[2024] 7 S.C.R. 640 : 2024 INSC 503

Mir Mustafa Ali Hasmi
v.
The State of A.P.

(Criminal Appeal No. 2845 of 2024)

10 July 2024

[B.R. Gavai and Sandeep Mehta,* JJ.]

Issue for Consideration

The question arose whether the prosecution was able to prove beyond all manner of doubt the fact that the appellant demanded and accepted bribe from the complainant; and whether the courts below were justified in convicting and sentencing the appellant for offence punishable u/ss.7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, for the demand and acceptance of illegal gratification.

Headnotes†

Prevention of Corruption Act, 1988 – ss. 7 and 13(1)(d) r/w 13(2) – Demand and acceptance of illegal gratification – Prosecution case that the the appellant-Forest Section Officer and the co-accused-Forest guard demanded and accepted bribe from the complainant who operated a saw-mill – Complaint filed by the complainant to the DySP, alleging that the flying squad led by the appellant imposed a fine of Rs.50,000/- on his saw mill in relation to the recovery of illegal and unlicensed teakwood in the saw-mill – Next week, the appellant and the Forest guard again demanded a monthly amount of Rs.5,000/- to refrain from taking any further action on the saw-mill – DySP organized the pre-trap proceedings, wherein the appellant demanded and accepted the bribe amount from the complainant – Conviction and sentence of the appellant and the co-accused u/ss. 7 and 13(1)(d) r/w 13(2) by the trial court – High Court acquitted the co-accused whereas upheld the order as regards the appellant – Correctness:

Held: Grave suspicion on the prosecution case that the appellant demanded the bribe money from the complainant – Prosecution miserably failed to prove the factum of demand of bribe against the appellant by reliable direct or circumstantial evidence – Allegation regarding acceptance of bribe by the appellant is primarily based

* Author

on the evidence of the complainant, PW-2 and DySP whereas the complainant and PW-2 being close friends, it can safely be assumed that PW-2 was an interested witness – No satisfactory evidence on record to establish that the appellant had actually handled the tainted currency notes as claimed by the complainant – No justification for the DySP to have straight away register the FIR on the mere ipse dixit of the complainant and to have planned the trap proceedings without the minimum endeavour to verify the background facts leading to the alleged demand of bribe – Prudent and unbiased police officer would be persuaded to make at least a basic enquiry into these facts rather than following the dictat of the complainant – Furthermore, PW-2 was the only witness associated by the DySP to accompany the complainant for witnessing the transaction of demand and acceptance of bribe – PW-2 was kept as a shadow witness in the case – DySP did not make any effort whatsoever to associate an independent person to act as a shadow witness in the trap proceedings – Also call detail records completely demolish the complainant's case – Manner in which the worker in the saw mill was associated as a panch witness in the trap proceedings, creates a grave doubt that the entire case was orchestrated against the appellant at the instance of the worker – Prosecution case full of embellishments contradicting and doubting and thus, would not be safe to convict the appellant for having demanded and accepted the bribe money from the complainant – Prosecution failed to bring home the charges against the appellant by leading evidence of an unimpeachable character – Appellant to be acquitted of the charges – Impugned judgments quashed and set aside. [Paras 48, 52-57]

Case Law Cited

Neeraj Dutta v. State (Government of NCT of Delhi) **[2023] 2 SCR 997 : (2023) 4 SCC 731 – referred to.**

List of Acts

Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973.

List of Keywords

Demand and acceptance of bribe; Conviction and sentence for offence punishable u/ss. 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988; Pre-trap proceedings; Trap Laying Officer; Interested witness; Tainted currency notes.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2845 of 2024

From the Judgment and Order dated 02.08.2022 of the High Court for the State of Telangana at Hyderabad in CRLA No.1036 of 2008

Appearances for Parties

Dama Sheshadri Naidu, Sr. Adv., Hitesh Singh, Ms. Nisha, Ms. Tanvi Munjal, Sunil Kumar Sharma, Advs. for the Appellant.

Kumar Vaibhav, Ms. Devina Sehgal, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. Leave granted.

2. This appeal by special leave filed on behalf of the appellant lays a challenge to the judgment dated 2nd August, 2022 passed by the High Court of Telangana at Hyderabad in Criminal Appeal No.1036 of 2008, whereby the appeal preferred by the appellant was dismissed and the judgement dated 5th August, 2008 passed by the learned Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad (hereinafter being referred to as 'trial Court') was affirmed. By the said judgment, the appellant herein i.e., Accused Officer No.1 (hereinafter being referred to as 'AO1') and Accused Officer No.2 (hereinafter being referred to as 'AO2') were convicted and sentenced as below:-

   i) Offence punishable under Section 7 of Prevention of Corruption Act, 1988 (hereinafter being referred to as 'PC Act'): Rigorous Imprisonment of one year and a fine of Rs.1,000/- each (in default, simple imprisonment for three months)

   ii) Offence punishable under Section 13(1)(d) read with 13(2) of PC Act: Rigorous Imprisonment of one year and a fine of Rs. 1,000/- each (in default, simple imprisonment for three months)

   Both the sentences were ordered to run concurrently.

3. In appeal, the High Court overturned the conviction of AO2 and affirmed the conviction of the appellant (AO1) herein.

4. The case of the prosecution in a nutshell is that the appellant (AO1) being the Forest Section Officer and co-accused (AO2-N. Hanumanthu) (since acquitted) being the Forest Guard were both part of the Flying Squad of the Forest Department. On 6th January, 2003, the appellant (AO1) and AO2 had gone to a saw-mill at Vanasthalipuram, purportedly operated by the complainant Mukka Ramesh (hereinafter being referred to as 'PW-1'), which was taken on lease in the name of PW-1's wife from one Sri E. Ramachary. During their visit, the appellant (AO1) and AO2 detected teakwood lying in the saw-mill. It is alleged that both the accused (AO1 and AO2), threatened PW-1 that he would be booked in a case for the illegal and unlicensed possession of teakwood in the saw-mill. It is further alleged that on the plea of PW-1, the appellant (AO1) booked a case against one M. Ashok, a worker in the saw-mill and not against PW-1 and thereafter, a compounding fee of Rs.50,000/- was charged, by issuing a receipt (Exhibit P-2) in the name of M. Ashok.

