that date, complainant Santosh Kumar Tiwari (PW-6) made a written complaint (Ex. P-1) to Deputy Superintendent of Police, Lokayukta, Bilaspur that his father J.N. Tiwari had purchased an agricultural land measuring 0.13 acre in his own name, whose papers including stamp papers were given by complainant Santosh Kumar Tiwari (PW-6) to the concerned Halka Patwari, i.e., the appellant for mutation. At that time, the appellant demanded Rs. 225/- for mutation of the land in the name of

his father J.N. Tiwari. Complainant Santosh Kumar Tiwari (PW-6) gave him a sum of Rs. 50/- on 30-11-1989. The appellant told complainant Santosh Kumar Tiwari (PW-6) unless a sum of Rs. 225/- was not given mutation was not done by him. Since complainant Santosh Kumar Tiwari (PW-6) did not want to give the money to the appellant, he made the complaint (Ex. P-1). The complaint (Ex. P-1) was forwarded to Inspector Ramesh Pandey (PW-8) for necessary action. B.R. Trivendram (PW-2) District Industrial Manager and B.P. Sharma (PW-9) Assistant Commercial Tax Officer were made Panch Witnesses.

The complaint (Ex. P-1) was given to the Panch Witnesses for their perusal. They enquired about the complaint (Ex. P-1) from complainant Santosh Kumar Tiwari (PW-6). A pre-trap demonstration was arranged, wherein a solution of sodium carbonate was prepared in a glass. On dipping of a piece of plain paper in the solution, colour of the solution did not change. Thereafter, another piece of paper containing phenolphthalein powder was dipped in the solution, colour of the solution turned pink. After giving demonstration, complainant Santosh Kumar Tiwari (PW-6) was asked to submit currency notes of Rs. 200/-. Complainant Santosh Kumar Tiwari (PW-6) submitted currency notes of Rs. 200/- in the denomination of Rs. 50/- each. Pre-Trap Panchnama (Ex. P-2) was prepared and numbers of the currency notes were recorded in Pre-Trap Panchnama (Ex. P-2) and thereafter phenolphthalein powder was smeared on the currency notes and those currency notes were kept in the left pocket of the full shirt worn by complainant Santosh Kumar Tiwari (PW-6). He was informed and guided as to how the trap would be arranged and the role which he was required to play in the trap proceedings. Complainant Santosh Kumar Tiwari (PW-6) was also instructed that he will give the money to the appellant only on his making demand.

After preparing Pre-Trap Panchnama (Ex. P-2) and arranging pre-trap proceedings, the trap team proceeded to Village Tifra to the house of the appellant. Complainant Santosh Kumar Tiwari (PW-6) and Ram Bahadur Singh (PW-7) entered the house of appellant and other trap team surrounded house of the appellant. Complainant Santosh Kumar Tiwari (PW-6) gave the tainted currency notes to the appellant. After giving money, complainant Santosh Kumar Tiwari (PW-6) as was already guided to him, transmitted signal to the trap team. After receiving the signal, members of the trap team rushed the spot immediately and caught hands of the appellant. The trap team seized the currency notes from the appellant.

A solution of sodium carbonate was prepared in which fingers of both the hands of the appellant were dipped, colour of the solution turned pink. The solution was kept in a separate bottle and sealed. The currency notes were recovered from the pocket of the shirt of the appellant. Numbers of the currency notes were compared with the numbers mentioned in Pre-Trap Panchnama (Ex. P-2), which were found to be similar. Another solution of sodium carbonate was prepared and the recovered currency notes were dipped therein, colour of the solution turned

pink. The solution was kept in another bottle and sealed. Another solution of sodium carbonate was prepared in which the pocket of the shirt of the appellant was dipped, colour of the solution turned pink. The solution was kept in another bottle and sealed. The shirt of the appellant and the recovered currency notes were seized. Copy of the Sale Deed was seized. Thereafter, Trap-Panchnama was prepared vide Ex. P-6. Dehati First Information Report (Ex. P-13) was recorded. Thereafter, Crime No. 151/89 was registered vide regular First Information Report (Ex. P-14) on 22-12-1989. The seized solutions and other articles were sent for chemical examination to Forensic Science Laboratory, Sagar vide Ex. P-19. Report of FSL (Ex. P-20) was received. In Ex. P-20, test of phenolphthalein was found to be positive.

