

(2012) 10 CHH CK 0007
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1138 of 1992

State of Madhya Pradesh (now Chhattisgarh)	APPELLANT
Vs	
S.K. Rastogi	RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 161, 165A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 5(2)

Citation : (2013) CriLJ 1163

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Division Bench

Advocate : Rajendra Patel, for the Appellant; Ashish Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Manindra Mohan Shrivastava, J.—The aforesaid two appeals are being decided by this common judgment as both the appeals arise out of impugned judgment dated 18th January, 1992 passed by learned 4th Additional Sessions Judge & Special Judge, Bilaspur, in Special Case No. 4/88. Criminal Appeal No. 1138/92 has been filed by the State against acquittal as one of the accused-Rastogi has been acquitted by the judgment dated 18th January, 1992.

2. Criminal Appeal No. 217/92 has been filed by the appellant Arjundas, who has been convicted u/s 161 of the IPC and Section 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the Act of 1947") and sentenced to undergo R. I-for 1 year u/s 161 of the IPC and R.I. for 1 year u/s 5(1)(d) read with Section 5(2) of the Act of 1947 and fine of Rs. 1000/- and in default of payment of fine, additional simple imprisonment of 4 months.

3. Story of the prosecution, as unfolded from the records and judgment of the learned trial Court is that Ajit Kumar (P.W. 1) had filed a complaint in Ex. P-1 in the Vigilance Office, Bilaspur, stating that accused Rastogi demanded bribe of Rs.

1000/- and then reduced to Rs. 500/-, upon which, Rs. 300/- was given to appellant-Arjundas. Thereafter, the complainant was taken to police station and then near a hotel, another Rs. 200/- was given to appellant-Arjundas and then he was released from the police station and Rastogi stated that complainant should bring another Rs. 200/- on 25-2-1986, otherwise, he will be arrested. It was further stated in the complaint that appellant Arjundas came to his shop on 25-2-1986 and demanded Rs. 200/- from his brother Harjit, which was informed to him when he arrived in the shop. As the complainant was not willing to pay Rs. 200/-, complaint was lodged.

4. Taking cognizance of the complaint, pre-trap proceedings were arranged. Demonstration of phenolphthalein powder in the solution of sodium carbonate was given to complainant in the presence of witnesses. Phenolphthalein powder was smeared on currency notes and kept in the pocket of the complainant with instructions not to touch the currency notes before handing them over to the appellant-Arjundas on his demand. Pre-trap proceedings were reduced in writing as pre-trap panchanama (Ex. P-2). The trap party thereafter reached to the house of the appellant-Arjundas, where he was not found. Thereafter, when it was informed to the trap party that appellant-Arjundas has gone to the shop of the complainant, trap party proceeded to the shop of complainant-Ajit Kumar. Further case of the prosecution is that appellant-Arjundas was sitting in the shop and there, bribe of Rs. 200/- as demanded by the appellant-Arjundas was handed over to him by complainant-Ajit Kumar (P.W. 1). Immediately thereafter, trap team arrived at the spot and appellant-Arjundas was caught red-handed. Hands of the appellant-Arjundas were washed in the solution of sodium carbonate and hand wash was kept in a sealed bottle. The currency notes were also recovered and seized vide Ex. P-10. Records of Criminal Case No. 81/86 were also seized vide Ex. P-11. Trap panchanama was prepared in Ex. P-9. Dehati nalishi was recorded in Ex. P-12. FIR was registered in Ex. P-13. Map of the spot was prepared in Ex. P-12-A. Sealed bottles containing hand wash of the appellant-Arjundas, complainant and witnesses as also wash of currency notes were sent to Forensic Science Laboratory (FSL) vide Ex. P-14, in response to which, (FSL) report in Ex. P-15 was received, confirming presence of phenolphthalein in the hand wash of the appellant-Arjundas, wash of currency notes, hand wash of B.R. Dhruv, Dy. Collector (P.W. 13) and hand wash of the complainant. Sanction for prosecution was granted vide order dated 27th January, 1987 (Ex. P-6 C) for prosecution of appellant-Arjundas and vide order dated 8-4-1987 (Ex. P-7) for prosecution to accused Rastogi. Charge sheet was filed in the Court of Sessions Judge, Bilaspur. The case was transferred to Special Judge for trial who framed charges for commission of offence u/s 161 of the IPC and Section 5(1)(d) read with Section 5(2) of the Act of 1947. Both the accused abjured guilty and demanded trial.

