
Dinesh Kumar Kannoje Vs State of Madhya Pradesh

Criminal Appeal No. 2619 of 1998

Court: Chhattisgarh High Court

Date of Decision: Feb. 17, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Penal Code, 1860 (IPC) â€” Section 161#Prevention of Corruption Act, 1988 â€” Section 5(1)(d), 5(2)

Citation: (2012) 2 CGBCLJ 315 : (2012) CriLJ 2319

Hon'ble Judges: R.S. Sharma, J

Bench: Division Bench

Advocate: Sourabh Dangi, for the Appellant; M.P.S. Bhatia, Deputy Govt., for the Respondent

Judgement

Radhe Shyam Sharma, J.

This appeal is directed against judgment dated 31-10-1998 passed by Special Judge, Raipur in Special Case

No. 1/1993. By the impugned judgment, accused /appellant Dinesh Kumar Kannoje has been convicted u/s 161 of the Indian Penal Code and

Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (henceforth "the Act, 1947") and sentenced to undergo rigorous

imprisonment for one year and to pay fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for three months and to

undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for three

months, respectively. Both the jail sentences are directed to run concurrently. Case of the prosecution, in brief, is as under:

The appellant was posted as Patwari of Halka No. 2, Village Mandeli, District Raipur in July, 1988. Complainant Chaitram (PW-7), resident of

Village Mandeli, Police Station Abhanpur, District Raipur wanted to obtain a loan from Bank. In this regard, he required a certificate that he did

not have any land in his name. On being contacted to the appellant for issuance of such a certificate, the appellant demanded bribe of Rs. 60/-

therefor from the complainant. Since, the complainant did not want to give bribe to the appellant, he made a complaint (Ex. P-1) to the

Superintendent of Police, Special Police Establishment, Office of Lokayukta. Raipur on 20-7-1988. The complaint (Ex. P-1) was forwarded to

Inspector Jivan Bhalekar (PW-11) for necessary action.

On receiving the complaint (Ex. P-1), Jivan Bhalekar (PW-11) record Dehati Nalishi (Ex. P-14). He called for Panch Witnesses Dr. Abdul Rashid

(PW-1) and R.A. Sharma (PW-4). Both the Panch Witnesses were given the complaint (Ex. P-1) for their perusal. They enquired about the

complaint (Ex. P-1) from the complainant. Thereafter, currency notes of total Rs. 60/- in the denomination of Rs. 50/- and Rs. 10/- were

submitted by the complainant. A pre-trap demonstration was arranged wherein a solution of sodium carbonate was prepared in a glass. On dip of

a plain paper in the solution, colour of which did not change. Thereafter, another piece of paper containing phenolphthalein powder was dipped in

the said solution, then colour of the solution turned pink. A pre-Trap Panchnama (Ex. P-2) was prepared. Numbers of the currency notes

submitted by the complainant were recorded in Pre-Trap Panchnama (Ex. P-2). After submission of the currency notes, phenolphthalein powder

was smeared thereon and the notes were kept in right-side pocket of the pant of complainant Chaitram (PW-7). Complainant Chaitram (PW-7)

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 proceedings. The

trap-team proceeded for Village Mandeli. When they reached Village Mandeli, at that time, the appellant was not present there. He had gone to

Dhamtari. On the same day, at about 6 p.m., the appellant came back to Village Mandeli. When the appellant reached near a tank (Talab),

complainant Chaitram (PW-7) met him there and gave him the currency notes of Rs. 60/-. Thereafter, complainant Chaitram (PW-7) transmitted a

signal to the trap-team. The trap-team rushed to the spot immediately and caught hands of the appellant. The trap-team seized the currency notes

of Rs. 60/- from the pocket of the shirt of the appellant. The numbers of the seized currency notes were compared with the numbers mentioned in

the Pre-Trap Panchnama (Ex. P-2), which were found to be similar. A solution of sodium carbonate was prepared and fingers of the appellant

were dipped therein, colour of which turned pink. Thereafter, the solution was kept in a bottle and sealed. Another solution of sodium carbonate

was prepared in which pocket of the shirt of the appellant was dipped, colour of which turned pink. The solution was kept in another bottle and

sealed. Another solution of sodium carbonate was prepared and the seized currency notes were dipped therein, colour of which turned pink, the

solution was kept in a bottle and sealed. Another solution of sodium carbonate was prepared in which fingers of complainant Chaitram (PW-7)

were dipped, colour of which turned pink. The solution was kept in a bottle and sealed. Thereafter, Trap Panchnama (Ex. P-3) was prepared and

the seized articles were sent to Forensic Science Laboratory, Sagar vide Exs. P-8 and P-9, report therefrom was received vide Ex. P-10. Regular

First Information Report No. 161/ 88 was recorded vide Ex. P-15.