5. It is further alleged that after their visit on 6th January, 2023, the appellant (AO1) and AO2 started demanding *mamool* (monthly gratification) to the tune of Rs.5,000/- from the PW-1 under a threat that they would book a case against him and in that manner his business would be ruined. Threatening calls were allegedly made to PW-1 on a regular basis. On 21st January, 2003, AO2 called PW-1 and asked him to keep the *mamool* money ready with further instruction that he would make a call and give directions for delivery of the said bribe. On 22nd January, 2003, the appellant (AO1) called PW-1 and asked him to reach Hotel Quality-Inn Residency, Nampally (hereinafter being referred to as 'Hotel Quality-Inn'), on early morning of 23rd January, 2003 with the demanded *mamool* amount of Rs. 5,000/-. Disinclined to pay the bribe, PW-1 lodged a complaint (Exhibit P-1) on 22nd January, 2003 with Shri G. Ramachander, Deputy Superintendent of Police, ACB (hereinafter being referred to as 'DySP')(PW-10) and a crime report was registered thereupon. The trap was arranged on 23rd January, 2003. The complainant (PW-1), along with his friend Potagunta Ramesh Naidu (hereinafter being referred to as 'PW-2') reached the ACB office with the currency notes to the tune of Rs.5,000/- being the bribe amount. Two independent witnesses, namely, Kathi Srinivas Rao (PW-3) and Md. Mahmood Ali were summoned to act

as mediators (*panchas*). At 9:45 am, the trap party conducted the pre-trap proceedings which were recorded in the memorandum (Exhibit P-4). After completing the pre-trap proceedings, the trap party, under the leadership of DySP (PW-10) proceeded to the Hotel Quality-Inn at 10:30 am. The complainant (PW-1) and PW-2 entered the Hotel and met the appellant (AO1) in the coffee shop of the said Hotel. It is further alleged that the complainant (PW-1) offered the bribe amount to the appellant (AO1) at the coffee shop, who showed reluctance to accept the same and asked them to follow him into the cellar of the hotel. The DySP and the other trap party members followed them from a distance. After reaching the cellar, the appellant (AO1) demanded and accepted the bribe amount from the complainant (PW-1) and pushed it down into the rexine bag which he was carrying. The prosecution claims that the above sequence of events which transpired between the appellant (AO1) and the complainant (PW-1) in presence of PW-2 was also visible to the trap party which was waiting in the hotel lobby, however, they could not overhear the conversation.

6. At about 11:25 am, PW-2 came out of the cellar and gave the pre-arranged signal upon which, the trap party proceeded towards the appellant (AO1). The DySP (PW-10) questioned him about having accepted the bribe amount. The complainant (PW-1) immediately informed the DySP(PW-10) that the appellant (AO1) had demanded and accepted the bribe amount of Rs.5,000/- from him and had placed the same in a rexine bag. The hands of the appellant (AO1) were rinsed in sodium carbonate solution. The wash of the fingers of his right hand turned pink. The appellant (AO1), upon being questioned about having accepted the bribe, stated with trepidation that he had accepted the said amount towards compounding fee and opened the rexine bag which he was carrying. The mediator, Kathi Srinivas (PW-3) took out the currency notes from the rexine bag being held by the appellant (AO1) and on verification, numbers of the notes tallied with the numbers of the currency notes submitted by the complainant (PW-1) at the time of the pre-trap proceedings. The bribe amount and a diary along with the rexine bag held by the appellant (AO1) were seized. The diary too was tested for presence of phenolphthalein because it had also come into contact of the tainted currency notes which was kept in the bag. A money-receipt book was also seized (via memorandum (Exhibit P-6)). The post-trap proceedings were recorded in the memorandum (Exhibit P-11).

7. The prosecution sanction was procured and upon concluding the investigation, charge sheet came to be filed against the appellant (AO1) and AO2 in the Court of learned Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad. The learned trial Court framed charges against the appellant (AO1) and AO2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. They denied the charges and claimed trial. The prosecution examined as many as 11 witnesses and exhibited 19 documents and 8 material objects in order to prove its case. The accused (AO1 and AO2) upon being questioned under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter being referred as 'CrPC') and when confronted with the allegations as appearing in the prosecution evidence, denied the same and claimed to be innocent.

8. The appellant (AO1) categorically stated in his statement under Section 313 CrPC, that while he and the complainant (PW-1) were having coffee in the hotel, he inadvertently left his rexine bag behind at the coffee shop. He conjectured that the complainant (PW-1) might have planted the tainted currency notes in his rexine bag without his knowledge because he was aggrieved by the fine of Rs.50,000/- imposed upon M. Ashok (employee of the saw-mill) by the appellant (AO1) earlier.

9. Upon hearing the arguments of the learned defence counsel and the learned Special Public Prosecutor and after evaluating the evidence available on record, the trial Court proceeded to convict and sentence the appellant (AO1) and AO2 as above *vide* judgment dated 5th August, 2008.

10. The said judgment was assailed by both the accused by filing separate appeals before the High Court of Telangana. The appeal preferred by AO2 was accepted whereas, the appeal preferred by the appellant (AO1) was rejected by judgment dated 2nd August, 2022 which is subjected to challenge in this appeal by special leave.

Submissions on behalf of the appellant: -

11. Shri Dama Sheshadri Naidu, learned senior counsel representing the appellant, vehemently and fervently contended that the entire prosecution case is false and fabricated. No convincing evidence was led by the prosecution to prove the factum of demand of bribe by the AO1 (appellant). G.Ramachander (PW-10) DySP, who was

also the Trap Laying Officer (hereinafter being referred to as 'TLO') did not make any effort to get the factum of demand of bribe verified by means of any independent or tangible evidence.

12. Shri Naidu submitted that the prosecution failed to prove that the appellant (AO1) had ever demanded any bribe from the complainant (PW-1) because neither did the TLO (PW-10) make any endeavour to get the telephonic conversation between the complainant (PW-1) and the appellant (AO1) recorded nor did he make any attempt to place a recording device on the person of the complainant (PW-1) during the trap proceeding so as to verify the factum of demand of bribe. Furthermore, other than the interested witness i.e., PW-2, no independent witness was directed by the TLO to overhear the conversation which took place between the complainant (PW-1) and the appellant (AO1) on the day of the trap.

