
(2013) 06 CHH CK 0027
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1352 of 1997

Yugal Kishore

APPELLANT

Vs

State of M.P. (now State of Chhattisgarh)

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2013) 2 CG.L.R.W. 186 : (2013) 4 CGLJ 32

Hon'ble Judges : Radhe Shyam Sharma, J

Bench : Single Bench

Advocate : Neeraj Mehta, for the Appellant; Anand Verma, Panel Lawyer, for the Respondent

Judgement

Radhe Shyam Sharma, J.—This appeal is directed against judgment dated 30-06-1997 passed by Special Judge under the Prevention of Corruption Act, 1988 (henceforth "the Act, 1988"), Rajnandgaon in Special Case No. 5/94. By the impugned judgment, accused/appellant Yugal Kishore has been convicted under Sections 7 and 13(1)(d) of the Act/1988 and sentenced to undergo rigorous imprisonment for 6 months and to pay fine of Rs. 200/- and to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 300/-, respectively. In default of payment of fine, to further undergo imprisonment for 2 months and 3 months, respectively. The jail sentences are directed to run concurrently. Case of the prosecution, in brief, is as under:

Accused/appellant Yugal Kishore was posted as a Lower Division Clerk in the Employees' State Insurance Corporation, Rajnandgaon. Complainant Chhannulal (PW-4) was working in BMC Mills, Rajnandgaon as a labour. From 18-9-1993 to 17-14994, complainant Chhannulal (PW-4) was on leave. He was entitled to receive payment (money) for leave period. He received some amount but, sum of Rs. 2000/- was remaining to be paid to him. He approached Cashier Bharat. Bharat demanded a sum of Rs. 1200/- for payment of remaining amount. Since, complainant Chhannulal (PW-4) did not want to satisfy the demand of illegal gratification made by Bharat, he went to the office of Superintendent of Police

Rajnandgaon and made a written complaint (Ex.-P/6). The complaint (Ex.-P/6) was forwarded to City Superintendent of Police, Rajnandgaon for necessary action. City Superintendent of Police R.K. Gandhi (PW-9) arranged a trap proceeding and called for two Panch Witnesses, namely. Deputy Collector Raj Kumar Tandon (PW-2) and Sanjay Tiwari SDO (P) (not examined). They were introduced with complainant Chhannulal (PW-4). They enquired about the complaint (Ex. P/6) from complainant Chhannulal (PW-4). Thereafter, a pre-trap demonstration was arranged. Complainant Chhannulal (PW-4) was asked to present currency notes of Rs. 1200/-. Numbers of the currency notes were recorded in Pre-Trap Panchnama (Ex.-P/7). Complainant Chhannulal (PW-4) was instructed and guided as to how the trap would be arranged and as to the role which they were required to play in the trap-proceeding. The trap-team proceeded for the office of Employees' State Insurance Corporation, Rajnandgaon. They reached near office of the accused/appellant. Complainant Chhannulal (PW-4) entered the office, met the appellant and handed over the currency notes of Rs. 1200/- to the appellant. Appellant kept the amount between two registers which were kept in the drawer. After receiving signal transmitted by complainant Chhannulal (PW-4), the trap-team rushed the spot immediately and caught hands of the accused. The trap-team seized the currency notes from the register which were kept in the counter of accused. Numbers of the currency notes seized from the accused were compared with the numbers mentioned in the Pre-Trap Panchnama (Ex.-P/7), which were found similar. Trap Panchnama (Ex.-P/8) was prepared. Documents were seized. First Information Report No. 185/1994 (Ex.-P/22) was registered.

After completion of the investigation, sanction for prosecution against the accused/appellant was obtained vide Ex.-P/19 and charge-sheet was filed against him in the Court of Special Judge under the Act, 1988, Rajnandgaon. The learned Special Judge framed charges against the accused under Sections 7 and 13(1)(d)/13(2) of the Act, 1988. After appreciation of the evidence available on record, the learned Special Judge convicted and sentenced the accused/appellant as mentioned above.

