

Karnataka High Court Sri B N Swamy vs The State Of Karnataka on 27 March, 2015 Author: Budihal R.B. 1

IN THE HIGH COURT OF KARNATAKA AT
BENGALURU

DATED THIS THE 27TH DAY OF MARCH 2015

BEFORE

THE HON'BLE MR. JUSTICE BUDIHAL R.B.

CRIMINAL APPEAL No.1339/2010

BETWEEN:

Sri B N Swamy S/o Late Ningegowda Aged 57 years R/o No.1959, 14th Main
Vijayanagara 3rd Stage Mysore-17. .. APPELLANT

(By Sri Ravi B Naik, Senior Counsel A/W Smt Vijetha R Naik, Adv.)

AND:

The State of Karnataka (Through by Lokayukta Police) Rep. by its Learned
Special Public Prosecutor For Lokayukta. .. RESPONDENT

(By Sri Venkatesh P Dalwai, Spl. P P)

This criminal appeal is filed under Section 374(2) CR.P.C

praying to set aside the order of conviction and sentence dated 2

06.12.2010 passed by the Spl. Judge, Mysore in Spl.C.No.71/2007 convicting
the appellant/accused for the offences punishable under Sections 7 and 13(1)(d)
read with Section 13(2) of Prevention of Corruption Act, 1988.

This appeal having been heard and reserved for orders,

coming on for pronouncement of judgment, this day, the Court delivered the
following:

JUDGMENT

This appeal is preferred by the appellant accused being aggrieved by the order of conviction and sentence dated 6.12.2010 passed by the Principal Sessions Judge and Special Judge, Mysore, in Spl.Case No.71/2007 on the grounds mentioned at ground Nos.7 to 19 of the appeal memorandum. 2. The case of the

prosecution in brief is that the Lokayuktha police filed charge sheet against the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short the 'Act'). The accused was working as FDA in Mysuru Urban Development Authority, Mysuru on 15.9.2006. When the complainant N. Krishna approached him for issue of sale deed, the accused demanded Rs.1,000/- from the complainant as gratification other than legal remuneration as motive for showing official favour. Pursuant to the said demand, the accused accepted the sum of Rs.1,000/- from the complainant on 16.9.2006 as illegal gratification and he being the public servant has misused his official position and by corrupt or illegal means, obtained pecuniary advantage to an extent of Rs.1,000/- for himself from the complainant. Hence, case was registered and then, the entrustment and trap mahazars were conducted and after completing the investigation, charge sheet was filed. 3. To prove its case, the prosecution has examined P.Ws.1 to 5 and produced the documents at Exs.P.1 to P.11 and M.Os.1 to 9. After considering the merits of the case, ultimately, the Special Court convicted the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. Being aggrieved by the judgment and order of conviction passed by the trial court, the appellant has preferred the present appeal before this Court. 4. Heard the arguments of the learned Senior counsel appearing for the appellant-accused and also the learned SPP for the respondent Lokayuktha. 5. Learned Senior Counsel for the appellant submitted that the demand said to have been made by the accused for the bribe amount is not proved by the prosecution. He further submitted that the accused took charge on the very same day, when the alleged trap was laid, and no work of the complainant was pending with the accused. It is also his submission that P.W.1 has not supported the case of the prosecution. Looking to the evidence of prosecution witnesses, P.W.2, who was panch witness to entrustment mahazar, was not present when the alleged demand for the bribe was made by the accused. In the evidence at Para Nos.10, 11 and 14, P.W.2 has clearly stated that accused has not committed any offence. Learned Senior Counsel has further submitted that perusing the evidence of P.W.3, sanction order is not in accordance with Section 19 of the Act and it is bad in law. The evidence of P.W.4 goes to show that no liquid was found in the bottle and hence, there is no corroborative evidence by P.W.4 about the alleged demand for bribe by the accused person. P.W.4 deposed that Krishna is the accused present before the court. The learned senior counsel also submitted that unless demand is proved satisfactorily, mere recovery of the currency notes is not sufficient. The accused is not the authority to make the allotment of site. Lastly, he made the submission that the prosecution has not proved its case beyond reasonable doubt. 6. Learned Senior Counsel for the appellant in support of his contention has relied upon the following decisions: i. In the case of Banarsi Dass Vs. State of Haryana (Judgment dated 05.04.2010 in CrI.A.630/2003 - Supreme Court of India)

