

(2000) 01 MP CK 0041
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 30/89

Khanju Prasad Ladiya

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 11-01-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 4(1), 5(1), 5(2)

Citation : (2000) CriLJ 4400 : (2000) 2 MPHT 480 : (2000) 1 MPLJ 23

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : S.L. Kochar, for the Appellant; Vinay Harit, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mishra

Present appeal has been filed by the accused aggrieved of conviction u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and Section 161 I.P.C.. He has been sentenced to R.I. for one year and a fine of Rs. 500/- and in default R.I. for three months under each of the charges. Both sentences have been ordered to run concurrently, on account of having obtained illegal gratification from Ganesh Prasad in order to give the lease of the land to him. According to the prosecution case the accused applicant was holding the post of Naib Tehsildar and was working under SDO, Khurai at the relevant time on 1-2-85. Complainant Ganesh Prasad was granted temporary lease in the year 1973-74 of 5 acres of land situated at village Bandri and his possession continued over the said land. He wanted to obtain permanent lease of the said 5 acres of land comprising in survey No. 329/12. When complainant contacted Naib Tehsildar at village Malthone, he asked him to get prepared Khasra B-1, affidavit and Patwari report. The accused was not ready to give permanent lease without having been paid a sum of Rs. 100/- as illegal gratification, which was quoted by the accused.

Ganesh Prasad submitted the complaint Ex. P-19 in the office of Lokayukta, at Sagar. Inspector of Lokayukt office Mahesh Prasad Dubey, P.W. 10 also asked A.N.M. Sadiq SDO Forest, B.P. Singh, Inspector Gautam Shukla and Head Constable Indramani. Head Constable Indramani, Head Constable Sokhelal, Baburam Dohre to be present in the office on 28-9-1985. In the morning on 28-9-85 all aforesaid persons were present in the office. Thereafter the complaint was given to the said persons for apprising them of the contents. Thereafter Ganesh Prasad handed over currency note of Rs. 100/- consisting of one currency note of Rs. 50/-, two of Rs. 20/- and one of Rs. 10/-, total Rs. 100/-. The number of these currency notes were noted in Panchnama inquest. Phenolphthalene powder was applied and demonstration was made of Phenolphthalene powder in the solution of Sodium Carbonate. Solution was kept in the sealed cover. The currency notes were placed in the left hand pocket of Ganesh Prasad and he was told that only on demand being raised by Naib Tehsildar the complainant would give the currency notes after handing them to the Naib Tehsildar. He will put his left hand over his head and the trap party on receiving this indication would reach to spot. The inquest prepared of the said proceedings is Ex. P-20. The complainant was carrying application for permanent lease, affidavit, copy of B-1 Khasra.

P-5 in the case is document pertains to permanent lease. These documents were supposed to be handed over to Naib Tehsildar, the accused thereafter sum of Rs. 100/- was to be paid. A trap party stopped about one kilometer. Complainant Ganesh Prasad and constable Sokhelal were dropped from the Jeep. Thereafter the trap party reached near the house of Naib Tehsildar at about 12:30 p.m.. Accused was in office, after sometime the accused came and went inside the house. After sometime the complainant Ganesh Prasad also entered the house of accused, then handed over to him the documents Exs. P-2 to Ex. P- 6. The accused asked him to call Ravishanker Namdeo, Patwari. Accused went to Namdeo Patwari to call him. Thereafter the accused read the documents and handed over them to the said patwari and asked him to bring those documents in the Court. Thereafter the accused demanded sum of Rs. 100/- from the complainant which the complainant took out by his left hand and handed over them to the accused. The accused had put them in the red bag which was lying on the cot. Thereafter the complainant Ganesh Prasad came out and signalled the trap party. They all immediately went inside and caught hold of the accused. The accused informed that the money received by him has been placed in the red bag lying on the cot. B.P. Singh lifted the bag from the cot, his hands were washed from the Sodium Carbonate the colour of which did not turn, thereafter the hands of the accused were washed in the solution of Sodium Carbonate, which turned rosy. The solution was again kept in a sealed cover. Subsequently B.P. Singh took out from that bag currency notes of Rs. 100/-. The number of these currency notes tallied with the number mentioned in the inquest report P-20. These currency notes were seized alongwith the bag in which they were placed and the other material in that bag was also seized. B.P. Singh hands were