13. Shri Naidu urged that even the allegation of acceptance of illegal gratification by the appellant (AO1) is surrounded in a cloud of dubiety. In order to buttress these submissions, Shri Naidu drew the attention of the Court to the following admissions as appearing in the cross-examination of the complainant, Mukka Ramesh (PW-1): -

> "We ordered coffee took ½ an hour for servicing. I removed the amount and about to give the amount to the AO. I did not give it to his hand. The accused refused and asked me to come downstairs. After ordering coffee the coffee being served we 3 took coffee. The Accused No.1 started to going out and we follow the accused at that time I kept the amount in my pocket and while going out from coffee inn the amount was with me. We have to get down the same ramp by 50ft. We have to take turns After the accused 1 going out I found the bag of him in the hotel 1 picked it up I handed over the bag to the accused 1 after crossing 2 tables in the hotel. A1 was going to since I paid the bill of the hotel I was to little bit late to follow AO.1. We have to again pass the ramp down the cellar by about 50ft. Where there are two different stands for parking motor cycles and four wheelers. The generators are situated near to the parking stand of two wheelers. The accused came on two wheeler I asked the accused 1 to show the papers. He showed the papers to me. It is not true to suggest that

> after accused showing the papers to me I snatched them and myself and Pw2 turned them and throw them away. It is not true to suggest that I paid the money to the Accused 1 near the generator and the accused asked me to put it in bag is false. It is not true to suggest I kept the tainted amount in the rexyne bag which was left by the accused before leaving coffee inn and I planted the currency notes in the bag and handed over it to him and the accused has no knowledge the tainted amount was in the rexyne bag. It is not true to suggest that myself and Pw2 used our influence to ACB to organize the false trap against Alas AO.1 insisted of filing case against my wife, Manjula. It is not true to suggest that the AO1 and 2 did not telephone me and my statement is false."

(emphasis supplied)

14. Referring to the above admissions as appearing in the testimony of the complainant (PW-1), Shri Naidu contended that it is clear that the appellant (AO1) had forgotten his rexine bag in the coffee shop from which the tainted currency notes were recovered later by the trap party, and it was the complainant (PW-1) who handed over the same rexine bag to the appellant (AO1). Shri Naidu urged that fuelled by ulterior motive, the complainant (PW-1) misused this window of opportunity to plant the tainted currency notes in the bag of the appellant (AO1).

15. Learned counsel also urged that the prosecution did not take any steps to get the wash collected from the hands of the appellant (AO1) during the trap proceedings, tested through the FSL and thus, there is no corroborative evidence to show that the appellant (AO1) had accepted or handled the tainted currency notes as alleged by prosecution.

16. Shri Naidu further contended that the trial Court as well as the High Court rendered the findings of guilt against the appellant (AO1) merely on the basis of assumptions and presumptions drawn from the tainted and vacillating deposition of the complainant (PW-1) and PW-2, who was admittedly a close friend of the complainant (PW-1) and thus, he can be categorized as being an interested witness.

17. Learned counsel also urged that the TLO (PW-10) was under an obligation to send an independent shadow witness with the

complainant (PW-1) and PW-2 to oversee and overhear the events as they unfolded during the course of the transaction of demand and acceptance of the bribe. Admittedly, neither the mediators nor any other witness associated in the trap proceedings heard the conversation which took place between the AO1 (appellant), the complainant (PW-1) and PW-2, despite the positive case that they all were sitting on the nearby table. It was the complainant (PW-1) who voluntarily took his friend, PW-2, and got him associated during the trap proceeding. As per Shri Naidu, this was a clear attempt by the complainant (PW-1) in connivance with the TLO (PW-10) to create evidence through a partisan witness acting and hence, the prosecution is guilty of deliberately associating an interested witness so as to fortify the alleged transaction of demand and acceptance of bribe.

18. Shri Naidu urged that the High Court cursorily brushed aside the crucial admission as appearing in the cross-examination of the complainant (PW-1)(reproduced *supra*) that the rexine bag of the appellant (AO1) from which the tainted currency notes were recovered had been handled by the complainant (PW-1), by observing that this was an afterthought. As per Shri Naidu, the said vital admission was spontaneously elicited during the cross-examination conducted from the complainant (PW-1) and thus, it cannot be ignored as being an afterthought. He contended that the prosecution consciously chose not to re-examine the complainant (PW-1) on this aspect of his testimony and thus, the defence cannot be denied to the benefit thereof.

19. Shri Naidu, further contended that no calls were made by the appellant (AO1) to the complainant (PW-1) proximate to the date of the trap. He drew the attention of the Court to the call detail records (CDR) of the appellant (AO1) and the complainant (PW-1) and urged that only two calls were exchanged between the appellant (AO1) and the complainant (PW-1), one being on 8th January, 2003 and the other on 17th January, 2003 and hence, the allegation made by the complainant (PW-1) in the FIR and in his deposition, that the appellant (AO1) called him on 21st January, 2003, 22nd January, 2003 and 23rd January, 2003 in connection with demand of bribe is falsified, creating a grave doubt on the veracity of the entire prosecution case.

20. Attention of the Court was also drawn to the pertinent admission made by the complainant (PW-1) in his testimony that while they were having coffee in the coffee shop of the Hotel Quality-Inn, he

took out the bribe amount and offered it to the appellant (AO1) who refused to accept the same. Shri Naidu thus, urged that it is crystal clear that the prosecution miserably failed to prove that the appellant (AO1) demanded or accepted any bribe amount from the complainant (PW-1).

21. On these grounds, learned senior counsel appearing for the appellant implored the Court to accept the appeal, set aside the impugned judgments and direct acquittal of the appellant (AO1) from the charges.

Submission on behalf of the respondent-State: -

22. *Per contra*, learned standing counsel appearing for the State, vehemently and fervently opposed the submissions advanced on behalf of the appellant (AO1). He contended that the appellant (AO1) being the Forest Section Officer firstly, imposed an unwarranted fine amount of Rs.50,000/- on the saw-mill of the complainant (PW-1). Thereafter, extending a threat of repeated action thereby harming the business of the complainant (PW-1), the appellant (AO1), demanded a monthly amount of Rs.5,000/- as bribe (*mamool*) from the complainant (PW-1) which fact is duly corroborated from the evidence of the complainant (PW-1) and PW-2.

23. He urged that at the time of preparation of the memorandum of the post-trap proceedings (Exhibit P-11), the appellant (AO1) admitted that he had received the amount from the complainant (PW-1), offering a far-fetched explanation that the same was received as compounding fee in a case whereas, no such case was pending. It was thus, contended that this admission made by the appellant (AO1) can be read against him. The subsequent plea set up by the appellant (AO1) that the currency notes were planted by the complainant (PW-1) himself in his rexine bag without his knowledge is unacceptable on the face of record and that such frivolous defence plea was rightly discarded by the trial Court and the High Court.

24. He further urged that the appellant (AO1), having failed to offer a plausible explanation regarding the tainted currency notes found from the rexine bag in his possession and so also to the presence of phenolphthalein on the fingers of his right hand, was rightly convicted by the trial Court and his conviction was justifiably affirmed by the High Court. He thus, implored the Court to dismiss the appeal and affirm the impugned judgments.

Discussion and Conclusion: -

25. We have given our thoughtful consideration to the submissions advanced at bar and have perused the impugned judgments. With the assistance of learned counsel for the parties, we have thoroughly examined the evidence available on record.