5. In order to prove its case, prosecution examined as many as 13 witnesses. Both accused persons were examined u/s 313 of the Cr.P.C. in respect of incriminating evidence and circumstances appearing against them, which were

denied by them. The appellant-Arjun stated that he has been falsely implicated by Harjit because wife of Harjit (brother of complainant) is relative of deserted wife of the appellant Arjun. Therefore, he has been falsely implicated. In his examination u/s 313 of the Cr.P.C. accused-Rastogi came out with defence that when he had searched the house of the complainant-Ajit, he insisted on not making any search being afraid of public condemnation which was not acceded to by him, therefore, false report has been lodged.

6. By impugned judgment, the learned trial Court convicted appellant-Arjundas, but, acquitted accused-Rastogi.

7. Aggrieved by the impugned judgment of conviction and order of sentence, appellant-Arjundas has preferred Criminal Appeal No. 217/92, whereas aggrieved by the judgment of acquittal of accused-Rastogi, the State has preferred Criminal Appeal No. 1138/92 against acquittal.

8. As far as appeal against acquittal is concerned, learned counsel for the appellant/ State argued that the learned trial Court has committed gross perversity in acquitting accused-Rastogi, ignoring clinching evidence of complainant-Ajit Kumar (PW-1) corroborated by evidence of Ruplal Ratre (P.W. 5), who has clearly deposed regarding demand of bribe made by accused Rastogi. Learned counsel for the State further argued that merely because tainted currency notes was handed over to Arjun and recovered from his possession, accused-Rastogi was not entitled to be acquitted because the prosecution has proved by leading cogent and reliable evidence that the demand of bribe was made by respondent-Rastogi and Arjundas accepted the bribe money on behalf of and under instructions of accused-Rastogi. Learned counsel for the State further argued that the independent evidence of the prosecution establishes that when accused Arjundas was asked regarding acceptance of bribe money, the immediate explanation offered was that the same was accepted for being given to accused-Rastogi. Therefore, the acquittal of accused-Rastogi is contrary to evidence on record. Learned counsel for the State also argued that there is no evidence led by the defence nor any suggestion made to the prosecution witnesses to suggest that the complainant Ajit (RW. 1) had any motive to falsely implicate accused-Rastogi, yet learned trial Court recorded perverse finding that false implication of accused-Rastogi was probable in the facts and circumstances of the case. Learned counsel for the State/ appellant further argued that the learned trial Court has rejected the story of demand and acceptance of bribe by giving undue weightage to minor discrepancies ignoring that in all material particulars with regard to demand, acceptance and recovery, the story of the prosecution is fully corroborated not only by the coherent and reliable evidence particularly of complainant Ajit (P.W. 1), but also corroborated in material particulars by the evidence of Harjit (PW-2), Chatur Singh Dhurve (P.W. 4). Ruplal Ratre (P.W. 5), S. N, Dubey (P.W. 8), S.S. Gaur (P.W. 12) and Benuram Dhruv (P.W. 13). In support of his submission, learned counsel for the State/ appellant placed reliance in the cases of State of Maharashtra Vs.

Narsingrao Gangaram Pimple, Hazari Lal Vs. State (Delhi Administration), , Bhagwan Singh and Others Vs. State of Madhya Pradesh, and Nepal Singh Vs. State of Haryana,