again got washed in the Sodium Carbonate solution, this time it turned rosy. This solution was also seized and kept in the sealed cover. Seizure of the currency notes was made vide seizure memo Ex. P-21. Ravishanker Patwari was called and documents were seized from him. The bag and the articles etc., were seizure as per seizure memo Ex. P-22. The documents P-2 to P-6 were seized vide seizure memo P-I from Ravishanker Patwari, Mathura Prasad Patwari prepared the spot map Ex. P-23. As per Ex. P-17 the case was sent to Lakayukt Office, Bhopal for its registration. The registration was done as per Ex. P-18. Khasra and Kishtabandi P-10 and P-11 were seized from Mathura Prasad Patwari vide seizure memo Ex. P-8 which was given in supurdagi of Mathura Prasad vide supurdaginama Ex. P-9. Phenolphthalene and Sodium Carbonate solution were sent to FSL Sagar for examination vide requisition memo Ex. P-24. The analysis report is Ex. P-25. The accused was arrested vide arrest memo Ex. P-26. The bag of the accused and the other documents were seized vide memo Exs. P-27, P-28, P-29 and P-30. Work distribution, posting documents have been exhibited as Exs. P-14 and P-15. Sanction was granted as per sanction order P-22 after completing the investigation challan was filed.

The accused abjured the guilt and contended that he never demanded any illegal gratification from Ganesh Prasad nor accepted any bribe. Sum of Rs. 100/- which has been recovered from the bag of the accused have been placed in his absence by Ganesh Prasad with the help of his relative Mukundi who was reader in the Court of Naib Tehsildar and the charge of said reader was taken with the help of police and due to that illwill the case has been connected as Mukundi was having been illwill with the accused the complainant had acted in collusion of Mukundi. In the defence the accused has examined Chhotelal Parashar Shankerlal, Sakhi Gopal, and Rajkumar as D.W. 1 to D.W. 4. The accused has been convicted by the learned trial Judge. Aggrieved by the same the present appeal has been filed.

It was submitted by learned counsel for the appellant that the conviction in the facts and circumstances of the case was bad in law. The currency notes were not found from the person of the accused, but, they were recovered from a bag which was lying on a cot and it was possible to place a currency note in the same. It was also submitted that there was no occasion to grant the permanent lease in favour of the complainant as land stood already settled permanently in bhumiswami rights thus the basis of demand of illegal gratification is missing. It was further submitted that the prosecution has not been able to establish that illegal gratification was demanded, the investigation was not fair and the appellant deserves to be acquitted.

Prosecution has examined Ravi Shanker Patwari as P.W. 1. He has deposed that when he was standing at bus-station Malthone, Ganesh Prasad came there at about 12:30. The complainant told him that he wanted to obtain lease in Bhumiswami rights of the land in question and was carrying Khasra B-1. The said Patwari asked him to take the Patwari of his circle. Ravishanker Patwari states that thereafter the complainant had gone to call the Patwari of his own circle