26. Since fervent arguments were raised on behalf of the parties on the aspect of demand of bribe, it would be useful to recapitulate the relevant position of law on the use of circumstantial evidence to prove demand of illegal gratification.

27. A Constitution Bench of this Court in the case of ***Neeraj Dutta v. State (Government of NCT of Delhi)***,[1] was called upon to answer a reference on the question as to whether the circumstantial evidence can be relied upon to prove the demand of illegal gratification and whether in the absence of evidence of the complainant direct/primary, oral or documentary, would it be permissible to draw an inferential deduction of culpability/guilt of a public servant under Sections 7 and 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution. This Constitution Bench traversed the entire history of the judicial pronouncements on the issue and held as below: -

> "**88.** What emerges from the aforesaid discussion is summarised as under:
>
> **88.1.** (*a*) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a *sine qua non* in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(*d*)(*i*) and (*ii*) of the Act.
>
> **88.2.** (*b*) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

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88.3. (*c*) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (*d*) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(*i*) if there is an *offer to pay by the bribe-giver* without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a *case of acceptance* as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(*ii*) On the other hand, *if the public servant makes a demand* and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is *a case of obtainment*. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(*d*)(*i*) and (*ii*) of the Act.

(*iii*) In both cases of (*i*) and (*ii*) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(*d*)(*i*) and (*ii*), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made

which is received by the public servant, would be an offence of obtainment under Sections 13(1)(*d*)(*i*) and (*ii*) of the Act.

88.5. (*e*) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (*f*) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (*g*) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(*d*)(*i*) and (*ii*) of the Act.

88.8. (*h*) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(*e*), above, as the former is a mandatory presumption while the latter is discretionary in nature."

28. Thus, in addition to answering the primary issue raised in the matter, the Constitution Bench also went on to hold that in order to bring home the guilt of the accused, the prosecution has to prove the demand of illegal gratification and the subsequent acceptance, by either direct or circumstantial evidence.

29. Keeping in view the ratio of the above mentioned decision of the Constitution Bench, we now proceed to discuss the evidence available on record so as to find out whether the prosecution has been able to prove beyond all manner of doubt the fact that the appellant (AO1) demanded and accepted bribe from the complainant (PW-1).

30. First and foremost, we may note that the first allegation of demand as emanating from the prosecution case is reflected from the complaint (Exhibit P-1) submitted by the complainant (PW-1) to the DySP, ACB Department, Hyderabad Range on 22nd January, 2003, alleging *inter alia* that a fine of Rs.50,000/- had been imposed on his saw mill by the flying squad led by the appellant (AO1) in relation to the recovery of illegal and unlicensed teakwood in the saw-mill. After a week of this event, the appellant (AO1) and the Forest guard (AO2) again came to the saw-mill and demanded a monthly amount (*mamool*) of Rs.5,000/- to refrain from taking any further action on the saw-mill. Thus the allegation of demand as emanating from the complaint (Exhibit P-1) is common to both the appellant (AO1) as well as the co-accused (AO2) who stands acquitted by the High Court. The complaint (Exhibit P-1) was lodged on 22nd January, 2003. The DySP (PW-10) organized the pre-trap proceedings, on the next day i.e. on 23rd January 2003 without making any attempt to verify the allegation of demand of bribe levelled against the appellant (AO1) by the complainant (PW-1) in the complaint (Exhibit P-1).

31. It is the settled convention in such cases that the Trap Laying Officer, makes efforts to verify the factum of demand of bribe by the public servant before initiating the trap proceedings. The factum of demand of bribe can also be verified by recording the telephonic conversation between the decoy and the suspect public servant. Often, a recording device is secretly placed on the person of the decoy to record the conversation which would transpire during the course of acceptance of bribe by the public servant. However, no such steps were taken by the DySP (PW-10), who straight away organized the trap without making any effort whatsoever to verify the

factum of demand attributed to the appellant (AO1) and AO2. It is relevant to mention here that PW-2 was the only witness associated by the DySP/TLO (PW-10) to accompany the complainant (PW-1) for witnessing the transaction of demand and acceptance of bribe. Evidently thus, PW-2 was kept as a shadow witness in the case. During the course of trial, the complainant (PW-1) and PW-2 both admitted that they were close friends. The complainant (PW-1) and PW-2 being close friends, it can safely be assumed that PW-2 was an interested witness. Hence, it is also manifested that TLO/DySP (PW-10) did not make any effort whatsoever to associate an independent person to act as a shadow witness in the trap proceedings. It is recorded in the memorandum of the pre-trap proceedings (Exhibit P-4) that it was the DySP (PW-10) who summoned the PW-2 and asked him to act as a shadow witness to oversee and overhear the transaction of acceptance of illegal gratification. However, this fact is totally contradicted by the version as set out in the evidence of the complainant (PW-1) and PW-2. Both categorically stated that it was the complainant (PW-1) who asked PW-2 to accompany him during the trap proceedings scheduled to take place on the morning of 23rd January, 2003. In normal course, before proceeding to the stage of trap, it was incumbent upon the DySP (PW-10) to get an independent verification done of the alleged demand which fact assumes prominence considering the circumstance that the accompanying shadow witness, Ramesh Naidu (PW-2) is a close friend of the complainant (PW-1) who himself bore a grudge against the appellant (AO1) on account of the fine of Rs. 50,000/- imposed on the saw-mill.

32. Now, we shall proceed to discuss the evidence of the material prosecution witnesses.

33. The complainant (PW-1), stated in examination-in-chief that he had taken a premises on lease from E. Ramachary in the name of his wife and was running a saw-mill and timber depot thereupon. On 6th January, 2003, the Flying Squad of the Forest Department comprising of Mir Mustafa, Forest Section Officer (appellant herein) (AO1) and N. Hanumanthu, Forest Guard (AO2) along with three other staff members came to his saw-mill and conducted an inspection. They allegedly found teakwood stored in the saw-mill without any licence etc. and thus a case was booked against the complainant (PW-1)