After completion of the investigation, sanction for prosecution against the appellant was obtained vide Ex. P-16 and chargesheet was filed against

him in the Court of 1st Additional Sessions Judge/Special Judge, Raipur. The learned Special Judge framed charges against the appellant u/s 161

of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Act, 1947. After appreciation of the evidence available on record, the

learned Special Judge convicted and sentenced the appellant as mentioned above.

2. To establish the charges against the accused/appellant, the prosecution, in relation to the demand and receipt of the illegal gratification, mainly

examined Dr. Abdul Rasid (PW-1), Krishna Lal Gwal (PW-2), John Verghese (PW-3), R.A. Sharma (PW-4), Shivcharan (PW-5), Nemichand

Hirwani (PW-6), Chaitram (PW-7), B.I.R. Naidu (PW-8), Ishwarlal (PW-9), Naresh Kumar (PW-10), Jeevan Bhalekar (PW-11) and D.R.

Yadav (PW-12). In defence, the appellant examined Mohanlal (DW-1) and Loknath Sahu (DW-2).

3. Shri Sourabh Dangi, learned counsel for the appellant argued that the prosecution has failed to prove demand of illegal gratification by reliable

and cogent evidence. Dr. Abdul Rasid (PW-1) and R.A. Sharma (PW-4) specifically deposed that they had not heard the appellant demanding

money of his own from the complainant. Looking to the evidence of Nemichand Hirwani (PW-6) and Naresh Kumar (PW-10), it appears that

complainant Chaitram (PW-7) was trying to give money to the appellant forcefully and the appellant was refusing to accept the same. Demand of

illegal gratification, which is sine qua non for convicting the appellant u/s 161 IPC and Section 5(1)(d) read with Section 5(2) of the Act, 1947 is

not proved. A presumption cannot be drawn against the appellant. He further argued that it is necessary for the prosecution to satisfy and establish

all the ingredients of Section 161 IPC and Section 5(1)(d) read with Section 5(2) of the Act, 1947 before convicting the appellant. The

prosecution did not prove its case beyond reasonable doubt. Therefore, the impugned judgment is not sustainable and the appellant deserves to be

acquitted. He placed reliance on Bal Krishan Sayal Vs. State of Punjab, Subash Parbat Sonvane Vs. State of Gujarat, , Aran Kumar Pandey v.

State of M.P., 2011 (1) CGLJ 99 : (2011 Cri LJ 4631), Darshan Lal Vs. The Delhi Administration, and Dudh Nath Pandey Vs. State of Uttar

Pradesh,

4. Shri M.P.S. Bhatia, learned Deputy Government Advocate for the State/respondent, supporting the impugned judgment, refuted the above

arguments and submitted that the prosecution has led clinching and reliable evidence. The bribe money was recovered from the appellant. When

fingers of the appellant were dipped in the solution of sodium carbonate, colour of which turned pink. Therefore, there is a presumption against the

appellant and the judgment of conviction and sentence against him does not warrant any interference by this Court.

5. I have heard learned counsel for the parties at length and have also perused the record of Special Case No. 1/93 with utmost circumspection.

6. The learned Special Judge, after appreciation of the evidence available on record, held that the appellant had demanded illegal gratification of

Rs. 60/- from the complainant.

