Chironjilal vs State Of Madhya Pradesh on 14 February, 2008

Equivalent citations: 2008CRILJ1784

Author: S.A. Naqvi

Bench: S.A. Naqvi

JUDGMENT

S.A. Naqvi, J.

1. The appellant Chironjilal has preferred the appeal being aggrieved by the impugned judgment dated 25-11-1993 passed by the Special Judge and 1st Additional Sessions Judge, Damoh in Special Case No. 8/92 whereby the appellant has been convicted under Section 161, IPC read with Section 7 of the Prevention of Corruption Act 1988 (in short the 'Act') and under Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo one year R.I. and fine Rs. 1,000/- in default six months R.I. and two years RI with fine of Rs. 2,000/- in default six months R.I. respectively.

2. The admitted facts of the case are that the appellant Chironjilal was Head Constable at Police Station Batiyagarh District! Damoh at the relevant point of time; the appellant was working as public servants. The case of prosecution in a nutshell is that in 1983 and 1985-86 Tatu Singh donated his 16 acres land and house to Kunj Bihari (P.W. 1). But Smt. Bari Bahu wife of Tatu Singh later on objected to it. Kunj Bihari filed case for mutation, Bari Bahu filed objection in that case, she lodged FIR against the Kunj Bihari and his father Keshavram Shukla of theft of ornaments.' Kunj Bihari and his father Keshavram Shukla obtained anticipatory bail and they went to Police Statio Batiyagarh to file anticipatory bail papers, but they were compelled to remain in Police Station for 24 hours. SHO Vimal Kumar Jain told them that in how many cases they will obtain bail. SHO Vimal Kumar Jain and the appellant Chironjilal demanded illegal gratification of Rs. 5,000/- from the complainant, but after negotiation it was settled that complainant shall pay Rs. 1500/- to them at the residence of either SHO Vimal Kumar Jain or the appellant Chironjilal. It was settled that complainant shall pay Rs. 1500/-on 19-12-1986 to SHO Vimal Kumar Jain or Chironjilal. Complainant Kunj Bihari presented an application Ex. P/1 to S.P. Lokayukat; Sagar for arranging a trap. After completing the formalities and preparing the Panchanamas' a trap was arranged.

3. On 19-12-1986. Rs. 1500/- consisting of Rs. 100/- denomination were handed over to Kunj Bihari applying phenolphthalein powder, to hand over the same to the appellant, the number of notes were recorded as per procedure. Kunj Bihari along with trap party went to village Batiyagarh, he went to appellant's house along with trap party and handed over Rs. 1500/- to Chironjilal and indicated the trap party, keeping his hand on his head as directed. The appellant was caught hold by the trap

party. He threw notes on the ground and Rs. 1500/- were recovered from the spot. The fingers of the appellant were dipped in Sodium Carbonate Solution, which turned pink. Solution was sealed. Seizure memo of the notes and Panchnamas were prepared on the spot. The appellant was got arrested. After obtaining sanction to prosecute the appellant, he was charge-sheeted under Section 161, IPC read with Section 7 of the Act and under Section 13(1)(d) of the Act in the Court of Special Judge, Damoh.

4. Charges under Section 161, IPC read with Section 7 of the Act and Section 13(1)(d) of the Act have been framed. The appellant abjured the guilt; he pleaded innocence and false implication. His defence is that he was on leave from 13-12-1986 to 19-12-1986. He came back to Batiyagarh on 19-12-1986 afternoon. Trap party could not find SHO Vimal Kumar Jain. Consequently, he was falsely implicated.

5. The prosecution examined 19 witnesses and the appellant examined one defence witness.

6. After hearing learned Counsel for the parties, perusing the evidence and material on record learned trial Court found the appellant guilty under Section 161, IPC read with Section 7 of the Act and under Section 13(1)(d) of the Act and sentenced him as aforementioned. Being aggrieved by the impugned judgment the appellant has preferred the appeal.