After completion of the investigation, sanction for prosecution against the appellant was obtained vide Ex. P-12 and charge-sheet was filed against him in the Court of Special Judge/First Additional Sessions Judge, Bilaspur and trial was conducted by learned First Additional Sessions Judge, Bilaspur.

The trial Court framed charges against the appellant under Sections 7 and 13(1) (d) read with Section 13(2) of the Act, 1988. After appreciation of the evidence available on record, the trial Court convicted and sentenced the appellant as mentioned above.

2. To establish the charges against the accused/appellant, the prosecution examined S.R. Dahariya (PW-1), Assistant Industrial Manager, District Industrial Center Bilaspur B.R. Trivendra (PW-2), D.K. Bal (PW-3), Patwari A.S.G. Sheikh (PW-4), Bharat Das (PW-5), complainant Santosh Kumar Tiwari (PW-6), Ram Bahadur Singh (PW-7), Inspector Ramesh Pandey (PW-8), Assistant Commercial Tax Officer B.P. Sharma (PW-9). The appellant did not examine any witness in his defence.

3. Shri B.M.K. Bajpai, learned counsel for the appellant argued that the prosecution has failed to prove demand of illegal gratification by reliable and cogent evidence. The Panch Witnesses did not hear the appellant demanding money of his own from the complainant. It is necessary for the prosecution to satisfy and establish that all the ingredients of Sections 7 and 13(1)(d) of Act, 1988 have been made out before convicting the accused. Therefore, the prosecution did not succeed in proving the ingredients of Sections 7 and 13(1)(d) of the Act, 1988. He further submitted that even if a presumption is drawn as per Section 20 of the Act, 1988, the accused established his case that he did not accept any illegal gratification. Evidence of the prosecution witnesses are full of contradictions. Evidence of complainant Santosh Kumar Tiwari (PW-6) is not reliable and conviction cannot be based on his testimony. Hence, the impugned judgment is not sustainable in the eyes of law. Learned counsel for the appellant placed reliance on Banarsi Dass Vs. State of Haryana,

4. On the other hand, Shri Anand Verma, learned Panel Lawyer for the State/respondent, supporting the impugned judgment, refuted the above arguments

and submitted that the prosecution has led clinching and reliable evidence. The bribe money was recovered from the appellant. When fingers of the appellant were dipped in the solution of sodium carbonate, colour of the solution turned pink. Therefore, there is a presumption against the appellant and the judgment of conviction and sentence against him does not warrant any interference by this Court.

5. I have heard learned counsel for the parties at length and have also perused the record of Special Case No. 3/92 with utmost circumspection.

6. The learned trial Judge, after appreciation of the evidence available on record, held, that the appellant had demanded illegal gratification of Rs. 200/- from the complainant for mutation of the land in the name of father of the complainant in the revenue record.

7. Complainant Santosh Kumar Tiwari (PW-6) deposed that his father J.N. Tiwari purchased 0.13 acre agricultural land. He further deposed that he had given the sale-deed to the appellant for mutation. Appellant kept the sale deed and demanded a sum of Rs. 250/-. He told the appellant that he would give the money later on. Then the appellant asked for some money in advance. He gave a sum of Rs. 50/- to the appellant and thereafter, he frequently met the appellant in this regard, but the appellant said him that he will do the mutation only on being given the sum of Rs. 200/-. He made the complaint (Ex. P-1) in Lokayukta Office, Bilaspur on 14-12-1989. He had submitted currency notes of Rs. 200/- before the trap team. Phenolphthalein powder was smeared on those currency notes and necessary proceedings were recorded.