- ii. In the case of Subash Parbat Sonvane Vs. State of Gujarat

(Judgment dated 24.04.2002 in Appeal
(crl.)546/2002 - Supreme Court of India)

7. Per contra, the learned Spl.P.P appearing for respondent made the submission that looking to the materials produced by the prosecution, both oral and documentary, it has proved its case about the demand and acceptance of bribe amount by the accused from the complainant to show him official favour. He has also submitted that the trial court has taken into consideration all the materials placed before it and has rightly convicted the accused for the offences leveled against the accused. It is also his submission that even in the absence of demand and acceptance of the bribe amount, on the basis of recovery of amount, charge under Section 7 of the Act can be established. Hence, learned Spl.P.P submitted that there is no illegality in the judgment of the trial court. There is no merit in the appeal and the same may be dismissed.
8. I have perused the oral evidence of PWs-1 to 5 documents Ex.P-1 to P-11, M.Os.1 to 9, judgment and order passed by the Trial Court, grounds urged in the appeal memorandum and also the decisions relied upon by the learned Senior Counsel for the appellant, which are referred above.
9. In his oral evidence PW-1, who is the complainant of this case has deposed that he knows the accused, present before the Court, who was working as Clerk in the Mysore Urban Development Authority (MUDA), Mysore. Earlier one site was allotted to his father. Subsequently, in the place of earlier site, another site was allotted and his father gave the said site to him under the gift deed. He has given the application to the MUDA office for effecting katha of the said site in his name. At that time, accused told the complainant that earlier site measuring 30X40 feet was given and thereafter site measuring 60X40 feet was allotted, so it is not permissible, and only the site measuring 30X40 feet will have to be allotted. Hence, accused can't effect the katha in his name. Thereafter, site measuring 30X40 feet was allotted. As the earlier site was given to him by his father under the gift deed, for the subsequent site he has requested to enter his name into the katha directly. For that request, accused was telling that it is not possible and without giving correct information, accused was troubling him. As accused was giving such trouble and as accused has not taken steps for change of katha in his name, PW-1 has lodged the complaint before the Lokayukta Police. Lokayukta Police got written the complaint but he does not know from whom it was got written. In the complaint, it is mentioned that he is paying Rs.1000/- to the accused and on that date of lodging the complaint, no other proceedings took place in the Lokayukta office. PW-1 was treated as hostile at the request of the learned Spl.P.P and he has been cross-examined.
10. In his cross-examination, PW-1 has deposed that he studied B.Com., and has worked as PRO in private organizations. He has deposed that accused has not demanded for money on 15.09.2006, when he had been to the office of the accused, for the suggestion made by learned Spl.P.P. But

he admitted the complaint and his signature, as per Ex.P-1 and P-1(a), respectively. He has deposed that the witnesses were not called to the Lokayukta office, but they were called nearby Ganghotri ground. When it was suggested by the Spl.PP about the complaint averments, he denied the same. Even he denied the entrustment mahazar proceedings said to have been conducted in the office of Lokayukta. But he admitted his signature on the entrustment mahazar as per Ex.P-2 and P-2a. Even he has admitted as true that when he was going to give the amount to the accused, Venkataramanashetty, the pancha, will accompany him as told by the Lokayukta police. He has also admitted as true, after entrustment mahazar proceedings at about 4.00 p.m., himself, panch witnesses, Lokayukta staff left the Lokayukta office and went near the MUDA office. He again deposed that they had not been to the office of the accused from the office of the Lokayukta, but they came from Ganghotri grounds. He has admitted that thereafter, he went inside the office of the accused and at 4.20 p.m. he came out of the office and gave the prearranged signal. When the Lokayukta police came he had not went along with them, but told them that he had paid the money and asked them to go inside. He has denied the suggestion that accused was shown to the Lokayukta Inspector by him. He does not know what has happened inside the office of the accused. He has also denied the suggestion that panch witness, who accompanied him, told that accused received the bribe amount. He has denied the suggestion that the left and right hand wash of the accused was taken in the solution and it has changed its colour and same was secured, seized and sealed. He has also denied that when the accused was asked, where the money is, he produced the same from the shirt pocket. He has admitted as true that Lokayukta police has recorded his statement in respect of the proceedings took place since morning. He has admitted that he knows reading and writing of Kannada and he signed the complaint after knowing the contents. He has also deposed that as the accused has not demanded the bribe amount and in the complaint it is mentioned that accused has demanded the bribe amount, he had raised his objection before the Lokayukta police that he will not sign the complaint. He has admitted that he knew what type of complaint he has to file and accordingly, he has filed the complaint. In the cross-examination by the learned counsel for the accused, PW-1 has admitted as true that in the MUDA Office after 3.00 p.m. the public will be moving and at the place, apart from accused, his co-employees will also work along with him. At the place where the accused was sitting, there is a counter for sitting of public and the staff of MUDA.