9. On the other hand, learned counsel appearing for respondent-Rastogi argued that the prosecution has utterly failed to prove first requisite and essential ingredient of commission of offence i.e. demand by the respondent-accused. According to him, the story of demand from the complainant by the accused-Rastogi suffers from serious contradiction and omissions with regard to time, place and date in the evidence of complainant Ajit (P.W. 1). He further argued that while there is one story depicted in the complaint (Ex. P-1), different story has been narrated in the evidence of complainant-Ajit (P.W. 1), which is not corroborated in material particulars by the evidence of Ruplal Ratre (P.W. 5). Moreover, even according to the complainant, every time, bribe money is alleged to be given to Arjun and not to the accused-Rastogi. No recovery of currency notes has been made from accused-Rastogi. Therefore, in these circumstances, the impugned judgment, acquitting the accused-Rastogi does not suffer from any perversity or patent illegality of such degree so as to warrant interference, particularly when the view taken by the learned trial Court is plausible and possible. In support of his submission, learned counsel for the respondent-accused placed reliance on the judgments in the cases of V.N. Ratheesh Vs. State of Kerala, State of Madhya Pradesh Vs. Anil Kumar Verma, and State of Madhya Pradesh (now Chhattisgarh) Vs. Vijay Kumar, and judgment dated 2-12-2009 passed by this Court in the case of State of Madhya Pradesh v. R.K. Pandey and another (Cr. A. No. 1133/92).

10. In so far as Criminal Appeal No. 217/ 92 filed, by appellant-Arjun is concerned, learned counsel for the appellant assailed the legality and validity of impugned judgment of conviction and sentence mainly on the submission that story of prosecution with regard to demand by the appellant-Arjun is improbable, because the appellant-Arjun had no official capacity to close the criminal case as he was only a constable. It is further argued that even according to the story of the prosecution, premises of the complainant-Ajit were searched by other accused-Rastogi and appellant was not involved in search proceedings, therefore, it is highly improbable that the appellant would demand bribe for hushing-up criminal case. Next submission is that there are serious discrepancies and material contradiction and omissions of material particulars with regard to time, date, place, manner and amount of bribe alleged to be demanded by the appellant from the complainant. Learned counsel for the appellant-Arjundas further argued that the complainant in the present case is an accomplice because according to his own version, he gave bribe on two occasions, therefore, where the story of demand is doubtful due to several contradictions and omissions, it would be unsafe to convict the appellant. Further submission is that when demand has become doubtful, it cannot be presumed either in law or on facts that what was given to the appellant was towards bribe because it has been clearly suggested to complainant-Ajit that what was given to the appellant was

towards part re-payment of loan advanced by the appellant to the complainant. In support of his submissions, learned counsel for the appellant relied upon the decision in the cases of Suraj Mal Vs. State (Delhi Administration), C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, Banarsi Dass Vs. State of Haryana, and Anand Sarup v. The State, 1998 Cri LJ 756 (Del).

11. On the other hand, learned counsel for the State supported the judgment of conviction and order of sentence and argued that there is reliable and creditworthy evidence of complainant corroborated by evidence of Ruplal Ratre (P.W. 5) as also of Harjit Singh (P.W. 2), which proves that the appellant-Arjundas demanded bribe for closing criminal case. It is also argued that there is overwhelming evidence on record that the bribe money was handed over by the complainant-Ajit (RW. 1) to the appellant-Arjundas in the shop and complainant's evidence of giving and accepting bribe is fully corroborated from the evidence of Harjit (P.W. 2) Chatur Singh Dhurve (P.W. 4). S.N. Dubey (P.W. 8), S.S. Gaur (P.W. 12) and also of Benuram Dhruv (P.W. 13), who is an independent witnesses and the recovery of currency notes has also been proved. The FSL report fully corroborated the story of acceptance and recovery as traces of phenolphthalein powder have been found in the hand wash of the appellant. Therefore, conviction of the appellant does not warrant any interference.

12. I have considered the rival submissions made by learned counsel for the parties in both the criminal appeals and perused the records.

13. I shall first examine the legality and validity of the impugned judgment of conviction and sentence by which one of the accused Arjundas has been found guilty of commission of offences alleged and convicted.

14. In C.K. Damodaran Nair Vs. Govt of India, the Supreme Court had an occasion to consider the meaning and import of the word "obtained" used in Section 5(1)(d) of the Prevention of Corruption Act, 1947 (now Section 13(1)(d) of the Act, 1988), and it was held (SCC p.483, para 12):

12. The position will, however, be different so far as an offence u/s 5(1) (d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption u/s 4(1) of the Act as it is available only in respect of offences under Sections 5(1) (a) and (b) and not under Sections 5(1)(c). (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence u/s 5(1)(d) of the Act unlike an offence u/s 161, IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment".