8. V.R. Trivendra (PW-2) and B.P. Sharma (PW-9) deposed that on 14-12-1989, they were called for by Lokayukta Office, Bilaspur. They went there and met Inspector Ramesh Pandey (PW-8), who introduced him with complainant Santosh Kumar Tiwari (PW-6). He was given the complaint (Ex. P-1) for their perusal. They enquired about the complaint from complainant Santosh Kumar Tiwari (PW-6). Complainant Santosh Kumar Tiwari (PW-6) stated before them the contents of the complaint (Ex. P-1) to be true. Then they put their signatures on the complaint. They further deposed that a pre-trap demonstration was arranged. Complainant Santosh Kumar Tiwari (PW-6) submitted currency notes of Rs. 200/- in the denomination of Rs. 50/- each. Pre-Trap Panchnama (Ex. P-2) was prepared. Numbers of the currency notes were recorded therein. Phenolphthalein powder was smeared on the currency notes and those currency notes were kept in the pocket of the complainant Santosh Kumar Tiwari (PW-6).

9. Inspector Ramesh Pandey (PW-8) deposed that complainant Santosh Kumar Tiwari (PW-6) made the complaint. (Ex. P-1) against the appellant. He had arranged a pre-trap demonstration. Complainant Santosh Kumar Tiwari (PW-6) had submitted currency notes of Rs. 200/-, numbers thereof were recorded in Pre-Trap Panchnama (Ex. P-2). Phenolphthalein powder was smeared on me currency notes and they were kept in left pocket of the shirt worn by

complainant Santosh Kumar Tiwari (PW-6). He further deposed that complainant Santosh Kumar Tiwari (PW-6) was instructed and guided as to how the trap would be arranged and the role which he was required to play in the trap proceedings.

10. Inspector Ramesh Pandey (PW-8), Santosh Kumar Tiwari (PW-6), B.R. Trivendra (PW-2), Ram Bahadur Singh (PW-7) and B.P. Sharma (PW-9) deposed that they proceeded for Village Tifra and reached there at about 8 a.m. They stayed near the house of the appellant and complainant Santosh Kumar Tiwari (PW-6) and Ram Bahadur Singh (PW-7) were sent to the house of the appellant. Ram Bahadur (PW-7) also accompanied the Complainant Santosh Kumar Tiwari (PW-6) near the house of the appellant. Complainant Santosh Kumar Tiwari (PW-6) was entered the house of the appellant. Complainant Santosh Kumar Tiwari (PW-6) deposed that he entered the house of the appellant. He asked the appellant whether the mutation has been done, then appellant demanded money to him. He gave money to the appellant and after counting, appellant kept money in his pocket of the shirt. He further deposed that Ram Bahadur (PW-7) transmitted a signal. After receiving the signal, the trap team rushed the spot immediately and caught both the hands of the appellant.

11. Inspector Ramesh Pandey (PW-8), V.R. Trivendra (PW-2), complainant Santosh Kumar Tiwari (PW-6), Ram Bahadur Singh (PW-7) and B.P. Sharma (PW-9) deposed that a solution of sodium carbonate was prepared in which fingers of both the hands of the appellant were dipped, colour of the solution turned pink. The solution was kept in a separate bottle and sealed. The currency notes were recovered from the pocket of the shirt of the appellant. Numbers of the currency notes were compared with the numbers mentioned in Pre-Trap Panchnama (Ex. P-2), which were found to be similar. Another solution of sodium carbonate was prepared and the recovered currency notes were dipped therein, colour of the solution turned pink. The solution was kept in another bottle and sealed. Another solution of sodium carbonate was prepared in which pocket of the shirt of the appellant was dipped, colour of the solution turned pink. The solution was kept in another bottle and sealed. The shirt of the appellant and the recovered currency notes were seized.

12. On examining the accused u/s 313 Cr.P.C. he took defence that there was old enmity between him and complainant Santosh Kumar Tiwari (PW-6). Due to old enmity he was falsely implicated by complainant Santosh Kumar Tiwari (PW-6).

13. After perusal of evidence of V.R. Trivendra (PW-2), Santosh Kumar Tiwari (PW-6), Ram Bahadur Singh (PW-7), Inspector Ramesh Pandey (PW-8) and B.P. Sharma (PW-9), it is proved that a sum of Rs. 200/- was recovered from the accused and after comparing the numbers of the recovered currency notes with the numbers mentioned in the Pre-trap Panchnama (Ex.-P/2) they were found to be similar.