2. Shri Neeraj Mehta, learned counsel for the accused/appellant argued that the prosecution has failed to prove demand of illegal gratification by reliable and cogent evidence. It is necessary for the prosecution to satisfy and establish that all the ingredients of Sections 7 and 13(1)(d) of the 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 the prosecution has utterly failed to prove the demand of bribe by the appellant from the complainant. He further submitted that in the complaint (Ex.-P/6), it is stated that the demand was made by Bharat. Complainant Chhannulal (PW-4) stated that the appellant never demanded any bribe. The Panch witnesses have only stated that on being asked by T.P. Kujur (PW-3), the amount was given by the complainant to the appellant. Even if a presumption is drawn as per Section 20 of the Act, 1988, the appellant established his case that

he did not accept any illegal gratification. Evidence of the prosecution witnesses are full of contradictions. Evidence of complainant Chhannulal (PW-4) is not reliable and conviction cannot be based on his testimony. Hence, the impugned judgment is not sustainable in the eyes of law.

3. On the contrary, Shri Anand Verma, learned Panel Lawyer for the State/respondent supporting the impugned judgment, submitted that the prosecution has adduced cogent and reliable evidence against the accused. Bribe money was recovered from the accused. Therefore, the statutory presumption u/s 20 of the Act, 1988 would be attracted and it has to be inferred that the amount was accepted as illegal gratification. Shri Verma, learned Panel Lawyer for the State further argued that the circumstances in which the money was received by the appellant clearly amounts to acceptance and, therefore, that, by itself, permits the Court to draw an inference that it was an acceptance pursuant to demand of bribe made by the appellant.

4. Having heard rival contentions of the parties, I have perused the record of Special Case No. 5/94 with utmost circumspection. The learned Special Judge, after appreciation of the evidence available on record, held that the accused had demanded illegal gratification of Rs. 1200/- from the complainant for payment of amount of leave period.

5. In C.K. Damodaran Nair Vs. Govt of India, the Hon"ble Supreme Court had an occasion to consider 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 u/s 5(1)(a) and (b) and not u/s 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 primarily 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.

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.

6. In A. Subair Vs. State of Kerala, the Hon"ble Supreme Court examined essential ingredients of Sections 7 and 13(1)(d) of the Act, 1988 as under:

13. The essential ingredients of Section 7 are:

- (i) that the person accepting the gratification should be a public servant;
- (ii) that he should accept the gratification for himself and the gratification should be 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 function, favour or disfavour to any person.

14. Insofar as Section 13(1)(d) of the Act is concerned, its essential ingredients are:

- (i) that he should have been a public servant;
- (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant; and
- (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

Therefore, the settled legal position and which is no longer *res integra* is that primary requisite of an offence u/s 13(1)(d) of the Act, 1988 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) of the Act, 1988 cannot be held to be established. The aforesaid well settled legal position has been reiterated in plethora of decisions. Therefore, one of the essential ingredients to prove the offence alleged is demand of bribe by the public servant.

7. In *Subash Parbat Sonvane Vs. State of Gujarat*, the Hon"ble Supreme Court held thus:

5. In our view, mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused u/s 13(1)(d)(i). Section 13(1)(d) is as under:

13. Criminal misconduct by a public servant.--(1) A servant is said to commit the offence of criminal misconduct,--

* * *

(d) If he,--

- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

6. In Sections 7 and 13(1)(a) and (b) of the Act, the legislature has specifically used the word "acceptance" or "obtains". As against this, there is departure in the language used in sub-section (1)(d) of Section 13 and it has omitted the word "accepts" and has emphasized the word "obtains". Further, the ingredient of sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under sub-clause (ii), he obtains such thing by abusing his position as a public servant; and sub-clause (iii) contemplates that while holding office as a public servant, he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person u/s 13(1)(d), there must be evidence on record that the accused "obtained" for himself or for any other person, any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

7. This Court interpreted similar provisions under the Prevention of Corruption Act, 1947 in *Ram Krishan and Another Vs. The State of Delhi*, . In the said case, the Court dealt with similar clause (d) of Section 5 and held that there must be proof that the public servant adopted corrupt or illegal means and thereby obtained for himself or for any other person any valuable thing or pecuniary advantage. The Court observed: (SCR p. 188)

In one sense, this is no doubt true but it does not follow that there is no overlapping of offence. We have primarily to look at the language employed and give effect to it. One class of cases might arise when corrupt or illegal means are adopted or pursued by the public servant to gain for himself a pecuniary advantage. The word "obtains", on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. One may accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant.