11. PW-2/Smt.Shivalingamma has deposed in her evidence in the examination in chief that on 16.09.2006 as per the instructions of her higher officers, she along with Venkataramanashetty went to the Lokayukta office to act as panch witnesses. At 2.45 p.m. they went to Lokayukta office and there they met the Lokayukta Inspector Jayaram. The Inspector introduced the complainant to them, who was present in the Lokayukta office and asked

them to read the complaint and there was a mention that one Swamy of MUDA office demanded the bribe amount. When they enquired about the same, complainant told that the averments made in the complaint are true. Then, she has also deposed in detail about the entrustment mahazar proceedings as per Ex.P-2. So also she has deposed that at 3.30 p.m. the proceedings were concluded. Thereafter, Lokayukta Inspector, his staff, complainant and panch witnesses went nearby the MUDA office in the Lokayukta jeep. Then, complainant and Venkataramanashetty were sent to MUDA office. At that time, the inspector informed the complainant that in case accused demands the amount, he has to pay the same and if the accused gives the sale deed complainant has to receive it. Venkataramanashetty was informed to observe the complainant giving amount to the accused and then to report, at that time, she was outside. When they went there, it was 4.00 p.m. within 5 to 10 minutes, both of them went inside the office and within 5 to 10 minutes complainant came outside and gave the prearranged signal. Thereafter, when they went inside the office of the accused, complainant told that as the accused demanded money, he gave it. Complainant himself has shown the accused. She has also deposed that when the right hand wash of accused was taken it turned to pink colour and when the left hand wash was taken there was no change in the colour. When the bottles containing the solution were shown to this witness, she again deposed that in the right hand wash there was colour visible to some extent and in the left hand wash solution, it was appearing light pink colour. She has also deposed that accused took out the amount from his pocket and she identified the accused before the Court. When the notes were verified, they were tallied with the numbers mentioned in the paper at the time of entrustment mahazar. When the said pocket portion of the accused was washed in the solution, it has also turned into pink colour. The shirt was identified as M.O.4. When the accused was asked to offer his explanation, he has given the explanation as per Ex.P-5.

12. In her cross-examination PW-2 has deposed that when they went to the office of accused sufficient number of people were present so also the co-employees of accused were also there and Lokayukta police sent them out as there should not be any obstruction for them. She has denied the suggestion that no trap mahazar proceedings were conducted and she is deposing falsely. She does not know when the file pertaining to the complainant was seized, it was at which stage. She has denied the suggestion that she is giving false evidence on the apprehension that if she did not depose, she will also be prosecuted.
13. PW-3/Ashokanand has deposed in his evidence in the examination in chief that from 4.5.2006 to 24.08.2007 he had worked as Commissioner in MUDA. On 19.05.2007, ADGP has given a letter to him and requested to issue prosecution sanction in respect of accused/Swamy. Along with the said letter, complaint, FIR, entrustment mahazar, trap mahazar, property documents, the statement of witnesses and also the file relating to demand for bribe amount were also sent, after examining in detail, PW-3 has issued

the sanction order on 22.06.2007 for prosecution of accused as per Ex.P-6 and the signature of witness is Ex.P-6(a).