7. I have heard learned Counsel for both the parties, perused the impugned judgment, evidence and material on record. It has been vehemently argued by Umakant Sharma learned senior counsel for the appellant that the learned trial Court erred is not considering the fact that case of the prosecution has not been supported by the independent evidence, Kunj Bihari (P.W. 1) is accomplice and he is not a trustworthy witness. It is proved that demand of illegal gratification was made by SHO Vimal Kumar Jain and in absence of SHO Jain, the amount has been handed over to the appellant for SHO, there was no proposal for demand of illegal gratification by the appellant, and the evidence has not been considered by the learned trial Court in proper way, the appellant has been convicted on conjecture and surmises. Contrary to that, learned Public Prosecutor supported the impugned judgment and contended that learned trial Court did not commit any error in convicting the appellant and sentencing him as aforementioned.

8. It has been admitted by the learned senior counsel for the appellant that on 19-12-1986 the appellant Chironjilal was posted In Police Station Batiyagarh as Head Constable and he was a Public Servant. It has not been challenged by learned senior counsel for the appellant that Kunj Bihari gave Rs. 1500/- to the appellant and this money has been recovered from the floor of the house of the appellant. This fact is proved by the evidence of Kunj Bihari (P.W. 1), A.K. Jain (P.W. 6), Indramani Mishra (P.W. 9), R. Dwarka Prasad (P.W. 10), Narayan Prasad (P.W. 12), M.K. Gautam (P.W. 18) and M.P. Dubey (P.W. 19) and also Panchnama Ex. P/7, seizure memo Ex. P/6 and registration of crime Ex. P/11. On going through the evidence of these witnesses it is proved that Kunj Bihari on 19-12-1986 presented an application Ex. P/1 for a trap and trap was arranged, currency notes were brought by the complainant, phenolphthalein powder was applied on those currency notes, and handed over to the complainant to give the notes to concern public servant, the number of currency notes were written in Panchnama Ex. P/6 and trap party went to village Batiyagarh and successfully

completed the trap and recovered the money. Other formalities such as hands of the complainant were got washed by Sodium Carbonate, which turned pink were completed.

9. Learned senior counsel for the appellant contended that prosecution has not proved demand of illegal gratification amount by the appellant Chironjilal from the complainant Kunj Bihari, being head constable the appellant was not capable to do favour to complainant, he was not authorised to release the complainant on anticipatory bail in presence of SHO and no proposal was made by the appellant for illegal gratification to the complainant. The competent officer was SHO Vimal Kumar Jain, who demanded illegal gratification from the complainant to release him on the anticipatory bail; luckily, Vimal Kumar Jain was not present on 19-12-1986 in head quarter. Consequently, Kunj Bihari handed over Rs. 1500/- to the appellant to give this money to Vimal Kumar Jain. The appellant has been made scape goat and falsely implicated.

10. Through, in application Ex. P/1 it has been mentioned that SHO Vimal Kumar Jain and Head Constable the appellant Chironjilal demanded money as illegal gratification from the complainant and it was settled that how, money shall be paid to them, either at the house of SHO Vimal Kumar Jain or at the house of the appellant Chironjilal. But this fact has not been substantiated by the prosecution evidence i.e. the appellant Chironjilal along with Vimal Kumar Jain demanded Rs. 1500/- as illegal gratification from the complainant. Kunj Bihari (P.W. 1) in his examination in chief clearly deposed that he along with his father went to Police Station, along with the appellant where SHO Vimal Kumar Jain met them, and told them that why you obtained anticipatory bail, and in how many cases, you will get ball. He specifically deposed that Vimal Kumar Jain demanded Rs. 5,000/-as illegal gratification to release them on bail, ultimately, it was settled that complainant shall pay Rs. 1500/- to Vimal Kumar Jain as illegal gratification. Consequently Kunj Bihari was released from the Police Station and he straightway went to S.P. Lakayukat, Sagar and arranged trap. Kunj Bihari in examination-in-chief deposed that it was decided that he will give money to the SHO Vimal Jain or at the direction of SHO he will give money to the appellant Chironjilal. In para 2 of his cross-examination Kunj Bihari specifically admitted that on the day of trap i.e. 19-12-1986 he went along with other officers to village Batiyagarh, but he could not meet SHO Vimal Kumar Jain being out of town. It leads to the presumption that the trap initially was arranged for SHO Vimal Kumar Jain, luckily he was not in town, consequently, money was handed over to the appellant Chironjilal for SHO Vimal Kumar Jain, which was in turn to be handed over to SHO Vimal Kumar Jain by the appellant. In para 3 of the cross-examination Kunj Bihari specifically admitted that Sahab (Vimal Kumar Jain) told him to arrange money within 3-4 days but he requested him that he will arrange money within 7-8 days, thereafter, he left the Police Station. He also deposed that he went to Police Station alongwith, order of anticipatory bail and told to Vimal Kumar Jain that he possesses anticipatory bail order; Vimal Kumar Jain reacted that in how many cases you will get bail. In para 4 of the cross-examination Kunj Bihari specifically deposed that on the date of trap first he searched of SHO Vimal Kumar Jain, but he came to know that SHO Vimal Kumar Jain is out of station, the trap party told him to go and see whether Head Constable (Chironjilal) is there in town or not, if he is in town go his house, he also deposed that he went to appellant's house and for 10-15 minutes there was talk between him and Chironjilal, thereafter he handed over Rs. 1500/- to the appellant Chironjilal. The appellant Chironjilal told him that this money is for Sahab i.e. SHO Vimal Kumar Jain and he asked money for himself (Chironjilal) thereafter, trap party rushed and over