subsequently the person of the vigilance department came and told he was carrying the documents of Ganesh Prasad on that witness admitted that he was having the documents of the complainant. Subsequently the vigilance department person took him to the office of Naib Tehsildar Khanju Prasad Ladiya. The documents handed over to him by Ganesh Prasad complainant were recovered from him. The witness has stated the documents P-2 to P-6 were recovered from him. The said witness denied that Ganesh Prasad came to Tehsildar and told him that, Tehsildar was calling him and on that he had gone to the house of Naib Tehsildar and Naib Tehsildar had handed over documents to him for doing the work of complainant. This witness has been declared hostile and was put to cross-examination witness has denied his police statement. Ex. P-7 that Tehsildar called him and asked him to help the complainant. The witness has further stated that he was not holding the charge of concerned circle at the relevant time as a land survey No. 76/44 was falling in the circle of Mathura Prasad Patwari not in his circle. Mathura Prasad Patwari of circle No. 44 has been examined as P.W. 2. He has stated that he knew Ganesh Prasad was having 5 acres of land on temporary lease in the year 85 when he had gone to Khurai in the meeting, he was told by Ganesh Prasad to prepare a report as he had to obtain a Patta of the land. P-4 report was prepared by the said Patwari. The witness has stated that he has not handed over copy of Khasra P-1 to Ganesh Prasad. Original record of B-1 form was brought by witness in the Court. Khasra and Kishbandi Khatouni is Ex. P-6 and Ex. P-6-A. The said documents were seized vide memo P-8 from him. The said Khasra and Kishbandi Register was brought by the said witness in Court. In the year 1985 Naib Tehsildar was accused Ladiya. The witness has stated that he has prepared Ex. P-4 the application of Ganesh Prasad. He has further stated that Patta has to be signed by Naib Tehsildar and sometime by special order Patwari may prepare it. This witness has not been put to any further cross-examination. Sunderlal Shrivastava P.W. 3 another Patwari has prepared the map Ex. P-13, and he has made entry in the map P-12. Nawabsingh Rajawat has been examined as P.W. 4 he has registered the case as per P-18 pursuant to P-17 the information sent to him.

Ganesh Prasad the complainant has been examined as P.W. 5. Ganesh Prasad has stated that sum of Rs. 100/- was demanded by Naib Tehsildar in order to give Bhumiswami rights and has complained to Mr. Jatav regarding the same vide P-19, he was called in the morning and reached the office of Lokayukt on 28-9-85. He has handed over a sum of Rs. 100/- consisting of one currency note of Rs. 50/-, two currency notes of Rs. 20/- and one that of Rs. 10/-. There was one of the officer Jatav another Shri Tiwari and name of other he did not remember. Tiwari has put the powder on the currency notes and put them in the pocket of Kurta. He was asked to handover the money on being demanded by Naib Tehsildar. Before applying the powder the number of said currency notes were noted. He has further stated that when he reached to the house of Naib Tehsildar accused asked him to call Ravishanker Patwari. He called him. The

documents were handed over to said Patwari to produce them in the Court. Subsequently the accused made a demand of Rs. 100/- same currency notes which were handed over to him after applying the powder in the office of Lokayukt were given by him to the accused. Accused had put them in the red bag lying on the cot. Thereafter complainant signalled to the trap party, they came inside, caught hold of the accused, washed his hands which turned rosy. In the cross-examination the said witness had denied the suggestion that he has obtained the permanent lease in the year 1981. He stated that it was wrong to suggest that on 12-11-81 he was given permanent lease and patta was delivered to him. He denied the suggestion that the accused had called him and told him that he should cultivate the land on his own otherwise the patta would be cancelled. The witness has stated that prior to 3 months accused has raised a demand of Rs. 100/-, but, he has not mentioned the said fact in Ex. P-2. The record of revenue case No. 12-A/19 of the year 1981-82 with respect to grant of permanent lease was summoned for the cross-examination of the complainant. The complainant has denied his signatures, over application, moved for grant. However, the complainant has stated that his father's name is Goda and in temporary lease also the mention was as Ganesh S/o Goda in affidavit Exs. P-2 and P-3 name is mentioned Ganesh S/o Goda. The particulars of applicant are same. The witness has denied the suggestion that in the year 1981-82 B.R. Yadav was Tehsildar and he has submitted an application for conferral of the Bhumiswami right. The complainant has further stated that the accused was alone in the house. He did not handover Rs. 100/- to the accused immediately, initially accused has asked him to take out the papers, call Patwari, thereafter Patwari was called, when Patwari left, then the complainant has given the currency notes to the accused towards illegal gratification. The witness has further denied the suggestion that he came to know that Tehsildar has gone to his house for lunch. Tehsil was near cross road. Complainant had denied that he had entered the house while Naib Tehsildar was not present and he has placed sum of Rs. 100/- in bag.