Relying upon the aforesaid decision, in another decision in the case of A. Subair Vs. State of Kerala, (in para 15 at page 591), Supreme Court held:

15....The legal position is no more *res integra* that primary requisite of an offence u/s 13(1) (d) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence u/s 13(1) (d) cannot be held to be established.

Therefore, in order to come to the conclusion as to whether a case of conviction is made out, it is required to be seen as to whether the prosecution has proved beyond reasonable doubt, the demand and acceptance of bribe by the accused.

15. In the case of *Panalal Damodar Rathi Vs. State of Maharashtra*, the Supreme Court observed as under:--

8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon....

16. The status of person offering bribe and the caution required while assessing his evidence implicating a Govt. servant was examined by the Supreme Court in its subsequent decision in the case of *M.O. Shamsudhin Vs. State of Kerala*, , wherein, it was held as under:

12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous tests which are generally applied to a case of an approver. Though bribe-givers are generally treated to be in the nature of accomplices but among them there are various types and gradations. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving the trap cannot succeed. When there is such a demand by the public servant from a person who is unwilling, and if to do public good approaches the authorities and lodges a complaint, then in order that the trap succeeds he has to give the money. There could be another type of bribe-giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is a *particeps criminis* in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who

becomes a party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of "accomplices" by reason of their being bribe givers, in the first instance, the Court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances.

What therefore, emerges from the principles enunciated by the Supreme Court is that the complainant's evidence has to be scrutinized carefully and the Court has to consider the degree of complicity and then look for corroboration, if necessary, as a rule of prudence. The extent and nature of corroboration that may be needed in a case, may vary, having regard to the facts and circumstances.

Evidence on record led by the prosecution, as also by the defence, therefore, is required to be scrutinized in order to find out as to whether the prosecution has been able to prove beyond reasonable doubt the demand, acceptance and recovery.

17. As against appellant-Arjundas, the story of demand, as stated in the complaint (Ex. P-1) lodged by complainant-Ajit (P.W. 1) is that when the other accused-Rastogi had come along with constable to carry out search in the house of the complainant, appellant-Arjun arrived and then he talked to Rastogi and constable separately and then started negotiating regarding giving of bribe. In the complaint, it has been stated that Rs. 300/- were handed over to Arjun. It is further stated in the complaint that the complainant was taken to police station and detained there till evening and another Rs. 200/- was given to Arjun near a hotel. It has also been stated in the complaint that on the date of complaint i.e. 25-2-1986, Arjundas again came to shop for collecting Rs. 200/- and complainant was so informed by his brother Harjit that Arjun has asked him to come to his house with Rs. 200/-, which he is not willing to give.

18. Complainant Ajit (P.W. 1), in his evidence before the Court, substantially supported the story of demand by Arjundas on material particulars. In para-5, he has stated that while inspector Rastogi was carrying out search, Arjun took him to a corner in the house and asked how much he could pay to get matter hushed up, upon which, complainant expressed that Rs. 300/- may be given and thereafter Rs. 300/- was given to Arjun. In para 10, he has further deposed that when he went to his cycle shop, Arjun was sitting and Arjun asked him whether he has brought money for being given to Rastogi and thereafter the money was taken out and given to appellant-Arjundas. Soon thereafter, trap party arrived and Arjun was caught red-handed. Though in his cross-examination, it has been elicited that details of the demand have not been stated in the complaint (Ex. P-1), that does not create any doubt on the veracity of the story of demand only on this count, because in the complaint, it has been stated regarding the time and place and the amount given, the same has also been stated in the evidence before the Court though in a little more details. Therefore, merely because the

detailed story has not been given in the complaint (Ex, P-1), the veracity of testimony of complainant-Ajit cannot be said to be doubtful, in so far as demand by Arjundas is concerned.

19. The story of demand by Arjun is also supported by the testimony of Harjit Singh (P.W. 2), brother of the complainant, who has deposed in para-2 of his evidence that the appellant-Arjundas demanded bribe on the threat that his life would be spoiled, whereafter, Ajit gave Rs. 300/-. He further deposed in para 3 of his evidence that when Arjun was sitting in the shop, his brother arrived there at about 4:30 to 5:00 p.m. and appellant asked his brother whether he has brought money, on which, his brother handed over bribe money. The evidence of demand in the house of Ajit at the time of search and then in his shop on 25-2-1986 has remained uncontroverted. Thus, as far as the story of demand is concerned, it is proved from reliable testimony of complainant Ajit (P.W. 1), which is corroborated on material particulars by his brother Harjit (P.W. 2) and further what has been stated in complaint (Ex. P-1) regarding demand by Arjun is substantially corroborated from the ocular testimony.