who disputed that no teakwood was found in his mill. After booking the case, the appellant (AO1) and AO2 imposed a fine of Rs.50,000/- but the fine receipt was issued in the name of an employee of the saw mill named M. Ashok. After 7 or 10 days, AO1 and AO2 again came to his saw-mill and demanded a monthly payment (*mamool*) of Rs.5,000/- threatening that if the amount was not paid, they would book repeated cases against him and dismantle his business. On 21st February, 2003, AO1 and AO2 rang up the complainant (PW-1) and demanded a bribe of Rs.5,000/- . AO2 also frequently called the complainant (PW-1) over mobile and harassed him in relation to the demand of Rs.5,000/-. Being perturbed by these persistent demands, the complainant (PW-1) went to the ACB Office on 22nd January, 2003 and submitted a complaint (Exhibit P-1) to the DySP (PW-10). The complainant (PW-1) was instructed by the DySP (PW-10) to come to the ACB office on 23rd January, 2003 along with the bribe amount of Rs.5,000/- which he intended to pay for getting the appellant (AO1) and AO2 trapped. On the same day, i.e. on 22nd January, 2003 in the evening, the complainant (PW-1) informed his friend Ramesh Naidu (PW-2) about lodging of the complaint and requested him to accompany him to the ACB office on the next day. The complainant (PW-1) alleged that in the morning of 23rd March, 2003, he received another phone call from the appellant (AO1) and AO2 and he was directed to come to the Quality-Inn Residency Hotel, Nampally along with the bribe amount of Rs.5,000/-. The complainant (PW-1) agreed and thereafter, he proceeded to the ACB office where PW-2 was already waiting for him. The DySP (PW-10), his staff along with mediators assembled in the ACB office. The DySP (PW-10) introduced the complainant (PW-1) to the mediators; pre-trap proceedings were undertaken; the mediators verified the currency notes presented by the complainant (PW-1) and noted the denomination and the serial numbers thereof in the pre-trap *panchnama* (Exhibit P-4). A white powder was applied to the currency notes. The DySP (PW-10) then requested PW-2 to act as an accompanying witness (shadow witness). He told the complainant(PW-1) and PW-2 to proceed to the Hotel Quality-Inn for paying the bribe amount to the appellant (AO1) and AO2 on their further demand and even otherwise. PW-2 was instructed to watch the sequence of events which would transpire between the complainant (PW-1) and the two accused (AO1 and AO2) and after transfer of the bribe amount, to give the pre-arranged

signal by wiping his hand with the handkerchief. The procedure of use of phenolphthalein powder was demonstrated in presence of the complainant (PW-1). After that, the complainant (PW-1) and PW-2 proceeded to the Hotel Quality-Inn and the DySP (PW-10) and other trap party members followed them from a distance. The complainant (PW-1) and PW-2 reached the Hotel Quality-Inn at about 10:30 am. The complainant (PW-1) parked his vehicle in the cellar of the hotel and then he, along with PW-2 went into the coffee shop and occupied a table. The mediators and Inspector, N. Chandrashekar (PW-11) also came into the shop and occupied a nearby table. The DySP (PW-10) and other staff members kept vigil at the entry gate of the coffee shop. While they were waiting, the appellant (AO1) came to the complainant's table and occupied the chair opposite to the one on which the complainant (PW-1) and PW-2 were sitting. The appellant (AO1) enquired whether he had brought the demanded amount; to which the complainant (PW-1) answered in affirmative. While the complainant (PW-1) was about to pass on the tainted currency notes to the appellant (AO1), he showed reluctance and suggested that the amount should not be given in the hotel and directed the complainant (PW-1) to proceed to the cellar. Accordingly, the complainant (PW-1), PW-2 and the appellant (AO1) proceeded to the cellar and reached near the generator room. There, the appellant (AO1) opened the zip of his rexine bag and asked the complainant (PW-1) to put the money in that bag. In conformance, the complainant (PW-1) took the tainted currency notes from his left side shirt pocket and placed the same in the bag of the appellant (AO1) wherein, some book and papers were lying. The appellant (AO1) pushed down the currency notes with his right hand, handed some papers to the complainant (PW-1) and closed the zip of the bag. The appellant (AO1) asked the complainant (PW-1) to tear the said papers, who complied and torn the papers. In the meanwhile, PW-2 left them and proceeded outside. In a short while, the DySP (PW-10) and the trap party rushed down into the cellar and disclosed their identity to AO1 (appellant). The DySP (PW-10), then asked the complaint (PW-1) to narrate the intervening sequence of events. The version as given out by the complainant (PW-1) was incorporated by the mediators in the post-trap memo (Exhibit P-11). The version of PW-2 was also noted down by the mediators in the same memo. The *panchnama* was drawn in a lounge on the second floor of the

hotel. The trap party stayed at the hotel till 5:00 pm. The complainant (PW-1) and PW-2 were called to the ACB office and their statements were recorded. Later on, Section 164 CrPC statements of both the complainant (PW-1) and PW-2 were also recorded. In his statement, the complainant (PW-1) stated that the torn papers, upon which the appellant (AO1) had taken his signatures during the very first raid i.e. on 6th January, 2003, were handed over to the DySP (PW-10) at the time of drawing the post trap memo.

34. In cross examination, the complainant (PW-1) stated that he was not aware that one M. Ashok of Vanasthalipuram was running the saw-mill and that the same M. Ashok turned out to be a signatory to the seizure proceeding conducted on 6th January, 2003 at the saw-mill as well as a *panch* witness in the trap proceedings. A pertinent question was put to the complainant regarding the calls made to him by AO1 (appellant), and he admitted that the appellant (AO1) did not call him between 6th January, 2003 to 23rd January, 2003 in relation to demand of bribe. The complainant (PW-1) also admitted that he had been warned by the appellant (AO1) that he would book a case against his wife Manjula.

35. The pivotal extracts drawn above from the cross-examination of the complainant (PW-1) clearly indicate that the tainted currency notes were not given by the complainant (PW-1) to the appellant (AO1) in his hands presumably, because he had shown reluctance to accept the same. After the complainant (PW-1), his companion PW-2, and the appellant (AO1) had taken coffee, the appellant (AO1) started moving out towards the cellar followed by the complainant (PW-1) and PW-2. While the complainant (PW-1) was proceeding towards the cellar, he noticed that the rexine bag of the appellant (AO1) had been left behind in the coffee shop and thus, he picked it up and handed the same to the AO1 (appellant). Nevertheless, he denied the defence suggestion that he had planted the tainted currency notes in the rexine bag left behind by the accused.

36. PW-2 in examination-in-chief, virtually repeated what was stated by the complainant (PW-1) in his deposition. However, in his cross-examination, PW-2 feigned ignorance to the fact that the complainant (PW-1) picked up the rexine bag from the coffee shop and handed over the same to the appellant (AO1). He admitted being a friend of the complainant (PW-1).

37. Kathi Srinivas Rao (PW-3) was one of the *panch* witness associated in the trap proceedings. He stated in his examination-in-chief that he, along with the other mediator and Inspector N. Chandrashekar (PW-11) had occupied a table in the coffee shop near the one on which the complainant (PW-1) and the accompanying witness (PW-2) were sitting. At about 10:45 am, the appellant (AO1) entered the coffee shop and started talking to the complainant (PW-1). He also took out some papers from the rexine bag and showed the same to the complainant (PW-1). At about 11:15 am, the complainant (PW-1) and the accompanying witness (PW-2) along with the appellant (AO1) left the coffee shop and moved towards the cellar of the hotel. The witness (PW-3) deposed about the recovery of the tainted currency notes from the bag held by the appellant (AO1) in the cellar of the hotel.