6A. Bholapratap Singh has been examined as P.W. 6. He was at the relevant time holding the post of SDO, Irrigation. He has stated that he was summoned to Lokayukt office, Sagar on 27-9-85, pursuant to which he reached on 28-9-85, SDO, Forest Shri Sadiq was also present at the relevant time. Mr. Jatav and Shri Sadiq both were also present, Inspector Gautam was also present. Complainant Ganesh Prasad came there and trap party was explained the details. Ganesh Prasad was carrying an application for grant of permanent lease. He has further deposed as to preparation of Sodium Carbonate solution sealing etc., handing over the currency notes after applying the powder of phenolphthaleine and those were placed in the pocket of the complainant. Panchnama inquest of the said proceedings was prepared, Ex. P-20 which had signature of the said witness B to B and Ganesh Prasad signature A to A. Thereafter they started in a Jeep to village Malthone. They reached near the house of Naib Tehsildar and waited for the signal of the complainant. Ganesh went out of the house and came back to

house with another person after sometime the said person left, thereafter Ganesh complainant came out and signalled the trap party then entered the house, when the witness Bholapratap P.W. 6 entered the house he found that one hand of Mr. Ladiya was caught by Ganesh and another by Dubey and thereafter Mr. Jatav told that they belong to vigilance and the accused has been trapped. There was one bag lying on the cot. Currency notes were found in that. The number of currency notes talley. They were placed in an envelope and sealed. The witness has suo moto stated that the accused was saying that Ganesh Prasad was in collusion with Patwari and was falsely implicating him. He has further stated that Ganesh Prasad initially went to Tehsildar came back after about 20 minutes. Witness has further stated currency notes were not taken but at the instance of the accused from the bag.

6B. Baburam Dohare has been examined as P.W. 7. He was clerk in the office of Lokayukt at Sagar. He applied phenolphthalene powder in currency notes. Indramani Mishra has been examined as P.W. 8. He was head constable in the Lokayukt office at the relevant time. He had deposed that he had gone to village Malthone. When complainant Ganesh Prasad went inside the house of Naib Tehsildar at about 12, he alongwith constable Sokhelal Tiwari was standing just by the side of wall of the accused house. The witness has deposed when Ganesh went inside accused and Ganesh had a talk, he over heard conversation, accused asked whether he had brought the money, complainant told that he had brought it. Accused sent Ganesh Prasad to call Patwari. Ganesh Prasad went to call Patwari who was carrying a black bag in his hand, after sometime that person left. Accused told Ganesh that his work would be done, thereafter Ganesh Prasad came out and signalled to the trap party. Thereafter Inspector Dubey, Inspector Gautam and another person entered in the house. Accused hands were caught hold currency notes were in the bag. The witness has stated that the accused was talking in the normal tone, he had informed the S.P. Dubey that he had over heard the conversation. He has denied the suggestion that he could not hear the conversation from outside where he was standing. Sopan Sadashivrao Shinde has been examined as P.W. 9, to prove the sanction Ex. P-22. He has proved the signature of the sanctioning authority. Mahesh Prasad Dubey is another witness examined as P.W. 10 by the prosecution. He was holding the post of Inspector in Lokayukt, Sagar Division, Sagar he stated that P-19 was complaint filed by the complainant, on that trap was arranged and he had accompanied the trap party. The witness has stated that he has not mentioned in the first information report that complainant initially had gone out and thereafter a person came from the Tehsil along with the complainant Ganesh Prasad and thereafter he left, due to his bona fide mistake he has not mentioned it in Ex. P-17, he further stated that from the Government Quarter of Naib Tehsildar, office was about 50 yards away. Aforesaid was entire evidence led by prosecution.

In defence Chhotelal Parashar D.W. 1 has been examined who was holding the post of Reader of Naib Tehsildar in the year 1981. He has stated that the case No. 12A/19 in the year 1981-82 was pending in the Court of Naib Tehsildar,

Malthone after seeing the original file, he stated that the order sheet dated 12-11-81 was in his hand-writing which was signed by Naib Tehsildar also, that was Ex. D-1. The said case was started on the application of Ganesh S/o Goda. Patta Ex. D-2 of 5 acres of land was given on 12-11-81 was having the signature of Ganesh Prasad over the portion A to A.