20. Though an attempt has been made to discredit the story of demand by suggesting-Ajit in his cross examination that a loan of Rs. 500/- was taken by him from the appellant, appellant-Arjun has failed to produce any material evidence to support the story of loan and possibility of re-payment towards that loan. Though in the accused statement u/s 313 of Cr.P.C., appellant Arjun has stated that he had deserted his wife and as complainant-Ajit and his brother-Harjit are relative of his wife, therefore, he has been falsely implicated, there is no suggestion to that effect given to Ajit Kumar (P.W. 1) or Harjit (P.W. 2) in their cross-examination. Therefore, the defence of the appellant is highly un-reliable and more an afterthought. In the absence of there being any material to make defence plausible and probable, applying the principles of preponderance of probabilities, the story of demand gets straightened.

21. Present is a case where there is abundance of evidence with regard to receipt of bribe money by the appellant-Arjun, While complainant-Ajit has emphatically stated as having given bribe to Arjun on three occasions, the evidence of acceptances of bribe is also corroborated by other witnesses. In the complaint, it has been stated that when search was going on in the house of complainant-Ajit (P.W. 1), Rs. 300/- was taken by Arjundas, which has been corroborated from testimony of his brother-Ajit (P.W. 1), who has clearly stated that at the time when search was made. Rs. 300/- was given on demand and accepted. The second stage of acceptance of bribe is deposed by Ajit in para-7 of his testimony, in which, he says that he went to his house and brought Rs. 200/- and gave it to Arjun near a square.

22. Ruplal Ratre (P.W. 5) has also deposed in para-4 of his evidence that Ajit brought Rs. 200/- from his house and gave it to Arjun Das, which was accepted.

23. In the complaint (Ex. P-1), complainant-Ajit stated that Arjun asked him to

bring Rs. 200/-, which he is not willing to pay, therefore, report is being lodged. In his testimony, Ajit Kumar (P.W. 1) has stated that when he reached his shop, Arjun Das was sitting and Arjun asked him whether he has brought money. Thereafter, the tainted money were handed over to him. This story of handing over a tainted money by complainant-Ajit to appellant-Arjun is supported by testimony of Harjit Kumar (P.W. 2), who has stated in para-3 that when his brother arrived at the shop, appellant-Arjun was sitting and he asked whether money has been brought, whereafter, his brother nodded and handed over tainted money. Chatur Singh Dhurve (P.W. 4) has deposed in para-2 that complainant sat near Arjun and handed over tainted money to the appellant. In para-8, he has further clarified that he saw tainted money being handed over. S.N. Dubey (P.W. 8), who had also accompanied the trap party being D.S.P. (vigilance) has also deposed in para-3 that when Ajit arrived in his shop where Arjundas was sitting, there was conversation and tainted money was handed over to Arjun, who counted it and kept with him, S.S. Gour (PW. 12) has also deposed in para-3 of his evidence that the complainant handed over currency notes to the appellant-Arjun in his shop. Benuram Dhruv (P.W. 13), Dy. Collector, who is panch witness and accompanied the trap party, has deposed in para-3 that Ajit handed over the currency notes each of Rs. 100/- to appellant Arjun. Nothing could be elicited in his cross examination to discredit his evidence of having seen the complainant-Ajit handing over bribe money to the appellant.

24. It is therefore clear from the evidence of prosecution supported by evidence of independent prosecution witness that when complainant arrived in the shop, appellant Arjun was sitting; there was conversation and then tainted money was handed over by Ajit to Arjun, which he accepted.