14. In his cross-examination, PW-3 has admitted as true that, as the accused was a clerk, he was not having the authority to issue the title deeds. But he has voluntarily deposed that it was the responsibility of the accused to process the said work and to put up the file before the Manager. He has further deposed that, the Secretary of MUDA, after receiving the documents, while presenting before him, verifying the report of the Lokayukta police stated that prima-facie there is material against the accused, hence, sanction can be issued. But PW-3 has admitted as true that there is no mention about perusal of those documents. He has admitted as true that in relation to said file the accused has not done any work. He has also admitted that he has not discussed about the explanation given by the accused in the sanction order, so also admitted that in the sanction order he has not mentioned about the aspects, which transpired that accused demanded the bribe amount and accepted the same. He has denied the suggestion that he has issued the sanction order without perusing the records and only on the basis of the report of the Lokayukta Police. He has deposed that the work of the accused is to process the file but taking the decision is with the officer.
15. PW-4/Venkataramanashetty has deposed in his evidence in examination in chief that on 16.09.2006, as requested by the Lokayukta office to send two panch witnesses his superior officer deputed him and Shivalingamma and accordingly, they went to the Lokayukta office and met the Police Inspector. Inspector introduced a person, who was sitting there as Krishna, who lodged the complaint and he was asked to read the complaint and accordingly, he read the same. When he asked the complainant about the contents of the complaint, complainant confirmed the contents of the complaint. Then, this witness has also deposed in detail about the entrustment mahazar proceedings conducted in the Lokayukta office as per Ex.P-2 and further deposed that from there they were taken to MUDA office. Himself, Shivalingamma, complainant, Lokayukta Inspector and his staff went in the police vehicle and the vehicle was stopped nearby the MUDA office. He was sent along with the complainant and asked to observe the happenings. Complainant went inside the office of the accused but the office staff has not allowed him and he has not seen, what has happened inside the office. Then, complainant came outside and gave signal. Thereafter, Lokayukta Inspector and his staff came, at that time he went along with them into the office. When Lokayukta inspector enquired with Krishna, Krishna shown the accused and told that he has given the money to him. Then, both the hand wash of the accused were taken separately in the sodium carbonate solution and it turned into pink colour. Witness identified the accused, the solution was secured in a bottle. They are as per M.O.s-1 and 2. Then, accused was asked, where the money is? Then, accused gave the money from the shirt pocket. It was also seized. When the numbers of notes were verified, they tallied. The amount is as

per M.O.5. When the shirt pocket of accused was washed in the sodium carbonate solution, it turned into pink colour. Solution is as per M.O.3 and Shirt is as per M.O.4. When the accused was asked to produce the file relating to the complainant and his signature was obtained to the said documents. After obtaining the Xerox of the said document, original file was returned to the office. The said file containing the documents is as per Ex.P-7. In that connection mahazar was drawn as per Ex.P-3 and his signature as per Ex.P-3(c). This witness was treated as hostile as per the request of Spl.PP.

16. When PW-4 was cross-examined, he has denied the suggestion that he has given the statement before the Lokayukta police as per Ex.P-8. When cross-examined by the counsel for the accused he deposed and denied the suggestion that except the Police Inspector, AGO and Lokayukta staff, others were sent outside. He has admitted as true that without looking to the details of the documents in Ex.P-7/file and as instructed by the Lokayukta police, he put his signature to all those files. He denied the suggestion that when the right hand wash of the accused was taken in sodium carbonate solution there was no change in the colour and he deposed that it turned to pink colour. He has denied further suggestion that no entrustment mahazar proceedings were taken place in his presence.
17. PW-5/D.Jayaram, Police Inspector deposed in his evidence in the examination in chief about the complainant going to the Lokayukta office at 1.30p.m. on 16.09.2006 and lodging the complaint, which was registered in their Police Station Crime No.14/2006 and FIR was sent to the Court, which is as per Ex.P-
18. Then, he deposed in detail about the entrustment mahazar proceedings conducted in Lokayukta office as per Ex.P-2 and also deposed that he instructed PW-4/Venkataramanashetty to accompany the complainant and to observe the happenings between the complainant and the accused. At about 4.05 p.m. himself, his staff, complainant and panch witnesses went in the Government vehicle nearby MUDA office and asked the complainant and PW-4 to go to the office of the accused. At about 4.20 p.m. complainant gave the pre-arranged signal to him. Then, himself, his staff and panch witness PW-2/Shivalingamma went into the office of accused. Complainant shown the accused stating that he received amount from him. When he enquired with the complainant what has happened inside the office, complainant told that when he went inside his office and asked the accused whether he has done his work, accused asked whether he has brought, then, he gave the amount, which was kept in his pocket. Accused received it through his right hand and then kept it in his left side pocket. When PW-4 was enquired, he has also told the same thing, which was told by the complainant. Then, the right and left hand wash of the accused was taken in the sodium carbonate solution and it turned into pink colour. When asked, the accused produced the amount from his pocket, when the numbers were verified, they were tallied. An alternate shirt was arranged to the accused. The shirt of the accused was taken, when