38. What is significant to note from the evidence of the witness (PW-3) is that he did not make a whisper that he observed or overheard the appellant (AO1) demanding any bribe from the complainant (PW-1) while they were all sitting in the coffee shop.

39. A. Balachithari (PW-4) being the Forest Beat Officer, stated that acting on the direction of the AO1 (appellant), the flying squad proceeded towards a saw-mill at Vanasthalipuram on the suspicion that teakwood was illegally stocked therein. A worker M. Ashok was present in the mill. Upon finding illegal and unlicensed teakwood in the saw-mill, the appellant (AO1) issued a money receipt in the name of M. Ashok after receiving a sum of Rs.50,000/- as compounding fee. A *panchnama* was also drawn regarding these proceedings. In cross-examination, the witness (PW-4) admitted that they found the teakwood in the saw-mill which was owned by a lady who did not come to the spot when the proceedings were undertaken. The name of the saw-mill was Malikarjun saw-mill. It may be noted that the appellant (AO1) has fervently contended that the second *panch* witness, M. Ashok was actually the owner of the saw-mill and is the same person in whose name the *panchnama* was prepared on 6th January, 2003. It is the contention of the appellant (AO1) that the entire trap proceedings were orchestrated at the behest of the said M. Ashok.

40. G. Santosh Kumar (PW-5) being the Divisional Forest Officer, Vigilance was examined to narrate the procedural aspects pertaining to the duties

of the Forest Section Officers etc. In cross-examination, the witness (PW-5) admitted that he had not been shown any records relating to the case. He feigned total ignorance about the instant ACB case.

41. B. Arun Madhav (PW-6) being the Nodal officer of Idea Cellular Limited proved the call detail records (CDR) of the cell phones held by the appellant (AO1)and AO2. It is clearly borne out from his evidence and the call detail records (Exhibit P-14 and P-15) that no calls were exchanged between the appellant (AO1) and the complainant (PW-1) after 17th January, 2023. Thus, it becomes crystal clear that the case setup by the complainant (PW-1) that the appellant (AO1) regularly called him right up to the date of the filing of the complaint (Exhibit P-1) and also gave him instructions over mobile to come to the Hotel Quality-Inn for paying the bribe (*mamool)* is nothing but a sheer piece of concoction. The call detail records (CDR) completely demolish the case setup by the complainant (PW-1) in this regard.

42. M.A. Waheeda (PW-9) being the Divisional Forest Officer, Kothagudam was examined by the prosecution to narrate about the procedure prevailing in the forest department. He stated that on 6th January, 2003, the appellant (AO1) had booked a case at a saw-mill in Vanasthalipuram and collected a sum of Rs. 50,000/- towards the fine. He deposited this amount with the department.

43. It is thus clear that once the appellant (AO1) had collected the compounding fees and deposited the same in the department and hence, there remained no rhyme or reason for him to have handed over the very same set of seizure documents to the complainant (PW-1) at the time of payment of bribe. The compounding fee already having been entered in the records of the department, the destruction of the memoranda etc. would not be of any help to the complainant (PW-1).

44. G. Ramachander (PW-10) being the DySP, ACB registered the FIR and conducted the trap proceedings. Upon perusal of his examination-in-chief, it transpires that the officer never instructed the accompanying witness (PW-2) to come with the complainant (PW-1) to the ACB office on 23rd January, 2003. During the pre-trap proceedings, the two mediators were called who were introduced to the complainant (PW-1) and *vice versa*. DySP (PW-10) stated that it is only after the demonstration of the phenolphthalein powder had been made in presence of all witnesses, that he had called PW-2 who is acquainted

with the complainant (PW-1), asking him to act as a shadow witness. PW-2 agreed to accompany the complainant (PW-1) and oversee the transaction exchange of bribe. This version is belied when we peruse the deposition of the complainant (PW-1) and PW-2 who categorically stated that it was the complainant (PW-1) who asked PW-2 on 22nd January, 2003 to accompany him to the ACB office. DySP (PW-10) also narrated about the sequence of events leading to the recovery of the trap money from the rexine bag being held by the AO1 (appellant). In cross-examination, DySP (PW-10) admitted that he did not make any enquiry whether the complainant (PW-1) was having any license to run saw-mill or the timber depot under the name of Malikarjun saw-mill. He simply accepted the version of the complainant (PW-1) that he had taken the saw-mill on lease from one E. Ramachary. However, neither any enquiry was made from E. Ramachary nor did the DySP (PW-10) visit the saw-mill before registering the case on the *ipse dixit* of the complainant (PW-1). He did not ask the complainant (PW-1) to produce the attendance register of the workers employed in the saw-mill. He also did not make any enquiry about the rent receipts issued by E. Ramachary. Smt. Manjula, wife of the complainant (PW-1) was alleged to be the lease holder of the saw-mill. However, DySP (PW-10) neither enquired about the financial status nor about the capability of complainant (PW-1) to pay the compounding fee of Rs.50,000/- under the memo (Exhibit P-2). PW-10 also admittedly did not make any effort to verify the allegation made by the complainant (PW-1) in the complaint (Exhibit P-1) that the appellant (AO1) was demanding *mamool* (bribe) from him. DySP (PW-10) explained that he got verification done through one Inspector and came to know that the appellant (AO1) was in a habit of demanding *mamools* (bribe). However, he could not recall the name of the said Inspector. He feigned ignorance having prior knowledge about the complainant (PW-1) and PW-2 being close friends. He admitted that there was no mention in the complaint (Exhibit P-1) as to the place or time where the bribe amount was to be handed over to the appellant (AO1). He also denied having seen the complainant (PW-1) picking up the rexine bag from the table and handing it over to the appellant (AO1). He rather stated that he continuously saw the appellant (AO1) holding the rexine bag. DySP (PW-10) admitted that the fact that "the complainant (PW-1) had asked him to check the rexine bag wherein, the bribe amount was kept at

the instructions of AO1" was not recorded in memorandum (Exhibit P-11). A pertinent suggestion was given to DySP (PW-10) that the appellant (AO1) stated at the time of the trap that he had forgotten his rexine bag in the coffee shop and that PW-1 had planted the currency notes therein which the DySP (PW-10) denied.