25. At the cost of repetition, it may be stated that though an attempt has been made by the appellant to offer an explanation by way of suggestion given to Ajit (P.W. 1) in his cross-examination that Rs. 500/- was given by way of loan to complainant by the appellant, there is no material evidence brought before the Court by the appellant to make the story of advancing loan probable and plausible, worthy of reliance by applying the principles of preponderance of probability. In fact, contradictory defence taken by the appellant itself demolishes his defence rendering it wholly unacceptable. In the absence of any explanation whatsoever of receipt of money and demand having been proved, the acceptance of money as bribe is also proved.

26. Seizure of currency notes from the appellant vide Ex.-10 is also proved from the evidence of seizure witness S.N. Dubey (P.W. 8) and Benuram (P.W. 13), Dy. Collector, the senior and responsible officer, and nothing could be elicited in their evidence to show that they had any motive or reason to falsely implicate the appellant. Moreover, recovery of currency notes is corroborated from the FSL report (Ex. P-15), which shows that the hand wash of the appellant contain traces of phenolphthalein powder, thereby clearly establishing that the appellant handled the tainted currency notes. Evidence of S.N. Dubey (P.W. 8) and

Benuram Dhruv (P.W. 13) also prove that when appellant was caught red-handed, his hands were washed and the hand wash was collected and sealed in bottles.

27. Therefore, in view of the above discussions of the independent evidence by applying the principle laid down in the decisions referred to above, the prosecution has been able to prove beyond reasonable doubt the demand, acceptance and recovery of bribe by the appellant-Arjun.

28. The appellant has relied upon various decisions referred to above. The material evidence available on record has been examined by this Court applying those principles which have been discussed and laid down in all those decisions cited by teamed counsel for the appellant and this Court is of the considered opinion that the conviction of the appellant-Arjun does not warrant any interference. The appeal of appellant Arjun Das is therefore liable to be dismissed.

29. Having dealt with the appeal of appellant-Arjun, I shall now deal with State's appeal against acquittal of the other accused-Rastogi."

30. As far as the other accused-Rastogi is concerned, it is not even the case of prosecution that any bribe amount was handed over to him at any point of time by the complainant-Ajit. In the entire evidence of the prosecution, it has nowhere come in the version of any of the witnesses including complainant that any part of bribe was given directly to accused-Rastogi. Moreover, the recovery of bribe money is only from other accused-Arjun and in the trap laid by the office of vigilance, the bribe money is stated to have been handed over to other accused-Arjun by the complainant-Ajit Kumar in his shop, witnessed by prosecution witnesses.

31. The learned trial Court has noted the aforesaid circumstances. Learned trial Court in its judgment, has taken into consideration the discrepancy with regard to the motive for demand alleged to be made by respondent-accused and has come to the conclusion that the motive has not been clearly stated in Ex. P-1. In order to hold that the case of the prosecution against respondent-Rastogi is not made out, the omission with regard to motive part in the complaint has been considered by the learned trial Court. The learned trial Court has also taken into consideration that the evidence of Harjit (P.W. 2) only indicates that the bribe was demanded by Arjundas. The amount which is said to have been demanded by respondent-Rastogi as stated in the complaint has not been stated by complainant-Ajit in his evidence before the Court and this material contradiction has been also noted by the learned trial Court.

32. In the complaint (Ex. P-1), the complainant Ajit Kumar alleges that respondent-Rastogi demanded bribe of Rs. 1000/- at the time of search in his house on 24-2-1986 and later on, stated to give Rs. 500/-. The second stage when demand is said to have been made by Rastogi is when the complainant Ajit was taken to police station and detained, when respondent Rastogi demanded further Rs. 200/- by saying that if that amount is not brought on 25-2-1986,