power him, the appellant again reiterated that currency notes does not belong to him, these notes for Sahab i.e. for SHO Vimal Kumar Jain. The appellant also told that he will give these notes to Sahab Vimal Kumar Jain. In para 7 of cross-examination Kunj Bihari specifically deposed that the appellant Chironjilal came to him and took him, along with his father to Police Station Batiyagarh, on way to the Police Station Kunj Bihari told the appellant that they are having the anticipatory bail orders, then Chironjilal told him that SHO Vimal Kumar Jain has called them. You have to file bail papers and personal bonds in the Police Station. He specifically admitted that no other conversation took place between him and Chironjilal. Keshram (P.W. 4) father of the complainant Kunj Bihari also deposed that they were called by SHO in Police Station and Kunj Bihar sat with Sahab (SHO) and conversation was going on between them in respect of money. It was agreed to pay Rs. 1500/- as illegal gratification to SHO Vimal Kumar Jain. There is no iota of evidence in the statement of Kunj Bihari and Keshram that any point of time the appellant Chironjilal demanded money as illegal gratification from Kunj Bihari to release them on bail. A.K. Jain (P.W. 6) deposed that Chironjilal gave an application to S.P. Lokayukat which was read to him he showed ignorance of the fact that SHO Vimal Kumar Jain demanded money as illegal gratification from Kunj Bihari, he deposed that if the fact of trap of Vimal Kumar Jain would have been in his knowledge he could not have gone with trap party, because he is also Jain. This fact proves that A.K. Jain is interested in SHO Vimal Kumar Jain and he is not stating against him.

11. R. Dwarka Prasad (P.W. 10) deposed that Kunj Bihari went to house of the appellant and chitchat with him. Kunj Bihari handed over Rs. 1500/- to Chironjilal, Chironjilal counted the notes and told to Kunj Bihari that this money is for Sahab. (SHO Vimal Kumar Jain), at this point of time Kunj Bihari put hand on his head and trap party over power the appellant Chironjilal and completed the trap. In para 2 of cross-examination R. Dwarka Prasad specifically admitted that at Sagar he was informed that in Batiyagarh Thanedar (SHO) and Hawaldar (Head Constable) have to be trapped. He also admitted that in Batiyagarh Kunj Bihari (P.W. 1) asked to complainant to find out whether Thanedar and Hawaldar are in Batiyagarh or not. Narayan (P.W. 12) deposed that Kunj Bihari came to the office of Lokayukat, Sagar and told that SHO Vimal Kumar Jain is demanding Rs. 1500/- and he wants to trap him. In examination -in-chief Narayan deposed that an enquiry it was revealed that Vimal Kumar Jain is not in town, hence, trap party went to the appellant's house. Kunj Bihari handed over Rs. 1500/- to Chironjilal and told him that give this money to Vimal Kumar Jain, Chironjilal took money in his hand and told Kunj Bihari that he will give this money to Vimal Kumar Jain because this money belongs to Vimal Kumar Jain.