14. In Dalpat Singh and Another Vs. State of Rajasthan, , the Hon''ble Supreme

Court observed that the words "in the discharge of his duty" occurring in S. 5(1) of the Prevention of Corruption Act do not constitute an essential ingredient of the offence under S. 5(1)(d) of the Act. The ingredients of the offence under S. 5(1)(d) are: (1) that the accused should be a public servant, (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant, (3) that he should have obtained a valuable thing or pecuniary advantage and (4) for himself or any other person. Therefore to bring home an offence under S. 5(1)(d), it is not necessary to prove that the acts complained of were done by the accused in the discharge of their official duties. Therefore, if it is proved that the accused had by illegal means or by otherwise abusing their position as public servants obtained for themselves money or other valuable things, then, they can be said to have committed the offence of criminal misconduct in the discharge of their official duties.

15. In the light of above principles, it is erroneous to hold that the essence of an offence u/s 13(1)(d) read with Section 13(2) of the Act, 1988 is that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is also erroneous to hold that the essence of an offence u/s 13(1)(d) read with Section 13(2) of the Act, 1988 is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage. It is necessary that an accused person, while misconducting himself, should have done in the discharge of duty and thereby obtained any pecuniary advantage. In the instant case, the appellant was posted as a Patwari in Patwari Halka No. 23 and complainant Santosh Kumar Tiwari (PW-6) had given him the sale-deed for mutation. Complainant Santosh Kumar Tiwari (PW-6) had frequently met the appellant for getting the mutation done. Even thereafter, the appellant did not done the mutation in the name of the father of the complainant. Therefore, the statement of the complainant that the appellant demanded the sum of Rs. 200/- from him as illegal gratification is reliable and acceptable.

16. In C.M. Sharma Vs. State of A.P. Th. I.P., , the Hon"ble Supreme Court observed thus:

12. Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz. unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the Court seeks corroboration in material particulars for other evidence. However, in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in all circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, Therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will encourage the bribe taker to receive illegal gratification in privacy and then insist for

corroboration in case of prosecution. Law cannot countenance such situation. In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness. Not only this corroboration of the evidence of a witness can be found from the other materials on record. Here in the present case there does not seem any reason to reject the evidence of the contractor....

15. We do not have the slightest hesitation in accepting the broad submission of Mr. Rai that demand of illegal gratification is sine qua non to constitute the offence under the Act. Further mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. In the facts of the present case, we are of the opinion that both the ingredients to bring the act within the mischief of Sections 7 and 13(1)(d)(ii) of the Act are satisfied. From the evidence led on behalf of the prosecution it is evident that the appellant demanded the money from the contractor as he had passed his bills. There is further evidence that when the contractor went along with the shadow-witness on the date told by the appellant for payment of the bribe, appellant asked the shadow-witness to leave the chamber and thereafter the demand for payment of illegal gratification was made and paid. The positive sodium carbonate test vis-?-vis the fingers and right trouser's pocket of the appellant go to show that he voluntarily accepted the bribe. Thus there is evidence of demand of illegal gratification and the voluntary acceptance thereof.

17. In the instant case, it is evident that complainant Santosh Kumar Tiwari (PW-6) had gone to the house of the appellant. Complainant Santosh Kumar Tiwari (PW-6) gave the money to the appellant. The appellant received the tainted money from the complainant. The complainant transmitted signal to the waiting trap-team and the trap-team, on receiving the signal, rushed the spot immediately and caught hands of the appellant. After getting fingers of the appellant washed in the solution of sodium carbonate, the test of phenolphthalein was found to be positive. Currency notes were also recovered at the instance of the appellant and their numbers were compared with the numbers mentioned in the Pre-Trap Panchnama (Ex. P-2), which were found to be similar.