7. Chaitram (PW-7) deposed that the appellant was posted as Patwari in Village Mandeli. He wanted to obtain a loan from Bank. In this regard,

he required a certificate that he did not have any land in his name. He contacted the appellant for issuance of such certificate. The appellant

demanded Rs. 150-200 from him. He repeatedly contacted with the appellant for the said certificate. The appellant demanded bribe of Rs. 60/-

and said him that he will not give him the required certificate without receiving money. On this, the complainant made a complaint (Ex. P-1) in the

office of Lokayukta, Raipur. Jeevan Bhalekar (PW-11) deposed that on 20-7-1988, complainant Chaitram (PW-7) came to the office of

Lokayukta, Raipur and submitted his complaint (Ex. P-1) before Superintendent of Police, Lokayukta, Raipur. The Superintendent of Police

forwarded the complaint (Ex. P-1) to him for necessary action.

8. Jeevan Bhalekar (PW-11) deposed that he called two panch witnesses Dr. Abdul Rasid (PW-1) and R.A. Sharma (PW-4) and introduced

them with complainant Chaitram (PW-7). He gave the complaint (Ex. P-1) to the panch a witnesses for their perusal. The panch witnesses perused

the complaint (Ex. P-1) and they enquired about the complaint (Ex. P-1) from the complainant. Thereafter, a trap proceeding was arranged. A

pre-trap demonstration was arranged, wherein a solution of sodium carbonate was prepared in a glass. A plain paper was dipped in the solution,

but colour of the solution did not change. Thereafter, another piece of paper smeared with phenolphthalein powder was, dipped in the solution,

colour of which turned pink. Pre-trap Panchnama was prepared vide Ex. P-2. After giving the demonstration, the complainant was asked to

produce currency notes of Rs. 60/-. The complainant submitted currency notes of Rs. 60/- in the denomination of Rs. 50/- and Rs. 10/-, on which,

phenolphthalein powder was smeared and thereafter the said notes were kept in the pocket of complainant. The complainant was informed and

guided as to how the trap would be arranged and about the role which he had to play during trap proceedings. Dr. Abdul Rasid (PW-1), R.A.

Sharma (PW-4) and Chaitram (PW-7) deposed in similar fashion in their examination-in-chief.

9. Dr. Abdul Rasid (PW-1), R.A. Sharma (PW-4), Chaitram (PW-7) and Jeevan Bhalekar (PW-11) deposed that they proceeded for village

Mandeli. At that time, the appellant was not present at his house at Mandeli. He had gone to Dhamtari. On the same day, at about 6 p.m., he came

back to Village Mandeli. When he reached near a tank (talab), complainant Chaitram (PW-7) and Dr. Abdul Rasid (PW-1) also reached near the

tank. Other members of the trap-team also rushed towards the tank. The complainant met with the appellant near the tank. At that time, the

appellant was going from the tank towards the market. The complainant met with the appellant and started talking with him. Thereafter, the

complainant gave the currency notes of Rs. 60/- to the appellant. The appellant received the sum and kept the same in the pocket of his shirt.

Complainant Chaitram (PW-7) transmitted a signal to the trap team. The trap-team rushed to the spot immediately and caught the hands of the

appellant.

10. Jeevan Bhalekar (PW-11) deposed that on being asked from the appellant, he told him that he had kept the money in the pocket of his shirt. A

solution of sodium carbonate was prepared in which the fingers of Dr. Abdul Rasid (PW-1) were dipped, colour of which did not change.

Thereafter, fingers of the appellant were dipped in the solution, colour of the solution turned pink. The solution was kept in a bottle and sealed.

Thereafter, Dr. Abdul Rasid (PW-1) recovered the currency notes of Rs. 60/- from the pocket of the shirt of the appellant. The numbers of the

seized currency notes were compared with the numbers mentioned in the pre-trap Panchnama (Ex. P-2), which were found to be similar. Another

solution of sodium carbonate was prepared and the seized currency notes were dipped therein, colour of which turned pink. The solution was kept

in another bottle and sealed. Another solution of sodium carbonate was prepared in which pocket of the shirt of the appellant was dipped, colour

of which turned pink. The solution was kept in another bottle and sealed. Dr. Abdul Rasid (PW-1), R.A. Sharma (PW-4) and Chaitram (PW-7)

also deposed in similar fashion.

11. After perusal of the evidence of Dr. Abdul Rasid (PW-1), R.A. Sharma, (PW-4), Chaitram (PW-7) and Jeevan Bhalekar (PW-11), it is

proved that the sum of Rs. 60/- was recovered from the appellant and on comparing the numbers of the seized currency notes with the numbers

mentioned in the pre-trap Panchnama (Ex. P-2), they were found to be similar.