12. There is sufficient evidence on record to prove that SHO Vimal Kumar Jain demanded Rs. 1500/- as illegal gratification from Kunj Bihari to release him and his father on bail in compliance of order of anticipatory bail, it was agreed upon that Kunj Bihari shall pay Rs. 1500/- to Vimal Kumar Jain either at his house or at the house of appellant Chironjilal. It is also established by evidence of prosecution witnesses that Kunj Bihari handed over Rs. 1500/- to Chironjilal for SHO Vimal Kumar Jain, asking him to hand over this money to Vimal Kumar Jain. There is no evidence on record to prove that when conversation of bargaining was going on between Kunj Bihari and SHO Vimal Kumar Jain for illegal gratification, the appellant was present in Police Station and he contributed actively in the bargain. It is of common knowledge that in order of anticipatory (sic) is never directed to Head Constable, to release the culprit on bail, in the event of his arret, always SHO of the

Police Station or Investigating Officer is directed to release the culprit on anticipatory bail in the event of arrest, therefore, there was no occasion to demand illegal gratification by the appellant Chironjilal for compliance of the Court's order to release Kunj Bihari or his father on bail. Keshavram did not depose that at any point of time the appellant Chironjilal demanded money as illegal gratification to release them on bail. The only act of the appellant Chironjilal was that in compliance of the order of SHO Vimal Kumar Jain he brought Kunj Bihari and Keshavram to Police Station and handed over them to SHO Vimal Kumar Jain.

13. Though, there is a presumption ' against the appellant, after receiving illegal gratification, but where accused had rebutted presumption against him by cross-examining, the witnesses and defence story was corroborated by the prosecution witnesses and prosecution could not prove the motive of bribe in the case, the accused would be entitled to acquittal. Where motive of demanding bribe is not proved then accused cannot be convicted for receiving illegal gratification of bribe. A public servant has to either accept or obtain or agree to accept or attempt to obtain from any person of illegal gratification. There is to be an offer and then acceptance of the illegal gratification, otherwise than legal remuneration, coupled with to do official act in favour of the person in consideration of such person to pay the sum the "phrase as a motive or rewarded for" means on the understanding that the bribe is given as consideration of some official act or conduct on the part of the public servant. In law, incapacity of the Government servant to show any favour or rendered any service in connection with official duties weakens the case of the prosecution in order to establish an offence under this section. It is necessary to prove that the public servant, accepts or obtains or agrees to accept or attempts to obtain illegal gratification as a motive or reward for doing or forbearing to do any official act or for any favour or to favour to any person or for rendering any services or disservice to any person with public servant as such. As I have already observed that there is no evidence and circumstance on record that Chironjilal demand illegal gratification from the Kunj Bihari and he was in a position to favour or rendered any service in connection with his official duty to the appellant. Contrary to that, there is sufficient evidence on record to prove that in fact SHO Vimal Kumar Jain demanded illegal gratification from the Kunj Bihari to release him and his father Keshavram on bail and it was not within the knowledge of the appellant that on 19-12-1986 complainant shall hand over Rs. 1500/- to appellant saying that this money is for SHO Vimal Kumar Jain, and pay as soon as SHO comes back gave money to him. It is proved by the evidence of Naresh Prasad (D.W. 1) and Rojnamchasaha Ex. D-1 that the appellant was on leave from 13-11-1986 to 19-11-1986 and on 19-11-1986 in the afternoon he came back Batiyagarh. This fact also shows that it was not within the knowledge of the appellant that in between 13-11-1986 and 19-11-1986 afternoon what conspired between Kunj Bihari and Vimal Kumar Jain SHO.