18. In *M. Narsinga Rao Vs. State of Andhra Pradesh*,) the Hon"ble Supreme Court observed thus:

22. In *Raghubir Singh Vs. State of Haryana*, V. R. Krishna Iyer, J. speaking for a three Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is "res ipsa loquitur". In this context the decision of a two-Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, JJ.) in *Hazari Lal Vs. State (Delhi Administration)*,) can usefully be referred to. A police constable was convicted u/s 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs. 60 from one Sriram who was examined as PW 3 in that case. In the trial Court PW 3

resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW 8 have spoken to the prosecution version. The Court found that phenolphthalein-smeared currency notes were recovered from the pocket of the police constable. A contention was raised in the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption u/s 4 of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two-Judge Bench observed as follows:

It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW3. u/s 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW 3, the presumption u/s 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the Courts below.

25. We, therefore, agree with the finding of the trial Court as well as the High Court that prosecution has proved that the appellant has received gratification from PW 1. In such a situation the Court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward or doing the public duty. Of course, the appellant made a serious endeavour to rebut the said presumption through two modes. One is to make PW1 and PW 2 speak to the version of the appellant and the other is by examining two witnesses on the defence side. True PW1 and PW2 obliged the appellant. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the date when the alleged demand was made by PW1. But the trial Court and the High Court have held their evidence unreliable and such a finding is supported by sound and formidable reasoning. The concurrent finding made by the two courts does not require any interference by this Court.

19. In T. Shankar Prasad Vs. State of Andhra Pradesh, the Hon''ble Supreme Court observed thus:

8. For appreciating rival stands it would be proper to quote Section 20(1) of the Act, which in essence and substance is the same as Section 4(1) of the previous Act of 1947 and which read as follows:

4. (1) Presumption where public servant accepts gratification other than legal remuneration.--(1) Where in any trial or an offence punishable u/s 161 or Section 165 of the Indian Penal Code, or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

9. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 4(1) of the 1947 Act and Section 20 of the Act, it must have the same import of compulsion.

10. When the sub-section deals with legal presumption, it is to be understood as in terrorem i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc. if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption u/s 4 of the 1947 Act is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. (See M. Narsinga Rao Vs. State of Andhra Pradesh,

20. In The State rep. by CBI, Hyderabad Vs. G. Prem Raj, the Hon"ble Supreme Court observed thus:

20. At this juncture, we must also express as to how the presumption was completely ignored by the High Court. Section 20 of the Act provides:

20. Presumption where public servant accepts gratification other than legal remuneration.--(1) Where, in any trial of an offence punishable u/s 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an

accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) [Not relevant.]

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

It was argued, though feebly, that the presumption could not be drawn as the charge in this case was u/s 13(2) read with Section 13(1)(d) of the Act.

21. It was pointed out by the learned counsel for the respondent-accused that Section 13(1)(d) did not attract the presumption u/s 20 of the Act. What is being ignored by the learned counsel for the respondent-accused is that the charge was not only u/s 13(1)(d), but also u/s 7 of the Act. Section 7 of the Act is as under:

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

21. In Subbu Singh Vs. State by Public Prosecutor,) the Hon"ble Supreme Court held that once it is proved by the prosecution that the money was demanded as bribe and the same was received from PW2, Section 20, PC Act comes into play. Once there is a presumption as contemplated u/s 20, it is for the appellant to establish that the amount was not received as bribe. It is to be noted that the appellant was alone in his room for sometime holding the currency notes before PW 26 and other officer entered into the house. Therefore, as rightly observed by the High Court, the possibility of the appellant counting the money with the help of right hand cannot be ruled out.

22. In the instant case, currency notes of Rs. 200/- were recovered from the appellant and the numbers thereof were compared with the numbers mentioned in the Pre-Trap Panchanama (Ex. P-2), which were found to be similar. The appellant did not offer any proper and plausible explanation for recovery of money from him. It is proved that tainted money was recovered from the appellant, therefore, in the facts and circumstances of the case, a presumption can be drawn against him that he demanded and accepted illegal gratification. In such a situation, this Court is under a legal compulsion to draw a legal presumption that such gratification was accepted as a reward for doing the public duty.

23. For the foregoing reasons, I am of the considered opinion that the conviction of the appellant is based upon reliable and credible evidence. I do not find any illegality or irregularity in the impugned judgment. In the result, the impugned judgment is affirmed and the appeal is dismissed.