The Court further observed that: (SCR p. 188)

It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour.

8. Similarly, in *M.W. Mohiuddin Vs. State of Maharashtra*, the Court dealt with Section 13(1)(d)(i) and (ii) and after referring to the decision quoted above as well as the dictionary meaning of the word "obtain" observed-whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances of each case. In that case, the Court held that it was proved that the accused made a demand and also got the affirmation from the complainant that he had brought the demanded money and

at his instance, the complainant wrapped the money in the handkerchief given by the accused and placed the same on the bag which was brought by the accused and as asked by him; these steps have been taken into consideration in arriving at the conclusion that the accused had in fact "obtained" the pecuniary advantage, namely, that he received the illegal gratification. Therefore, the Court upheld the conviction u/s 13(1)(d). Lastly, in C.K. Damodaran Nair Vs. Govt of India, this Court considered the word "obtain" used in Section 5(1)(d) and held as under: (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 u/s 5(1)(a) and (b)-and not u/s 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 primarily 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".

9. Same is the position of statutory presumption u/s 20 of the Act and is available for the offence punishable u/s 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13.

8. Complainant Chhannulal (PW-4) deposed that he was working as a labour in the BMC Mills for 24-25 years. He was on insurance leave during the period from 1993 to 1994. He received payment of insurance leave from insurance office situated at Kamthi Line. He had not received payment of leave of 28 days. He approached to concerning Clerk, namely, Bharat. He demanded Rs. 1200/-. He offered for a sum of Rs. 200/-, but Bharat refused to take the sum of Rs. 200/- and demanded Rs. 1200/- as bribe. He further deposed that he went to the office of Superintendent of Police, Rajnandgaon and made written complaint (Ex. P-6) there. He further deposed that he met to City Superintendent of Police R.K. Gandhi (PW-9) and submitted his complaint (Ex.-P/6). City Superintendent of Police R.K. Gandhi (PW-9) called the two Panch-witnesses, namely, Deputy Collector Raj Kumar Tandon (PW-2) and Sanjay Tiwari SDO (P) (not examined). City Superintendent of Police R.K. Gandhi (PW-9) asked him to submit currency notes of Rs. 1200/-. He further deposed that he submitted sum of Rs. 1200/-, 17 currency notes in the denomination of Rs. 50/-, 3 currency notes in the denomination of Rs. 100/- and 5 currency notes in the denomination of Rs. 10/-. He further deposed that phenolphthalein powder was smeared on the said currency notes. City Superintendent of Police R.K. Gandhi (PW-9) deposed that he was posted as City Superintendent of Police at Rajnandgaon. Complainant

Chhannulal (PW-4) came to him and submitted his complaint (Ex.-P/6). Superintendent of Police, Rajnandgaon directed him for necessary action. He called two Panch-witnesses Deputy Collector Raj Kumar Tandon (PW-2) and Sanjay Tiwari SDO (P) (not examined) and gave complaint (Ex.-P/6) to the Panch-witnesses for their perusal. The Panch-witnesses perused the complaint (Ex.-P/6) and they enquired about the complaint (Ex.-P/6) from complainant Chhannulal (PW-4). Thereafter, a trap proceeding was arranged. Pre-trap demonstration was arranged. Complainant Chhannulal (PW-4) submitted sum of Rs. 1200/-. Numbers of the currency notes were mentioned in the Pre-trap Panchnama (Ex.-P/7). Complainant Chhannulal (PW-4) was informed and guided as to how the trap would be arranged and about the role which he had to play during the trap proceeding.