14. In State v. K. Narasimhachary 2005 AIR SCW 6275 : 2006 Cri LJ 518 it has been held by the Hon'ble Apex Court that if by evidence and circumstances demand of bribe is not proved then accused is entitled to acquittal. In Ramlal v. State of M.P. 2005 (4) MPLJ 93 it has been held by the Single Bench of this Court that if demand of bribe is not proved and accused is not a party to an arrangement between complainant and Sub-Inspector then the appellant cannot be convicted under Section 5(2) of the Act it has been held in paras 4 to 6:

P.W. 11 Chandra Shekhar Shukla, Sub-Inspector has stated that on 5-8-1986, report Ex. P/19 of Chain Singh was received from the office of Superintendent of Police. For preliminary enquiry, it was given to the appellant. Report Ex. P/20 in relation to the alleged allegations was submitted by the appellant on 13-8-1986. Thereafter, on 15-8-1986, Crime No. 265/86 under Section 379, IPC was registered. The crime aforesaid was investigated by him and finally criminal case No. 42/87 arising out of Crime No. 265/86 against Prakash, S/o Nathu was filed in the Court of MFC, Sagar. On 15-8-1986 only appellant has been with him at the time of investigation of Crime No. 265/86. This statement of P.W. 11 Chandra Shekhar Shukla makes it clear that the appellant submitted report Ex. P/20 on 13-8-1986 itself. Thereafter, he was not concerned with the investigation of Crime No. 265/86. The statement of P.W. 2 Murlidhar is to the effect that Sub-Inspector Shukla investigating the offence arising out of the report Ex. P/19 in fact demanded a bribe of Rs. 300/-. Since Sub-Inspector Shukla was not traceable on 18-8-1986, appellant being found near the Chameli Chowk was requested to take the amount for payment to Sub-Inspector Shukla. P.W. 2 Murlidhar clearly stated that the appellant declined to do so by saying that he is not concerned at all with alleged arrangement between Sub-Inspector Shukla and Murlidhar.

5. P.W. 3 Yashwant Kumar Saxena, P.W. 8 Kedar Prasad Rawat, P.W. 5 Dwarka Prasad, P.W. 6 Bhagole Prasad and P.W. 14 Hari Prasad Choudhary in their cross-examination have admitted that they have not seen Murlidhar (P.W. 2) actually delivering the currency notes to the appellant. Therefore, statement of P.W. 2 Murlidhar alone is on the point that the currency notes of the denomination were offered to the appellant for payment to Sub-Inspector Shukla. P.W. 2 Murlidhar has stated that the appellant declined to do so, however, he kept the currency notes in his hands. The appellant immediately kept those currency notes on the table. Since the currency notes wereTkept in the hands of appellant, it was quite natural that the hand wash of the appellant turned pink.

In Smt. Meena Balwant Kemke v. State of Maharashtra AIR 2000 SC 337 : 2000 Cri LJ 2273 it has been held that the result of the phenolphthalein test should be viewed in the context only that the appellant also come into contact with the currency notes when these were kept in his hands by P.W. 2 Murlidhar and he pushed it away on the, table. The currency notes aforesaid were said to have been recovered from the appellant ' under the circumstances stated and explained by P.W. 2 Murlidhar. It is rightly contended that in relation to the alleged recovery of currency notes vide Ex. P/6, no presumption under Section 4 could be drawn against the appellant.

The word presumption in its largest and most comprehensive signification may be defined as in the sense of actual certainty of the truth or falsehood of a act or proposition, an inference affirmative or negative to that truth or falsehood which is drawn by a process of probable reasoning from something which is taken for granted. It is however rarely employed in jurisprudence in this extended sense. Like presumptive evidence, it has there obtained a restricted legal signification, and is used to designate an inference affirmative or dis-affirmative of the existence of some fact.

In the circumstances, as has been held in Banshi Lai Yadav v. State of Bihar the alleged recovery of currency notes by itself will not be sufficient to raise presumption against appellant particularly where as per the statement of P.W. 2 Murlidhar, the appellant never demanded any amount to settle the case against him.