the shirt pocket was washed in the sodium carbonate solution, it has also turned into pink colour. The solution is as per M.O.3 and shirt of the accused is M.O.4. When accused was asked to produce the file containing the documents pertaining to the complainant, accused produced file as per Ex.P-7. About the trap proceedings took place in the office of accused, mahazar was drawn as per Ex.P-3. PW-4 has given statement before him as per Ex.P-8.

19. In his cross-examination PW-5 has admitted as true that in the trap mahazar there is no mention about the sale deed in respect of alternate site allotted by the MUDA. He has admitted as true that accused is not the final authority for issuing the sale deed in respect of alternate site. He has admitted as true that the tape recorder was not properly audible and there is no mention about the same in the statement of witnesses. He has denied the suggestion that in the tape recorder as there was no record of the accused committing any offence and because of that reason he is giving false evidence that the recording was not properly audible. He has admitted as true that as they went to the office of accused after 3.00p.m., it was the time for the public to meet the accused. He has admitted as true, at that time the staff of MUDA were also present in the office and he has not enquired the staff or the public, who were present, when they went to the office of accused. But he has denied the suggestion that, if he enquired them truth will come out and for that reason he has not enquired with them. He has admitted as true that he has not enquired with the co-employees of accused about accused demanding the amount. He has admitted as true that after the trap, hand wash and the shirt pocket wash of the complainant was not taken. He has denied the suggestion that as the accused was not the final authority to issue the documents, the question of accused receiving the bribe amount does not arise at all. He has denied the suggestion that when the sanction was sought, the draft of the sanction order was sent.
20. Perused the oral evidence of the parties led by prosecution. PW-1, who is complainant of this case is not supporting the case of prosecution. In his oral evidence he has only stated that as the accused was troubling him and not taken the action for the issue of sale deed in respect of the subsequent site allotted, he lodged the compliant before the Lokayukta police. In his examination in chief, he has not at all stated on oath that accused demanded Rs.1000/- as bribe amount to show official favour with regard to the work of the complainant pending with the accused. When PW-1 was treated as hostile witness and cross examined by the Public Prosecutor, a specific suggestion was made to him that on 15.09.2006 when he went to the office of accused, the accused demanded bribe amount of Rs.1000/- to issue the sale deed and in that connection, he lodged the written complaint on 16.09.2006. He has answered that accused has not demanded such bribe amount. It is true, in his further cross-examination by the Public Prosecutor he has admitted his signature on complaint as per Ex.P-1. He has also admitted that he is a B.Com graduate, knows reading

and writing of Kannada and signed the complaint knowing its contents. But he has further deposed that after knowing that it is written in the complaint that accused demanded the said amount and asked him to bring it on the next day, he came to know that such mention in the complaint is a false one. Even he has deposed during the cross examination by the Public Prosecutor that as the accused has not demanded the bribe amount even then it is written in the complaint about the demand made by the accused, he has raised his objection before the Lokayukta police that he will not sign the complaint. As per this evidence of complainant/PW-1, even if, he admitted as true that he has lodged the complaint and put his signature knowing the contents of the complaint, but that itself may not be sufficient for the Court to hold that the evidence of the complainant regarding the demand and acceptance of bribe amount by the accused is cogent and worth believable, unless, it is corroborated by evidence of independent witness. It is no doubt true, if the evidence of the complainant itself is consistent, cogent and worth believable it can be relied upon without seeking further corroboration from the independent witnesses. But in the case on hand, as per the evidence of PW-1 about which I have already referred above, it will not inspire confidence in the mind of the Court that, it has established that accused has demanded and accepted the bribe amount.