12. Now, I shall examine whether mere recovery of the currency notes is sufficient to convict the appellant u/s 161, IPC and Section 5(1)(d) of the

Act, 1947?

13. To constitute an offence u/s 161, IPC, it is necessary for the prosecution to prove that there was demand of money and the same was

voluntarily accepted by the accused. Similarly, in terms of Section 5(1)(d) of the Act, 1947, the demand and acceptance of the money for doing a

favour in discharge of his official duties is sine qua non for conviction of the accused.

14. In Banarsi Dass Vs. State of Haryana, , the Hon"ble Supreme Court observed thus :

24. In M.K. Harshan Vs. State of Kerala, this Court in somewhat similar circumstances, where the tainted money was kept" in the drawer of the

accused who denied the" same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8)

8.....It is in this context the Courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of

bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has

obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is

very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then

there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal

gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1"s evidence suffers

from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence

of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to

hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly

when the version of the accused appears to be probable.

25. Reliance on behalf of the appellant was placed upon the judgment of this Court in C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala,

where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of

substantive evidence for demand and acceptance. The Court held that there was; no voluntary acceptance of the money knowing it to be a bribe

and giving advantage to the accused of the evidence on record, the Court in paras 18 and 20 of the judgment held as under : (SCC pp. 784 &

785-86).

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 if 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.

*** **

20. A three-Judge Bench in M. Narsinga Rao Vs. State of Andhra Pradesh, while dealing with the contention that it is not enough that some

currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what

was paid amounted to gratification, observed : (SCC p. 700, para 24).

24.....we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with

at length. (vide Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, The following statement made by us in the said decision would be the

answer to the aforesaid contention raised by the learned counsel : (Madhukar case, SCC p. 577, para 12).

12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said

premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any

official act So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the Court

has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two

expressions adjacent to each other like "gratification or any valuable thing". If acceptance-of any valuable thing can help to draw the presumption

that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to

mean any payment for giving satisfaction to the public servant who received it.

In fact, the above principle is no way a derivative but is a reiteration of the principle enunciated by this Court in Suraj Mal case where the Court

had held that mere recovery by itself cannot prove the charge of 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. Reference can also be made to the judgment of this Court in Sita Ram Vs.

The State of Rajasthan,), where similar view was taken.

15. In T. Subramanian v. State of T.N., (2006) 1 SCC 401 : (AIR 2006 SC 836), 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 CW1, 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. The appellant was examined u/s 313, Cr.P.C. and he took a defence that complainant Chaitram (PW-7) thrust the money into the pocket of

his shirt. In his defence, he examined Mohanlal (DW-1) and Loknath Sahu (DW-2). He also relied on the evidence of Nemichand Hirwani (PW-

6) and Naresh Kumar (PW-10).

20. Nemichand Hirwani (PW-6) is a teacher. He deposed that he, Naresh Kumar (PW-10) and the appellant had gone towards the tank (talab)

and brushing their teeth there. At that time, Chaitram (PW-7) and one other person came there. Chaitram (PW-7) asked the appellant to do this

work. Chaitram (PW-7) asked the appellant to take some money, but the appellant refused to accept the same. Chaitram (PW-7) insisted the

appellant to take the money. The appellant said Chaitram (PW-7) that he did not require money; he had come back from Dhamtari and tired. The

appellant further asked Chaitram (PW-7) to come tomorrow. He further deposed that when they were returning from the tank and reached near

the Panchayat Bhawan, Chaitram (PW-7) stopped the appellant and thrust the money into the pocket of the shirt of the appellant. The appellant

asked Chaitram (PW-7) that what was he doing and took out the money from his pocket. At the same time, the trap-team caught him.

21. Naresh Kumar (PW-10) deposed that he, Nemichand Hirwani (PW-6) and the appellant were brushing their teeth near the tank. At that time,

Chaitram (PW-7) had come there along with a person. Thereafter, Chaitram (PW-7) thrust money into the pocket of the shirt of the appellant. In

cross examination, in paragraph 4, he deposed that when they reached near the Panchayat Bhawan, Chaitram (PW-7) had also come there along

with them. Thereafter, Chaitram (PW-7) thrust money into the pocket of the shirt of the appellant. The appellant asked Chaitram (PW-7) that what

was he doing and took out the money from his pocket. At the same time, the trap-team caught him.