9. Raj Kumar Tandon (PW-2), complainant Chhannulal (PW-4) and City Superintendent of Police R.K. Gandhi (PW-9) deposed that the trap team proceeded for the office of Employees' State Insurance Corporation, Rajnandgaon and they reached, there. Complainant Chhannulal (PW-4) entered the office of the accused and rest members of the trap team waited outside the office.

10. Complainant Chhannulal (PW-4) deposed that he went to the office of the accused and met with T.P. Kujur (PW-3). At that time, the accused was also sitting near T.P. Kujur (PW-3). T.P. Kujur (PW-3) asked him whether he has brought the money. He answered in affirmative, then T.P. Kujur (PW-3) told him to give the amount to the accused. T.P. Kujur (PW-3) told him twice for giving the money to the accused. Then he handed over the money to the accused. The accused kept the currency notes in between the two registers. He further deposed that he came out of the office of the accused and transmitted the signal. After receiving the signal the trap team rushed the spot immediately. On being asked, the accused told that he kept the money in his drawer.

11. R.K. Gandhi (PW-9) deposed that he rushed the spot and enquired about the bribe money from the accused. But the accused did not reply. The office of the accused was searched, the tainted currency notes were recovered from between the registers. The currency notes were seized and numbers thereof were compared with the numbers mentioned in the pre-trap Panchnama (Ex.-P/7), which were found similar. Raj Kumar Tandon (PW-2) also deposed in similar fashion.

12. On examination of the accused u/s 313, Cr.P.C., he took the defence that he was falsely implicated and pleaded that--

13. In the cross-examination, complainant Chhannulal (PW-4) deposed in para 6 that Bharat Babu had demanded money from him. The negotiation between the Bharat Babu and him was continued since last one and a half months. He further deposed that a sum of Rs. 1200/- was demanded by Bharat only. In his cross-examination, in para 7, complainant Chhannulal (PW-4) deposed that the

accused had never demanded bribe from him. In his cross-examination, in para 8, he further deposed that he met with T.P. Kujur (PW-3) and at that time, the accused was sitting near T.P. Kujur (PW-3). On being asked by T.P. Kujur (PW-3) twice-thrice, he handed over the money to the accused. It is true that the accused took the money and kept it between the registers which were kept in the drawer.

14. Raj Kumar Tandon (PW-2) deposed that he enquired about the complaint (Ex.-P/6) from complainant Chhannulal (PW-4). Complainant Chhannulal (PW-4) stated before him that the contents of the complaint (Ex.-P/6) were true. He further deposed that complainant Chhannulal (PW-4) told him that Bharat Babu demanded a sum of Rs. 1200/- as bribe for payment of his claim. He further deposed that on being enquired, the accused denied to receive money from the complainant. He further deposed that the said tainted currency notes were not recovered from the accused, thereafter, the search was made and the money was recovered from the rack. At that time, complainant Chhannulal (PW-4), T.P. Kujur (PW-3) and other office members were also present in the office.

15. In *T. Subramanian Vs. State of Tamil Nadu*, , the Hon''ble Supreme Court observed that in a case u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, mere proof of receipt of money by the accused in absence of proof of demand and acceptance of money as illegal gratification is not sufficient to establish guilt of the accused. If the accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification, the accused would be entitled to acquittal.

16. In *Suraj Mal Vs. State (Delhi Administration)*, the Hon''ble Supreme Court held that mere recovery by itself cannot prove the charge of the prosecution against the appellant in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money.

17. In *C.M. Girish Babu Vs. CBI, Cochin*, High Court of Kerala, the Hon''ble Supreme Court observed thus:

18. In *Suraj Mal Vs. State (Delhi Administration)*, , this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted 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. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made u/s 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

"4. It is well established that where the burden of an issue lies upon the

accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him u/s 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (emphasis supplied) (See V.D. Jhangan Vs. State of Uttar Pradesh,

18. In State of Kerala and Another Vs. C.P. Rao, , the Hon"ble Supreme Court observed thus:

7. In the background of these facts, especially the non-examination of CW 1, was found very crucial by the High Court. The High Court has referred to the decision of this Court in Panalal Damodar Rathi Vs. State of Maharashtra, , wherein a three-Judge Bench of this Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied on. In the aforesaid circumstances, the three-Judge Bench in Panalal Damodar Rathi case held that there is grave suspicion about the appellant's complicity and the case has not been proved beyond reasonable doubt. (See SCC, para 11.)