21. Perusing the evidence of PW-4/ Venkataramanashetty, who is the shadow witness in this case, has deposed everything i.e., about conducting the entrustment mahazar as per Ex.P-2 in the Lokayukta office and he along with the raiding party going near by the office of the accused, the instruction given to him that he has to accompany the complainant to the office of the accused and to observe the happenings. But he has also deposed that as he was stopped by the office staff of the accused, he did not go inside the office of the accused. So this shows that complainant alone went inside the office of the accused. This PW-4/Venkataramanashetty, is not having the personal knowledge as to what has happened between the accused and the complainant. His evidence shows that when the complainant came outside and gave the prearranged signal, then he along with the raiding party went inside the office of the accused. Therefore, regarding the demand and acceptance of the bribe amount from the complainant, how and in what manner the accused has received the tainted currency notes, this shadow witness/PW-4 is not having the personal knowledge.
22. Perusing the evidence of PW-1, PW-1 has not admitted the suggestions made by the Public Prosecutor that accused demanded the bribe amount and accordingly, he gave the amount and when the Lokayukta police along with the staff entered into the office of the accused, the complainant was very much present and he has told before them pointing the accused that accused demanded the bribe amount and he gave the bribe amount accordingly, and the accused took it from him. But the evidence of PW-1 during the course of cross-examination shows that PW-1 came out of the office of accused and when the Lokayukta Inspector along with the staff

came to enter into the office of the accused, PW-1 has told them that he has given the amount to the accused and asked them to go and enquire the accused. So, this evidence of PW-1 shows that when the Lokayukta Police immediately rushed to the office of the accused, PW-1/complainant has not accompanied them. It is also deposed by PW-1 that later when he went to the office of the accused, some typing work was going on. Therefore, even if it is accepted that PW-4/ Venkataramanashetty was instructed by the Lokayukta Inspector to accompany PW-1 to the office of the accused and to observe the happenings. But, as per the evidence of PW-4 himself, he has not went inside the office of the accused along with PW-1. PW-4/Venkataramanashetty was also treated as hostile witness as per the request of Spl.PP to the limited extent and when cross examined by the Spl.PP, and it was suggested that when he went along with the complainant the accused asked the complainant whether accused has brought what was told by him, then complainant gave the amount to the accused and accused received it through his right hand and then kept it in the left side pocket and accordingly, he has stated before the police, and now he is deposing falsely, the witness PW-4 has denied this suggestion also. So this also shows that he has not accompanied the complainant inside the office of the accused.

23. It is true, the demand and acceptance of bribe amount can be proved not only by direct evidence but also by the other circumstances in the case, which were placed on record. The prosecution produced the materials by way of material objects and also the trap mahazar as per Ex.P-3, that the hand wash of accused were taken in two separate bowls and the solution turned into pink colour, same was secured in a separate bottles seized and sealed. With regards to this, prosecution has also produced the FSL report as per Ex.P-12. The items containing the solution of right and left hand wash of the accused are articles 3 and 4 and the opinion of the FSL that presence of phenolphthalein is detected in both right and left finger wash of the AGO. For this prosecution has to prove with satisfactory material that when the tainted currency notes were given to the accused, accused received the amount and handled with both the hands, then only the FSL report, which is corroborative to the oral evidence of the parties can establish the fact that the accused has received the bribe amount. But in the case on hand, PW-1 in his oral evidence has not specifically mentioned that he gave the bribe amount to the accused and accused received it with one hand and then, in his presence accused has handled the notes for the purpose of counting or to do some other act, for keeping the money into his pocket. So with regard to this if there is no acceptable evidence, only on the basis of Ex.P-12 Court cannot come to the conclusion that accused received the bribe amount as alleged by the prosecution.
24. As I have already observed above, the shadow witness has also not entered into the office of the accused along with the complainant. So his only evidence is when complainant gave the prearranged signal, he also went inside the office of the accused. Then both the hands of the accused were

caught hold and both right and left hand wash was taken in the solution and it turned into pink colour. But, even the evidence of PW-4 will not help the case of prosecution about how the accused received the amount, firstly by which hand and whether he has handled the amount with both the hands or not.