22. Dr. Abdul Rasid (PW-1) deposed in cross-examination in paragraph 14 that he did not hear the appellant demanding money from the

complainant. R.A. Sharma (PW-4) deposed that he did not see complainant Chaitram (PW-7) giving money to the appellant. He also did not hear

the talks taken place between the appellant and the complainant. At that time, the appellant was accompanied by two other persons.

23. In a trap case, at least some panch witnesses should over hear the conversation or see something to which they can depose. The corroboration

is essential in a case like this for what actually transpired at the time of alleged occurrence and acceptance of bribe is very much wanting in this

case.

24. Mohanlal (DW-1) deposed that he had seen complainant Chaitram (PW-7) keeping something in the pocket of the shirt of the appellant. The

appellant took out the said thing kept in his pocket and asked Chaitram (PW-7) that what was that. Having heard this, he and other persons

standing there, went ""to the appellant. They saw that the appellant was having money in his hand and was asking Chaitram (PW-7) that why was

he keeping the same in his pocket. This talk was going on, at that time, the trap team caught hands of the appellant.

25. Loknath Sahu (DW-2) deposed that Chaitram (PW-7) began to ask for a certificate from the appellant to the effect that he (Chaitram PW-7)

did not have any land. The appellant told Chaitram (PW-7) that he owned land then how could he issue such a certificate. Chaitram (PW-7) said

the appellant that he had brought money and asked for the certificate from the appellant. He further deposed that when he reached the Panchayat

Bhawan, the appellant and Nemichand Hirwani (PW-6) also came there. At that time, Chaitram (PW-7) and an other person, who was

accompanying Chaitram (PW-7), also came there. He further deposed that he saw that Chaitram (PW-7) kept something in the pocket of the shirt

of the appellant. The appellant, taking out the money from his pocket, asked Chaitram (PW-7) that what was that. At that time, the person

accompanying Chaitram (PW-7) caught hands of the appellant.

26. In Babu Lal Bajpai v. State of U.P., 1994 Cri. L.J. 1383 (SC), the Hon"ble Supreme Court observed thus :

6. The case of the accused is that the complainant had tried to thrust the money in his pocket and he had resisted the said attempt, and thrown

down the money on the floor. This version of the accused has been supported by the prosecution witness Raghubir Singh who is the adjacent

shopkeeper and in whose shop the testing of ultra violet rays on the currency notes was made. Since he was aware of what was going to happen

he had naturally moved near the shop of the trap. According to this witness he was standing outside the said shop and had heard the conversation

inside the shop where the trap was laid. There is no reason why this witness who is a stranger both to the prosecution as well as to the accused

would support the version of the accused, as stated above, if that was not the true version. The trial Court has also relied upon, and according to

us rightly, this version of the said prosecution witness.....

27. 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 even 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.

28. So far presumption u/s 4 of the Act, 1947 is concerned, it is well settled that the presumption to be u/s 4 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 made u/s 4 of the Act, 1947 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.

29. In the instant case, it is evident that the complainant had thrust the money into the pocket of the shirt of the appellant. The appellant asked the

complainant that what was he doing and took out the money from his pocket. It appears that while taking out the currency notes thrust into his

pocket by the complainant, fingers of the appellant came into contact of the said currency notes, therefore, when the fingers of the appellant were

dipped in the solution of sodium carbonate, colour of the solution turned pink. Dr. Abdul Rasid (PW-1) and R.A. Sharma (PW-4) specifically

deposed that they did not hear the conversation taken place between the appellant and the complainant. Therefore, mere recovery of money from

the appellant by itself cannot prove the charges of the prosecution against the appellant in absence of any evidence to show that the appellant

voluntarily accepted the money. For the foregoing reasons, the appeal is allowed. The conviction and sentence awarded to the appellant u/s 161 of

the Indian Penal Code and Section 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, 1947 are set aside. The appellant is

acquitted of the charges framed against him. Presently, he is on bail. His bail bonds are cancelled and sureties stand discharged.