10. In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, this Court while dealing with the case under the Prevention of Corruption Act, 1988, by referring to its previous decision in Suraj Mal Vs. State (Delhi Administration), , held that mere recovery of tainted 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. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained. (See SCC, para 18.)

11. In a subsequent decision of this Court also under the Prevention of Corruption Act, in A. Subair Vs. State of Kerala, this Court made certain pertinent observations about the necessity of the presence of the complainant in a bribery case. The relevant observations have been made in paras 18-19 which are quoted below: (SCC p. 592)

18. ...The High Court held that since the Special Judge made attempts to secure the presence of the complainant and those attempts failed because he was not

available in India, there was justification for non-examination of the complainant.

19. We find it difficult to countenance the approach of the High Court. In the absence of semblance of explanation by the investigating officer for the non-examination of the complainant, it was not open to the courts below to find out their own reason for not tendering the complainant in evidence. It has, therefore, to be held that the best evidence to prove the demand was not made available before the court.

12. Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in SCC para 28 of A. Subair case made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court.

19. R.K. Gandhi (PW-9) deposed that it is true that he interrogated Bharat Babu. It is also true that on bare perusal of Ex.-P/6, it appeared that the demand was made by Bharat Babu and offence was also made out against him but he was not made co-accused. Birendra Nagar (PW-8), who was Regional Director of the Employees' State Insurance Corporation, Rajnandgaon and sanctioning authority for prosecution against the accused deposed that on being enquired by him, it appeared that the accused did not make any demand of bribe from the complainant.

20. In the instant case, R.K. Gandhi (PW-9) does not state anything regarding phenolphthalein test. R.K. Gandhi (PW-9) also does not depose that the tainted currency notes were smeared with phenolphthalein powder. R.K. Gandhi (PW-9) does not depose that sodium carbonate solution was prepared and the recovered currency notes and hands of the accused were dipped in the sodium carbonate solution. Even in the Trap-Panchnama (Ex. P-8), it was not mentioned that after recovery of the currency notes, the currency notes and hands of the accused were dipped in the sodium carbonate solution. R.K. Gandhi (PW-9) does not depose that the seized currency notes were smeared with phenolphthalein powder and sent for chemical examination to Forensic Science Laboratory.

21. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of an inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or by circumstantial evidence. If each link of the chain of events is established pointing towards the guilt of the accused, the prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence.

22. So far presumption u/s 20 of the Act, 1988 is concerned, it is well settled that the presumption drawn u/s 20 is not inviolable one. The accused, charged

with the offence, can rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption, the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification. It is equally well settled that the burden of proof upon the accused person against whom the presumption is drawn u/s 20 of the Act, 1988 is not akin to the burden placed on the prosecution to prove the case beyond a reasonable doubt. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts, i.e., that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.

23. In the instant case, the duty was cast upon R.K. Gandhi (PW-9) to use phenolphthalein powder for the purpose of proving the demand of bribe by the accused, but R.K. Gandhi (PW-9) did not depose that the tainted currency notes were smeared with phenolphthalein powder. Therefore, admittedly, the recovered currency notes were not smeared with phenolphthalein powder so that the handling of said marked notes by the accused could be detected by the chemical process. Therefore, the oral evidence led by the prosecution is not such which inspires confidence. Therefore, I am not satisfied that the accused either demanded a sum of Rs. 1200/- from the complainant or the complainant gave bribe to the accused by handing over him marked currency notes.

24. In the instant case, the prosecution has failed to prove the demand and acceptance of bribe by the accused from the complainant. Mere recovery of money from the accused by itself cannot prove the charge of prosecution against the accused in absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. For the foregoing reasons, the appeal is allowed. The conviction and sentence awarded to the accused/appellant under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 are set aside. The accused/appellant is acquitted of the charges framed against him. It is stated that he is on bail. His bail bonds are continued for a period of 6 months.