Ex. C-1 is the certified copy of the said revenue case dated 12-11-81 in which Ganesh S/o Goda was granted Bhumiswami rights, on the basis of said order and it was ordered that the Patta should be prepared, one copy should be given to the complainant. Ex. C-2 is certified copy of the application filed by Ganesh on 12-11-81 for conferral of Bhumiswami rights. Patta has been already issued in the Bhumiswami rights, the said Patta is in respect to the Survey No. 329/12 situated in village Mangri. Copy of the case register has been filed as Ex. C-3-A, at serial No. 12 there is an entry of the case in question as 12/81. Khasra for the year 1985 records the name of Ganesh S/o Goda in Bhumiswami rights pursuant to said grant. The said witness Chhotelal examined in the defence as D.W. 1 has denied the suggestion that this case was in chat not filed and has been subsequently fabricated.

Shanker Lal has been examined as D.W. 2. He was Kotwar of the village Malthone in the year 1985. He has stated that he came to the house of Naib Tehsildar and took the lunch box and put the chain (Sankal), from the outside and came back at about 12, he saw Ganesh came out of the house of Naib Tehsildar. He asked what he was doing inside the house, he told that he had come with some work, thereafter the witness has deposed that he took tiffin from the house, at that time Naib Tehsildar was not in the house when after about 15 minutes he came back. Naib Tehsildar was present in the house, who objected why the house was not locked. D.W. 3 is Sakhi Gopal, an Advocate. He has stated that generally the house was not locked, the only chain used to be put from outside. D.W. 4, Rajkumar Sen was the Clerk in the Court of Naib Tehsildar in 1981-82. He has produced the register of revenue case. He has proved the entry of the case 12-A/19. He has deposed that Patta was issued to Ganesh son of Goda of village Mandri in Circle 76, Bandobast Number of which was 448. Bhairo has been examined as D.W. 5. He has purchased land from the complainant Ganesh.

Aforesaid evidence indicates that the Naib Tehsildar was residing alone in the house. Case has to be filed for permanent lease in the Court and Tehsil Court was situated nearby to the house. Doubtful conduct of the complainant is that he does not go to Tehsil office, at all, but, his case is that when he reached to the house, at that time Naib Tehsildar came for having lunch in the house in question where the trap was arranged. It emerges out that Naib Tehsildar himself did not accept the papers in the house as per the complainant own version, but, asked to call Patwari and to present case in the Court. The Patwari P.W. 1 to whom the complainant says that the papers were handed over was not the Patwari of the concerned circle. It is a doubtful circumstance in the case that the complainant

had not gone to the Tehsildar, but, was waiting at the house for sheer co-incident that Naib Tehsildar came at the same very time to the house at the time when the complainant along with the trap party reached the house though it was Tehsil working hours. It is not the case of the complainant that the Naib Tehsildar has asked him to come to his house in working hours on his visiting the Tehsil premises. It is also a circumstance that the currency notes have not been seized from the person of the accused, but, they were allegedly found in a room in a red bag on a cot. Learned counsel for the appellant has placed reliance on a decision of the Supreme Court reported in M.K. Harshan Vs. State of Kerala, wherein a trap case a tainted money was recovered from the drawer of the accused. The Supreme Court insisted for corroboration of the deposition more particularly when the plea of the accused that the same was planted in his absence and without his knowledge, was found to be probable. On the strength of the said decision it is submitted that the red bag was lying on cot and it was possible to the present complainant to plant the currency notes when he was carrying certain documents in his hands after planting them, he may have touched the papers and that explain the hand of the accused turned rosy on being washed in the Sodium Carbonate solution as he handled documents. In the aforesaid case of M.K. Harshan, the money was found from the drawer and it was possible to plant the money, hence, in the circumstances of the said case corroboration was required. In the instant case, the complainant was having the knowledge that money has been placed in the red bag and it was lying on a cot. Possibility cannot be ruled out of planting money in bag as accused was residing alone in the house.