25. Perusing the trap mahazar Ex.P-3, FSL report Ex.P- 12, it is true that, they shows that both the hand wash in the solution turned into pink colour. But referring to the oral evidence of PW-2/Smt.Shivalingamma at paragraph 4 of her deposition, she has deposed that at the first instance when the right hand wash of the accused was taken in a solution it turned into light pink colour and when the left hand wash was taken in the solution there was no change in the colour. But her further evidence shows that when the bottles containing the solutions were shown, after seeing the bottles she has improved her version and further deposed that when the right hand wash was taken in the solution there was change in the colour to some extent and when the left hand wash was taken in the solution it turned into pink colour. Not only that, the evidence of PW-5/Investigating Officer shows that when he asked the complainant about what has happened inside the office of the accused, complainant told him that when he asked the accused about his work accused told that yes he has to do it and whether he has brought what was told by him. Then complainant gave the money to the accused, accused received it from his right hand, then took it in the left hand and then kept it in the pocket. So this version of the prosecution also appears to be most unnatural and improbable that accused received with the right and exchanged it to the left hand and then, kept it in his shirt pocket. Not only that, the PW-1/complainant has not supported the said contention that he has told before the Investigating Officer about accused receiving the money with right hand then changed it into left hand and then he kept it into the shirt pocket.
26. I have perused the explanation given by the accused immediately after the trap. The said explanation is marked as per Ex.P-5, wherein accused has stated that on 16.04.2006 he took charge from one Smt.Manjula. On 24.11.2005 complainant has filed the application for issue of sale deed and he has not made any writings with his hands in respect of the said file. But in the charge list it is shown that he has received that file, but he does not know who has given the amount and he had not seen that file. After recording his statement under the provisions of Section 313 of Cr.P.C, accused has given his detailed written statement, wherein also he took the contention that on the date of alleged incident one person came and kept the cover with photos, as he took he could notice the notes beneath it. By the time he could enquire about it to the said person, he went away. Thereafter, all of a sudden few people caught his hands and made him to put the currency notes in his pocket. After a while, a person came and introduced himself as Lokayukta Inspector. Therefore, perusing the explanation given by the accused, he has explained about how the amount came into his possession. Perusing the oral evidence of PW-2 that the right

hand wash was turned into pink colour and when the left hand wash was taken there was no change in the colour, it probablises the defence of the accused and his explanation for the right hand wash and his shirt pocket wash in the solution turning into pink colour.

27. Perusing the prosecution material, it has come on record through the evidence of witnesses that when the raiding party immediately rushed to the office of the accused after complainant gave the prearranged signal, they noticed the public were present in the office and the co-employees of the accused were also present. When so many people were present in the office of the accused and in the presence of all of them accused received the bribe amount from the complaint is also very difficult for the Court to accept the same. When it is the illegal gratification by way of bribe amount, normally this will be received by the person secretly and not in presence of public. When as per the evidence of prosecution so many people as well as the co-employees of the accused were present at that time and as it has also come on evidence that they were all sent out from the office of the accused, nothing prevented the Lokayukta Inspector to record the statement of one or two such independent persons instead of confining it only to the statement of PWs-2 and 4. No such steps were taken by the Lokayukta Inspector in this case. So this conduct of the Investigation Officer raises reasonable doubt about the case of the prosecution.
28. It has also come on evidence of prosecution witnesses that this accused was working as a Second Division Clerk and he was not the final authority either to allot the sites or to issue the sale deeds. In his evidence, PW-5/Investigating Officer has admitted that this accused is not the final authority to issue the sale deed in respect of alternate site. The specific suggestion to PW-5 during the course of cross-examination that, if he had recorded the statement of public and the co-employees, who were present in the office of the accused, the truth will come out and only for that reason he has avoided to record the statement of public as well as co-employees of the accused, was denied.
29. Perusing the entire materials on record and appreciating the cumulative effect of the entire materials on record, reasonable doubt arises as to the case of the prosecution about the accused demanding and accepting the bribe amount. The Trial Court without appreciating these aspects of the matter, wrongly came to the conclusion that the prosecution proved its case beyond all reasonable doubt. The judgment and order of conviction passed by the Trial Court are not in accordance with the materials i.e., both oral and documentary, placed on record. Hence, the judgment and order passed by the Trial Court are not sustainable in law. The accused is entitled to the benefit of doubt and he is to be acquitted.
30. Accordingly, appeal is allowed. The judgment and order of conviction dated 6.12.2010 passed by the Principal Sessions Judge and Special Judge, Mysore, in Spl.Case No.71/2007 is hereby set aside and the accused is acquitted of the charges leveled against him and is set at liberty. Sd/- JUDGE Cs/BSR