complainant would be locked up. In his evidence before the Court, Ajit (P.W. 1), the complainant, has given entirely different story with regard to place of demand. In paras 3, 4 & 5 of his evidence, complainant depose that search was carried out by Rastogi and an inquiry was made with regard to luna (two wheeler) and receipt was demanded. As far as demand is made, it has been deposed that it is Arjun, the other accused, who demanded money. A new story, not stated in the complaint, has come out in para-6 of his evidence that while complainant was being taken to police station on way, respondent-Rastogi stated that Rs. 300/- are not sufficient and more money would be required to be given. Thereafter, in para-7 of his deposition, he states that while returning from police station, on way, respondent-Rastogi met him near church and asked whether he has brought money and insisted on giving bribe. Thus, with regard to the place and amount both there is clear contradiction. According to complaint, Rastogi demanded bribe firstly while carrying out search and secondly in the police station, whereas, according to evidence before the Court, accused-Rastogi demanded bribe while on way to police station and thereafter when complainant met him near church. Moreover, there is discrepancy with regard to amount demanded and settled. Different version has been given in complaint and in the evidence before the Court. In para-17 of his cross-examination, he has stated that he does not remember whether any demand was made by respondent-Rastogi when he was being taken from the house to police station and the omission with regard to this aspect in para 1 of complaint has also come out. Harjit Kumar (P.W. 2) has not supported the story of demand by respondent-Rastogi at the time of search in the house of complainant. Though Harjit corroborates the story of demand by other accused Arjundas, he does not corroborate the story in the complaint that at the time of carrying out search, respondent demanded bribe. Though Ramlal Ratre (RW. 5) has stated in para-3 that when complainant-Ajit met respondent near church, Rs. 500/- was demanded, it would be unsafe to rely upon this story when in complaint (Ex. P-1) no such story regarding place and amount of demand has been stated by the complainant himself. The story of demand therefore becomes doubtful in so far as respondent-Rastogi is concerned. In the absence of there being any evidence that any bribe amount, at any point of time, was ever handed over to respondent and in the absence of any recovery of bribe money it would be unsafe to convict the respondent-Rastogi on the basis of cryptic and doubtful story of demand of bribe.

33. Limited scope of interference against judgment of acquittal has been repeatedly highlighted by the Supreme Court in plethora of decisions. In the case of Ghurey Lal Vs. State of U.P., , after considering its previous decisions over the years, the Supreme Court held that the appellate Court may only overrule or otherwise disturb the trial Court's acquittal, if it has "very substantial and compelling reasons" as below:--

(i) The trial Court's conclusion with regard to the facts is palpably wrong;

- (ii) The trial Court's decision was based on an erroneous view of law;
- (iii) The trial Court's judgment is likely to result in "grave miscarriage of justice";
- (iv) The entire approach of the trial Court in dealing with the evidence was patently illegal;
- (v) The trial court's judgment was manifestly unjust and unreasonable;
- (vi) The trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.
- (vii) This list is intended to be illustrative, not exhaustive.

The Supreme Court also held that the appellant Court must always give proper weight and consideration to the findings of the trial Court and most importantly it was observed that if two reasonable views can be reached—one that leads to the acquittal, the other to the conviction—the High Courts/appellate Courts must rule in favour of the accused.

34. The aforesaid well settled principles have been reiterated by the Supreme Court in the case of State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, in the following words:--

7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the Court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence, A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate Court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

In the aforesaid decision, the Supreme Court placed reliance upon its earlier decision in the case of State of Rajasthan th. Secy. Home Dept. Vs. Abdul Mannan, , wherein, the scope of interference by the appellate Court in case of acquittal has been delineated.

35. Therefore, interference against judgment of acquittal is permissible only when there are very substantial and compelling reasons, few of which have been illustrated by the Supreme Court in its judgment in the case of Ghurey Lal Vs.

State of U.P., .

36. In the case of State of Madhya Pradesh Vs. Anil Kumar Verma, and State of Madhya Pradesh (now Chhattisgarh) Vs. Vijay Kumar, , material contradiction regarding demand of amount, time of place was taken into consideration to hold that the story of prosecution was doubtful and on that basis State appeal against acquittal was dismissed.

37. Therefore, the view, which has been taken by the learned trial Court, based on evidence available on record cannot be said to be patently illegal or opposed to settled principles of law so as to warrant interference by this Court against an order of acquittal applying the principles laid down in the catena of decisions referred to above. In these circumstances, there is no warrant for interference against judgment of acquittal and the appeal of the State is liable to be dismissed. In the result, both the appeals i.e. Criminal Appeal No. 1138/92 filed by the State and Cr. A. No. 217/92 filed by appellant-Arjundas are dismissed and the judgment of the learned trial Court is affirmed. As the appellant-Arjun is on bail, his bail bonds stand cancelled and he is directed to surrender before the trial Court. Upon his surrender, learned trial Court shall send him to jail for serving out remaining part of sentence.