The very reason to demand the illegal gratification is stated to be that the complainant wanted to obtain patta in Bhumiswami right and for that purpose he had applied to Tehsildar vide Documents P-2 to P-6, these documents P-2 to P-6 were to be presented in the Tehsil Court not in the house and Tehsildar actually had not accepted them. There was no reason to file fresh case as Bhumiswami rights were already conferred in 1981 in case No. 12-A/19 which have been proved by defence witnesses D.W. 1, the then reader in the year 1981 of Tehsildar Court and also by Rajkumar Sen, Clerk who has produced the case register of 1981 examined as D.W. 4. From the deposition of this witness it is clear that the patta was issued in Bhumiswami rights vide order dated 12-11-81 in favour of the complainant, though the complainant has tried to denied that he was conferred Bhumiswami rights in the year 1981, but, his statement falls much short of proving that documents of case No. 12-A/19 are fabricated the application, order and Patta issued in Bhumiswami rights are all forged and fabricated documents along with case register of 1981, in which there is entry of case of 12-A/81, in which there is entry of case of 12-A/81 in which patta was issued of the land in question in the name of the complainant. Prosecution has failed to prove that these documents are forged and fabricated, the Courts proceedings are final for proving these documents there appears to be no reasons that the reader and clerk of Tehsildar Court would speak a lie as well as

it cannot be said that the case register is also fabricated one. Thus, very basis of demand of illegal gratification falls down and entire conduct of the complainant becomes totally doubtful. There was no necessity of obtain patta afresh in Bhumiswami rights. Subsequently it appears that in the Khasra Ex. P-6 name was recorded in Bhumiswami right and in 1988 the land has been sold to other person. There is no evidence on record that at any subsequent time after 1981 Bhumiswami rights were conferred. It was only on the basis of the said case of 81 Bhumiswami right was conferred and on that basis complainant sold land in 1988 to someone else.

Learned counsel for the appellant has further placed reliance on a decision of the Supreme Court reported in Gulam Mahmood A. Malek Vs. State of Gujarat, . The accused in the said case has stated that he gave money to a Bench Clerk in the Court. The money was handed over in the Court and was recovered in the other room. There was no independent witness examined, hence, the case was held to be doubtful. Another case on which reliance is placed is Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, to contend that actual recovery of money from the possession of the accused is required. He has further contended that there can be no presumption that money was demanded on account of illegal gratification in any case. Yet another decision has been relied - Suraj Mal Vs. State (Delhi Administration), in which it has been held that in case merely recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.

As per prosecution case, the only circumstance to the demand of illegal gratification in the instant case is stated to be for conferral of Bhumiswami rights which is totally missing as Patta had already been granted in 1981, hence, there was absolutely no necessity for complainant to file fresh case for same purpose, no fresh case was ever instituted by the complainant. P-2 to P-6 complainant presents at the residence of Tehsildar, whereas the case was required to be filed in the Court in prescribed manner, lease was earlier granted time to time on temporary basis, thus, the complainant was well aware of the procedure of grant of lease. No case was instituted or registered pursuant to P-2 to P-6 in the Court or subsequently. Thus, it appears that the complainant was aware that the Bhumiswami right patta was already granted in 1981 and he has not proved before the Court that his signatures are not there in the case No. 12-A/81.

Learned counsel has further submitted that there is no independent corroboration, independent witness should have been procured. Reliance has been placed on Ragbir Singh Vs. State of Punjab, . In the said case the said witnesses were interested witnesses and with regard to giving bribe and recovery of amount from the person of the accused was not relied upon. However, in the instant case, even if assuming that the witnessess accompanied the complainant were independent, but, even then the money has not been recovered from person of accused, possibility of planting them in bag cannot be ruled out and Bhumiswami rights were already conferred and case was not at all required to be

instituted, the exaggerated version has been given by the prosecution witness, namely Bholapratap Singh, he has stated that he had heard the entire conversation from outside which was not at all possible. Moreover, in the first information report this fact has not been mentioned that once Ganesh Prasad complainant has come out of the house after talking with Naib Tehsildar and has gone to call one Patwari and thereafter Patwari came and he left and thereafter after some time Ganesh Prasad came out for the second time. This fact was material should have found place in the first information report, absence of it creates a doubt to the veracity of the prosecution version.