6. From statement of P.W. 11 Chandra Shekhar Shukla, it has become clear that the appellant, Head Constable was not entrusted with the investigation of Crime No. 265/86 under Section 379, IPC arising out of report Ex. P/15. The preliminary report Ex. P/20 was already submitted by the appellant on 13-8-1986. P.W. 2 Murlidhar has stated that during the investigation of Crime No. 265/86, he was called by the police at Police Station, Moti Nagar, where Sub-Inspector Shukla demanded Rs. 300/- to settle the dispute in relation to alleged theft of building material of Chain Sing, Since the raid party did not find Sub-Inspector anywhere, finally, while moving further, appellant the Head Constable of the Police Station was found near Chameli Chowk. This is the statement of P.W. 2 Murlidhar that in the hotel he asked the appellant to take the money for payment to the Sub-Inspector Shukla. The appellant did not agree nor accepted the currency notes to do so. The currency notes were kept in his hands by P.W. 2 Murlidhar.

15. Similar circumstances in Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe v. State of Maharashtra it has been held:

> As regards accused No. 2 merely because he was entrusted with some money to be passed on to accused No. 1 it could not be held that he was guilty of any one of these offences unless it is established that he was a party to the arrangement and the arrangement arrived at was that the money would be handed over to accused No. 2 to be given over to accused No. 1. Apparently accused No. 2 was not expected to help the complainant. The assurance to the complainant to settle the matter, according to the prosecution was given by accused No. 1 and according to the prosecution own case and the evidence of complainant this arrangement was finally settled at the house of accused No. 1. Admittedly accused No. 2 was not there not it is alleged that he had any knowledge about this settlement. Under these circumstances It could not be held that accused No. 2 accepted this amount for any purpose. At best as the complainant told him to pass this money on to accused No. 1 he accepted it but: on that basis it could not be held that he was sharing the intention with accused No. 1 or was acting on his behalf.
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> Under Section 5(1)(d) a public servant is said to commit the offence of criminal misconduct in the discharge of his duty : if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage. As per the statement of P.W. 2 Murlidhar, the appellant never demanded the money from him to settle the case arising out of report Ex. P/19. It is Sub-Inspector Shukla who had insisted him to pay Rs. 300/-. There was no arrangement between Sub-Inspector Shukla and the appellant that the amount being given to the appellant shall be paid by him to the Sub-Inspector Shukla. Appellant was not a party to the arrangement between P.W. 2

Murlidhar and Sub-A Inspector Shukla.

16. In Criminal Appeal No. 125/1979 Dinesh Kumar v. State of M.P. judgment delivered on 30-8-1979 it has been held by the Single Bench of this Court in para 6:

> If with the foregoing uncertain evidence particularly when the giver of illegal gratification Badri Prasad (P.W. 3) does not connect the appellant with either of the crimes charged, we look into the document Ex. D/ 1, the statement of Chhunna alias Rajendra Kumar recorded by Umashankar Verma (P.W. 9) during investigation, the doubt about the false implication of the appellant becomes aggravated. It appears, even to my naked eye, that the word "Dixit" has been superimposed, there was some other name underneath it in the fact of this evidence, it could as well as have been that Badri Prasad (P.W. 3) in point of fact had given the money to the Sub-Inspector Naik who had earlier demanded the money from him. It could be that the said Naik might have, at some point of time after receiving the money from Badri Prasad (P.W. 3), had passed it on to the appellant who was then in his company either without the appellant's knowledge or even with his knowledge and that is how the money ultimately, Rs. 40/- of the amount, came to be seized from the right-hand pocket of the trousers of the appellant, as established by the investigating officer, Umashanker Verma (P.W. 9) and Moolchand (P.W. 11). But, from this fact alone it cannot be concluded that it was the appellant who had any reason to demand illegal gratification or it was to him that the gratification had been paid and in any event that was not the charge which he had faced, nor, indeed, was there any charge that he (the appellant) acting in concert with the Sub-Inspector Naik had received that amount as illegal gratification.

17. In Rajeshwari Nandan Gupta v. Special Police Establishment, Lok Ayukat, Gwalior 2008 (1) MPHT 174 it has been held by the Single Bench of this Court in paras 12 & 15 as under:

> 12. The Supreme Court in the case of Ganga Kumar Shrivastava v. State of Bihar in similar facts and circumstances, held that if there was no occasion for demand and acceptance of bribe, the accused cannot be convicted. In this context, para 22 of the said judgment is very important. In the case of Ganga Kumar (supra), there was demand of money with respect to restoration of connection of electricity supply which according to the appellant of that case was already restored on 22-6-1985 and if the restoration of electricity connection was already restored on 27-6-1985 there was no occasion for the accused to make demand and to accept bribe thereafter either on 25-6-1985 and 28-6-1985 for the supply of electricity connection. In the present case also, since complainant Kailash Chandra Agrawal (P.W. 1) has admitted that the assessment order was already passed quite earlier by the appellant on 15-3-1990 and thereafter recovery notice was also issued by the appellant on 19-6-1990 therefore, there was no occasion to the appellant to make demand and to accept the bribe on 11 -7-1999, as alleged by the complainant. In the case of Ganga Ram (supra), the Supreme Court further held that since the accused of that case initially registered a

criminal case against the complainant for theft of electricity, there was probability to implicate the accused falsely by the complainant. In the present case also, it is the defence of the appellant in his statement recorded under Section 313 of Cr.P.C. that on issuing notice of demand, the complainant became annoyed. The defence of the appellant is also corroborated by the evidence of Kailash Chandra Agrawal (P.W. 1) Para 15 where he has clearly admitted that after passing the order of assessment on 15-3-1990 the appellant also issued notice of demand and therefore, this probability cannot be ruled out that the appellant has been falsely implicated as he also issued demand notice against the complainant to deposit the amount of tax.

15. In a latest decision of Supreme Court in the case of T. Subramanian v. State of T.N. (2006) 1 SCC 401 : 206 Cri LJ 804, Hon'ble R.V. Raveendran, J. spoke for the Bench and held that a trap was arranged, the currency notes were chemically tested and the currency notes were recovered from the accused but merely receipt of currency notes from the accused would not he sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Prevention of Corruption Act, 1947. In this context, it would be apposite to quote para 12 of the judgment which reads thus:

Mere receipts of Rs. 200/- by the appellant from P.W. 1 on 10-7-1987 (admitted by the appellant) will not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. In Punjabrao v. State of Maharashtra, Reported in the accused, a patwari, was on a campaign to collect loan amounts due to the Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. This Court accepted such explanation (though such explanation was not immediately offered as in this case, but was given only in the statement under Section 313) holding thus: (SCC p. 372, para 3).

It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability.

In the present case, the cash amount of Rs. 1,500/- was found in a bag and there is no clinching evidence that the said bag which was lying in the chamber of appellant was of his own. Even if it is held that the cash amount is recovered from the appellant, it would not be sufficient to hold that appellant is guilty of the offence. In this context,

the decision of Supreme Court in the case of T. Subramanian (supra), may be placed reliance.

18. It has been held by the Hon'ble Apex Court in Suraj Mal v. The State of (Delhi Administration) that mere recovery of money from the accused is not sufficient to hold that he, received bribe or illegal gratification.

19. As per above discussion, I am of the view that the prosecution has failed to prove that the appellant Chironjilal Head Constable was, in a capacity, as the public servant to favour or rendered any service in connection with his official duty to the complainant Kunj Bihari as per law. There is no evidence on record to prove that the appellant Chironjilal. demanded or agreed to accept bribe or illegal gratification from Kunj Bihari and obtained bribe for his own to release on him, after accepting anticipatory bail. The appellant successfully rebutted the presumption raised against him that he demanded bribe from Kunj Bihari, accepted bribe for his own to release Kunj Bihari and his father Keshavram on bail. In peculiar facts and circumstances of the case, the seizure Rs. 1500/- from the appellant or from house of the appellant is of no significance and is not sufficient to prove alleged offence against the appellant. The learned trial Court committed error in holding that the prosecution has proved charges under Section 161, IPC read with Section 7 of the Prevention of Corruption Act and under Section 13(1)(d) of the Act against the appellant and convicting arid sentencing him as aforementioned. The finding arrived by the learned trial Court is illegal and perverse and is not sustainable in law. He has been wrongly convicted of the offence charged and wrongfully punished.

20. Consequently, the appeal is allowed. The impugned judgment of conviction and sentences passed by the trial Court is set aside. The appellant Chironjilal is acquitted of charges under Section 161, IPC read with Section 7 of the Act and Section 31(1)(d) of the Act. Bail bonds of the appellant shall stand cancelled.