45. N. Chandrasekhar (PW-11) deposed that he was posted as Inspector, ACB from December, 2002 to March, 2006. He assisted the DySP (PW-10) in pre and post-trap proceedings conducted on 23rd January, 2003. He stated that the investigation of the case was entrusted to him wherein, he examined the witnesses including one M. Ashok. He admitted that M. Ashok was one of the workers employed in the saw-mill of the complainant (PW-1). He verified the *panchama* (Exhibit P-3) wherein, the name of M. Ashok was mentioned as a *panch* witness. He was questioned with reference to forest offence report which was prepared during the inspection of the saw-mill on 6th January, 2003, and admitted that M. Ashok who signed these documents was the same person who stood as a *panch* in the trap proceedings. The receipt (Exhibit P-2) did not contain the name of Malikarjun saw-mill and rather it reflected that the sum of Rs.50,000/- was received from M. Ashok.

46. What is most engrossing and significant to note from the evidence of N. Chandrashekar (PW-11) is that he did not utter a single word that he, along with the *panch* witnesses had occupied a table nearby the one on which the complainant (PW-1) and the appellant (AO1) were sitting inside the coffee shop of Hotel Quality-Inn. Evidently, the persons who were assigned the task to overhear the conversation between the appellant (AO1) and the complainant (PW-1) would be the most important witnesses in the case. The deposition of N. Chandrashekar (PW-11) on the above aspect contradicts to what was noted in the post-trap proceedings (Exhibit P-11) and the deposition made by *panch* witness. Kathi Srinivas Rao (PW-3) who categorically stated that he along mediators and other *panch* witness who would be none other than M. Ashok, went to Coffee Shop of Hotel Quality-Inn and occupied a table near the one on which the complainant (PW1) and the appellant (AO1) were sitting.

47. We may note that in so far as the allegation of demand of bribe is concerned, the complainant (PW-1), alleged in the complaint (Exhibit P-1) that a week after 6th January, 2003, the appellant (AO1) and AO2

both came to his mill and pressurized him that he would have to pay a monthly bribe (*mamool*) of Rs.5,000/- otherwise, they would file cases on him and his business would be ruined. As per the evidence of A Balachithan (PW-4) and the receipt (Exhibit P-2), the case for illegal possession of teakwood wherein, a sum of Rs.50,000/- was charged by way of compounding fee was not registered against the complainant (PW-1). It is an admitted position that M. Ashok S/o Abbaiah paid the said amount and the receipt (Exhibit P-2) bears his name and signature. The very same M. Ashok was also associated as a *panch* witness in the trap proceedings which cannot be by a mere chance or coincidence. The association of M. Ashok as a *panch* witness in the trap proceedings in the backdrop of the fact that the appellant (AO1) had imposed penalty of Rs.50,000/- on the same person is very significant and gives rise to a strong suspicion that M. Ashok might have been instrumental in orchestrating the trap proceedings. What lends assurance to this conclusion is that the DySP(PW-10) admittedly made no investigation whatsoever regarding the ownership or licence of the saw-mill where the incident dated 6th January, 2003 took place.

48. It is absolutely unnatural that the DySP (PW-10) would have blindly accepted the version of the complainant (PW-1) that the appellant (AO1) had made a search on his licenced premises and imposed a fine of Rs.50,000/- on account of the recovery of teakwood illegally stored in the said mill. Since M. Ashok paid the compounding fee of Rs.50,000/- and the cash receipt (Exhibit P-2) was also issued in his name, any prudent person would presume that it was M. Ashok who was operating the saw-mill. The complainant (PW-1) consciously tried to project that M. Ashok was merely a labourer in his mill. However, his version is falsified in face of the receipt (Exhibit P-2) which portrays that M. Ashok had paid the compounding fee which was a very heavy amount to the tune of Rs.50,000/-. If the recovery of teakwood has been effected from the mill being operated by the complainant (PW-1) then, there was no reason as to why compounding fees would be charged from M. Ashok. In view of these facts, there was no justification for the DySP (PW-10) to have straightaway register the FIR on the mere *ipse dixit* of the complainant (PW-1) and to have planned the trap proceedings without the minimum endeavour to verify the background facts leading to the alleged demand of bribe. A prudent and unbiased police officer

would be persuaded to make at least a basic enquiry into these facts rather than following the dictat of the complainant (PW-1). It may be highlighted that the prosecution very conveniently chose not to examine the said M. Ashok S/o Abbaiah as a witness in the case.

49. Admittedly, as per the complaint (Exhibit P-1), the appellant (AO1) as well as the forest guard N. Hanumanthu (AO2) both demanded the bribe from the complainant (PW-1). The complainant (PW-1) in his evidence, stated that the appellant (AO1) and AO2 threatened him frequently by making mobile calls and pressurised him to pay up the *mamool* amount of Rs.5,000/- or to face adverse consequences. However, as discussed above, this allegation of the complainant (PW-1) is belied by the call detail records and the evidence of B. Arun Madhav (PW-6).

50. Since the receipt of Rs.50,000/- had been issued in the name of M. Ashok, there could not have been any rhyme or reason for DySP (PW-10) to have accepted the bald version of the complainant (PW-1) that the raid had been made at a premises licenced in the name of his wife. The documents prepared on 6th January, 2003 would definitely be sufficient to put DySP (PW-10) on guard. Thus, there was neither any reason for the appellant (AO1) to have demanded bribe from the complainant (PW-1) nor any justification for him to cave in to such demand.

51. The complainant (PW-1) alleged that after he lodged the complaint (Exhibit P-1) to the DySP (PW-10) on 22nd January, 2003, he was called by the appellant (AO1) and AO2 and was directed to come to the Hotel Quality-Inn with the proposed bribe amount of Rs.5,000/-. Acting on his own wisdom, the complainant (PW-1) asked his friend PW-2 to accompany him to the ACB office. The complainant (PW-1) further alleged that when he and Ramesh Naidu (PW-2) were about to proceed to ACB office, he received another phone call from the appellant (AO1) and AO2 in the morning of 23rd January, 2003 and who instructed him to reach Hotel Quality-Inn. This fact, however, does not find place in the complaint (Exhibit P-1) and is thus a very significant omission. When the pre-trap *panchnama* (Exhibit P-4) was drawn, the complainant (PW-1) modified his version and alleged that it was AO2, who telephoned him in the morning and asked him to come to the Hotel Quality-Inn with the bribe amount. This apparent modulation by the complainant (PW-1) regarding the accused who