It may be seen that in *Sita Ram Vs. The State of Rajasthan*, that story of demand of bribe from the complainant should be proved. The main ingredient of the charge u/s 161, I.P.C. with reference to the facts of the case are one that the accused was a public servant, secondly; he must be shown to have obtained from any person any gratification and thirdly; the gratification should be 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 the person. In the instant case it has not been proved at all that there was any motive of obtaining any remuneration or legal remuneration since nothing was required to be done to conferral of Bhumiswami rights as that Patta was already issued in 1981. In the present case the evidence of acceptance of illegal gratification is highly doubtful as the money was recovered from the bag which was lying on the cot and it was possible to plant the money in the same by the complainant himself and there was sufficient time for him to do so, though the defence has tried to submit that the house was unlocked from the outside and the complainant has entered the house in the absence of Naib Tehsildar. Even if defence version is discarded. It was very much possible for the complainant to plant the money in the bag. In case of *Salimkhan Sardarkhan Vs. State of Gujarat*, where police constable was put to trial for accepting bribe, the trial Court accepted the version of defence that without his knowledge the currency notes were put in his pocket. High Court reversed the finding on an appeal. The Supreme Court has held that the trial Court has rightly accepted the defence that the currency notes were put in his pocket. It was further held that the High Court obviously lost sight of the fact that the appellant may have lost his agility and in the peculiar circumstances the notes could have been inserted without the appellant knowing it.

Counsel has further placed reliance on 1990 MPLJ 239 that no presumption can be raised u/s 4(1) of the Prevention of Corruption Act as the complainant version that appellant demanded bribe has not been corroborated. Presumption u/s 4(1) cannot be drawn merely on recovery of money. Possibility of illwill to involve into trouble was not ruled out. In the instance case also, there is no corroboration of the version of the complainant which itself is doubtful as no case was ever instituted by him subsequently to incident for conferral of Bhumiswami rights which sought for as per P-2 to P-6. Bhumiswami rights had already been conferred on him. Another case reported in 1994 JLJ 247 (Suresh Kumar

Shrivastava v. State of M.P.) in which reliance was placed on a decision reported in Panalal Damodar Rathi Vs. State of Maharashtra, . This Court in case of Suresh Kumar (supra) has taken the view and has held as under :

"The further question is whether mere recovery of the alleged tainted money from the possession of the accused gave rise to a presumption u/s 4(1) of the Prevention of Corruption Act, 1947 that the accused, unless contrary was proved by him, accepted gratification for the purposes mentioned in Section 161 I.P.C. ? The answer is that from mere recovery of money, divorced from the circumstances under which it was paid, the presumption could not be raised."

Thus, in the instant case no presumption could be raised and prosecution has failed to prove the version as required by law. Yet another decision relied upon is of Abdul Khalil v. State of M.P. reported in 1997 Cri.C.P. (M.P.) 238, in which it has been held by this Court that the demand should be proved in that case money was not recovered from the possession of the accused, but, lying on the Chabutara.

In present case prosecution witness Ravishanker was also declared hostile did not support prosecution in its entirety. P-2 to P-6 were recovered from his possession which goes to show that Naib Tehsildar did not accept these documents at his residence, there was no occasion for Tehsildar to call Patwari and handover the documents to him. Thus, the circumstance makes the case further doubtful. Bholapratap Singh has also stated that the accused has stated that relevant time Ganesh Prasad was falsely implicating him.

Thus, it cannot be said that the prosecution has proved the case beyond reasonable doubt. The accused appellant is acquitted of the charges u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and u/s 161 I.P.C.. The appeal is allowed.