had made the demand again throws a doubt on his conduct and credibility. The call detail records proved by PW-6 again decimates the version of the complainant (PW-1) because they clearly established that no call was made from the mobile number of the appellant (AO1) to the mobile number of the complainant (PW-1) after 17th January, 2003. As against the noting in the pre-trap *panchnama* (Exhibit P-4), the complainant (PW-1), during his sworn testimony, deposed that the phone call was made on 21st March, 2003 by both the appellant (AO1) and AO2. The complainant (PW-1) also alleged that after the pre-trap proceedings, the DySP (PW-10) called Ramesh Naidu (PW-2) and instructed him to act as a shadow witness. However, the fact remains that Ramesh Naidu (PW-2) had already been asked by the complainant (PW-1) to accompany him in the trap proceedings. The complainant (PW-1) further alleged that a little while after he and Ramesh Naidu (PW-2) had occupied one table in the said coffee shop, the mediators and Inspector N. Chandrasekhar (PW-11) also came to the coffee shop and occupied a nearby table. The appellant (AO1) entered the coffee shop after some time and took the chair opposite to the ones wherein the complainant (PW-1) and the shadow witness were sitting. The appellant (AO1) asked the complainant (PW-1) whether he had brought the bribe amount of Rs.5,000/- to which the complainant (PW-1) replied in affirmative. When the complainant (PW-1) was about to handover the tainted currency notes, the appellant (AO1) hesitated and said that the amount should not be given in the coffee shop. The complainant (PW-1) was directed by the appellant (AO1) to proceed to the cellar of the hotel and accordingly, both he and PW-2 proceeded to the cellar and reached the generator room. There, the appellant (AO1) opened the zip of his rexine bag and instructed the complainant (PW-1) to place the bribe money inside the same. The complainant (PW-1) complied and placed the tainted currency notes in the rexine bag of the appellant (AO1). The appellant (AO1) then handed him the papers which were prepared during the inspection of the saw-mill by the Flying Squad. This version of the complaint was corroborated only by Ramesh Naidu (PW-2). However, the version of the complainant (PW-1) and PW-2 that the appellant (AO1) while sitting inside the coffee shop, initially demanded the bribe and then refused to accept the same does not find corroboration from the evidence of K. Srinivas Rao (PW-3) and the Inspector (PW-11). If at all, the complainant (PW-1) and the appellant (AO1) were sitting on the table adjoining the one

on which the *panch* witnesses and the Inspector, N. Chandrasekhar (PW-11) were sitting then, these persons would not have missed out hearing the appellant (AO1) demanding the bribe from the complainant (PW-1). In total diversion to the version of the complainant (PW-1) and PW-2, the *panch* witness (PW-3) and the Inspector (PW-11) did not utter a word in their testimonies, that they both went to the coffee shop and occupied a table adjacent to the table where the complainant (PW-1), PW-2 and the appellant (AO1) were sitting. This can be supported by post-trap *panchnama* (Exhibit P-11), which also doesn't elucidate on the fact that K. Sriniwas Rao (PW-3) and Inspector (PW-11) heard the conversation of the complainant (PW-1) and the appellant (AO1). Thus, it can be presumed and put the Court on guard that the testimonies of PW-3 and PW-11 and the post-trap *panchnama* (Exhibit P-11) distorted the facts.

52. Thus, there is a grave suspicion on the story as put forth by the prosecution that the accused, the appellant (AO1) demanded the bribe money from the complainant (PW-1) while in the coffee shop of Hotel Quality-Inn.

53. In view of the above analysis and elaboration of evidence, we have no hesitation in holding that the prosecution miserably failed to prove the factum of demand of bribe against the appellant (AO1) by reliable direct or circumstantial evidence. The allegation regarding acceptance of bribe by the appellant (AO1) is primarily based on the evidence of the complainant (PW-1) and PW-2 and the DySP (PW-10). From the extracted portion of the deposition of the complainant (PW-1) *supra*, it is comprehensible that he admitted that the appellant (AO1), forgot his rexine bag in the coffee shop and that the complainant (PW-1) picked up the same and handed it over to the appellant (AO1). Thus, unquestionably, the complainant (PW-1) had the opportunity to plant the tainted currency notes into the bag being carried by the appellant (AO1).

54. As we have observed above that the entire case seems to have been planned at the behest of M. Ashok, it is clear that the complainant (PW-1) was simply used as a tool to get the appellant (AO1) trapped on made up allegations. The High Court while discussing the case, brushed aside the said part of the evidence of the complainant (PW-1) by observing that the same was an afterthought. However, the fact remains that these vital facts were elicited during the cross-

examination of the complainant (PW-1) and hence, the benefit thereof would have to be given to the appellant (AO1) more particularly as the prosecution did not make any effort to clarify this anomaly by way of re-examination. If at all, the prosecution felt that the captioned admission extracted above as appearing in the cross-examination of the complainant (PW-1) was a material deviation from the case set up by the prosecution, then, the public prosecutor was under an obligation to re-examine the witness to remove the anomaly. Having failed to do so, the prosecution cannot be permitted to cry foul that the decoy complainant (PW-1) modulated his testimony in the cross-examination so as to favour the accused. It is admitted that the DySP (PW-10) and the other members of the trap party were standing outside the coffee shop and thus, they could not have seen the sequence of events wherein, the complainant (PW-1) picked up the bag of the AO1 (appellant). PW-2, of course denied this suggestion, but we cannot be oblivious to the fact that the star witness of the prosecution, namely, the complainant (PW-1) himself made a candid admission to the suggestion given by the defence in cross-examination, that he got unhindered access to the bag of the appellant (AO1) and that this fact remained contraversed by the prosecution. In addition to the above, this Court has to remain conscious of the fact that the prosecution made no effort whatsoever to get the wash taken from the hands of the appellant (AO1) and the rexine bag examined through the FSL. Hence, there is no satisfactory evidence on record to establish that the appellant (AO1) had actually handled the tainted currency notes as claimed by the complainant (PW-1).

55. After a threadbare analysis and evaluation of the evidence available on record, we feel that the prosecution case is full of embellishments contradicting and doubting and thus, it would not be safe to convict the appellant (AO1) for having demanded and accepted the bribe money from the complainant (PW-1). At the cost of repetition, we may state that the manner in which M. Ashok S/o Abbaiah was associated as a *panch* witness in the trap proceedings, creates a grave doubt that the entire case was orchestrated against the appellant (AO1) at the instance of the said M. Ashok.

56. In wake of the discussion made hereinabove, we are of the view that the prosecution has failed to bring home the charges against the

appellant (AO1) by leading evidence which can be termed to be of unimpeachable character. The AO1 (appellant), therefore, deserves to be acquitted of the charges.

57. Resultantly, the impugned judgments dated 2nd August, 2022 and 5th August, 2008 are hereby quashed and set aside.

58. The appellant (AO1) is acquitted of the charges. He is on bail and need not surrender. His bail bonds are discharged.

59. The appeal is allowed in these terms.

60. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain