HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
….
CRA No. 15/2015
IA No.01/2015

Reserved on: 12.10.2023

Pronounced on: 31 .01.2024

Mansoor Ahmad Malik

….Appellant(s)

Through: Mr. M. A. Qayoom, Advocate

Versus

UT of J&K and others

…. Respondent(s)

Through: Mr. Mohsin Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting counsel.

***CORAM*:**
HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. The appellant has filed this appeal against the judgment of conviction and sentence dated 3rd December 2015, passed by the court of Special Judge, Anticorruption (Additional Sessions Judge, Pulwama) ("*Trial Court*" in short) in a case FIR No.26/2009 of Police Station VOK, whereby the appellant has been held guilty for commission of offence punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act ("*Act*" in short) and Section 161 RPC and has been sentenced to undergo simple imprisonment for two years for offence punishable under Section 5(1)(d) read with Section 5(2) of the PC Act and also to pay a fine of Rs.20,000/- and in default of payment of fine, the appellant is to undergo simple imprisonment for further period of six months. The appellant has been further directed to undergo one-year simple imprisonment for office under Section

161 RPC and also to pay a fine of Rs.5000/- and in default of payment of fine, the appellant shall further undergo simple imprisonment for three months, and for setting aside the same.

2. The case set up by appellant is that on the basis of a complaint filed by one Sabzar Ahmad Dar, alleging therein that he was running a Fair Price Shop of the CAPD Department at village Reshipora since 2007 and the appellant demanded and accepted an amount of Rs.10,000/- from him for issuing a report in respect of various applications which had been endorsed to him by Assistant Director, CAPD Department, an FIR No.26/2009 under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and Section 161 RPC was registered by the respondent on the directions of Trial Court, Pulwama. The respondent after registering the FIR conducted the investigation and presented Challan before the Trial Court. Thereafter the appellant was charge-sheeted but he denied the charges leveled against him and claimed to be tried. Accordingly, prosecution was directed to lead evidence in support of the allegations leveled in the charge sheet against the appellant. The prosecution in support of its case produced twelve witnesses. Besides the complainant, the prosecution produced a number of witnesses, including Tariq Ahmad Qadri, Assistant Director CAPD, Zahoor Ali Khan, I/C Deputy Director Planning in the office of Director CAPD, Mohammad Ismail Bhat Sr. Assistant, CAPD Department and Mohammad Shafi Sheikh, Dy. Superintendent of Police. The Trial Court, after closing the prosecution evidence, recorded statement of the appellant on 2nd December, 2013 under Section 342 Cr.P.C but no question was asked to the appellant by the

Trial Court as to whether he wanted to lead defence evidence or not. The Trial Court, upon recording the statement of the appellant, heard the arguments in the matter and passed impugned judgment dated 3rd December, 2015

3. I have heard learned counsel for the parties and considered the matter.

4. The impugned judgment of conviction and sentence dated 3rd December, 2015 is being challenged by appellant in this appeal, *inter alia*, on the following grounds:

a) That the Trial Court has not appreciated the evidence led by the prosecution in the case in its proper perspective. The impugned judgment and order have been passed by the Trial Court in utter disregard of law and without proper application of mind.

b) That the prosecution has not proved the demand of bribe by the appellant at all. The Trial Court in terms of impugned judgment and the order has held that when there is voluntary and conscious acceptance of money, there is no further burden required for the prosecution to prove by direct evidence the demand of money and its acceptance.

c) That in a case under Prevention of Corruption Act, it is incumbent on the prosecution to prove both demand and acceptance of bribe. If demand is not proved, then the case cannot be succeeded. The prosecution had not proved the demand. The witnesses produced by prosecution for proving acceptance of bribe by appellant was also incredible, inconsistent and contradictory. It was not open for the Trial Court to convict appellant and sentence him to undergo imprisonment under

Section (1)(d) read with Section 5(2) of the Prevention Corruption Act and under Section 161 RPC.

d) That in fact besides complainant Sabzar Ahmad, PWs, Bilal Ahmad Wani and Mohammad Shaban Reshi, have made inconsistent and contradictory statements before the Trial Court. This aspect of the matter was highlighted by counsel for appellant before the Trial Court, but it has miserably failed to appreciate the said contention and fell in error in passing the impugned judgment and order

e) That appellant as had been stated by him in his statement under Section 342 Cr.P.C. that he had initially not only conducted enquiry into the complaints filed by the locals against the complainant but had also submitted a report against him to the concerned authorities.

f) That the complainant had filed a suit before the Court at Pulwama and had also filed a writ petition before this Court and had arrayed the appellant as defendant/respondent thereto. The said suit was dismissed and the writ petition filed before this Court did not yield any result.

g) That as per the evidence collected and on perusal thereof it appears that there were two factions in the village; one faction supported the complainant and the other was against him. Those who were against him did not want that he should run Fair Price Shop in the village. Since appellant, after conducting an enquiry on the complaints filed against the complainant, had submitted a report against him, as such, complainant and his supporters got

annoyed with him and they concocted a story and implicated the appellant. This aspect of the matter has not been appreciated/ considered by the Trial Court while passing the impugned judgment.

h) It is worth to mention here that Mohammad Shaban PW is a close friend of the complainant; Bilal Ahmad Wani and Bashir Ahmad Reshi (Wani) PWs are the cousin brothers of the complainant and Ghulam Mohammad Dar PW is the real brother of the complainant, being all relatives, have supported him and his case.

i) That counsel for the appellant had stated before the trial Court that instead of filing a report before police concerned, the complainant had approached the Additional Sessions Judge (Anticorruption) Srinagar, who had forwarded his complaint to the VOK for registering an FIR against appellant. The appellant produced a judgment of the Supreme Court before the trial court which in clear and categorical terms had stated that where a person does not go to the Police Station but files a complaint in the Court of Special Judge (Anticorruption) who forwards the same to the police for registration of an FIR and acting on the directions of the Court, the police register a case and conduct investigation and filing of the challan against the accused, on the said count is vitiated.

j) The trial Court has stated that the judgment of the Apex Court is clearly distinguishable and does not apply to the facts of the case of the appellant, without indicating as to how it was distinguishable or did not apply to the facts of the case. Besides,

the Apex Court has observed in its judgment, as said by the learned Trial Court that if any order, sentence or finding has been recorded, same shall not be reversed or altered by a court in appeal, confirmation or revision, on the basis of any error, omission or illegality in the sentence recorded under Subsection (1) as such, the appellant's contention is repelled. The trial Court, in the instant case, has stated that sanction has been obtained by the Government for the prosecution of the accused and the accused has faced trial, so the judgment does not come to the rescue of the defence. The other judgments produced on the point have also not been considered by the trial Court.

k) That on perusal of the statements recorded under Section 342 Cr.P.C. by the trial Court, the appellant has not been given an opportunity of producing evidence in defence. The learned trial Court has of its own stated in the impugned judgment and order that the accused appellant herein did not opt to lead evidence in his defence, therefore, the case was set for final arguments. Since no question was asked from the appellant as to whether he wanted to adduce any evidence in defence and the trial court of its own recorded that the appellant did not opt to lead any defence evidence, therefore, the impugned judgment and order deserves to be set aside.

l) That the appellant is an innocent person and has not indulged in the commission of any crime, however, he has been falsely implicated, on the basis of incredible, inconsistent and partisan evidence and has been convicted under Sections 5(1)(d) read with

Section 5(2) of the P.C.Act and Section 161 RPC and sentenced to various imprisonments in terms of the impugned judgment and order, which the trial Court has passed on illegal appreciation of evidence, therefore, same deserves to be set aside.

5. Learned counsel for the respondent has stated that respondent-prosecution has proved the ingredients of alleged offences against the appellant, inasmuch as it was proved that appellant demanded Rs.10,000/- from the complainant to provide him report on his application which was accepted by him, therefore, demand and acceptance of bribe was established and that appellant failed to discharge the burden to rebut this presumption. It is also stated that evidence of complainant is categorical and evidence of two other witnesses of occurrence PW2 and PW3 and PW11, Investigating Officer as well as PW 12, has answered all the contradictions if any emerging out of the evidence. He also states that appellant by abuse of his official position as public servant demanded and accepted the bribe for discharge of his duty, so offences under Section 5(1)(d) read with Section 5(2) PC Act and Section 161 RPC were established against the appellant.

6. The submissions of learned counsel for appellant are worth consideration. He would contend that in the year 2009, appellant was posted as TSO in Zainpora Cricle. It was in the month of February 2009 that a written complaint was endorsed by Deputy Commissioner, Shopian to Assistant Director, CAPD, Shopian, wherein allegations were levelled by residents of Reshipora against CBC Dealer, Sabzar Ahmad Dar. The appellant was directed by

Assistant Director to visit the spot and after conducting enquiry on the spot, furnish a detailed report in respect of the complaint. Appellant conducted the spot visit. He filed a detailed report Assistant Director on 22nd February 2009. Appellant mentioned in the report that complaint lodged against the dealer was based on facts. This followed an order dated 28th February 2009, whereby quota of Village Reshipora was diverted to Government Sale Centre, Chitragam, from which the concerned rationees were directed to draw their ration. The dealer, Sabzar Ahmad Dar, filed a civil suit for declaration and mandatory injunction, which the court of District Judge, Shopian, issued notice upon the department. According to learned counsel, another complaint was lodged by inhabitants of Sofipora and Hydergund against the dealer on 4th May 2009, which was forwarded by Assistant Director to appellant for report. Appellant again went on spot and submitted his report. This was followed by another order dated 22nd May 2009, whereby the ration quota of two more villages, viz. Village Hydergund and Sofipora was diverted to Government Sale Centre Zainapora. Besides a show cause notice dated 22nd May 2009 was also served upon the dealer. It is stated that the suit of the aforenamed dealer was dismissed as withdrawn on 22nd October 2009.

7. It is also stated by learned counsel for appellant that while the suit was pending, the dealer, Sabzar Ahmad Dar, filed a writ petition, being OWP no.864/2009 before this Court for quashing communication dated 29th August 2009, addressed by Deputy

Director, P&S, CAPD, whereby the department decided to establish a sale centre at Reshipora – Zainapora, Shopian and also to command respondent-department, including appellant, to allow the dealer to run the fair price shop. In the said writ petition order dated 12th October 2009 was passed, directing maintaining of status quo. The Dealer filed another writ petition, being OWP no.864/2009, challenging therein various departmental communications and praying for release of ration. Thereafter, Assistant Director, Shopian, vide order dated 10th June 2010 constituted a committee to enquire into the allegations levelled against the dealer. The committee conducted the enquiry and found that all the rationees to the extent of 90% stated in one voice that they were satisfied with the functioning of Government Sale Centre and they refused to draw their ration from CBC Dealer, Sabzar Ahmad Dar. It is also submitted that while above two writ petitions were pending, licence of dealer was cancelled by the department. Sensing this development, the dealer withdrew writ petitions with liberty. The dealer filed OWP no.738/2012. After seven years supplies were restored vide order dated 12th August 2015, but residents of Village Reshipora preferred OWP no.1670/2015, seeking quashment of the said order.

8. Learned counsel for appellant has also stated that while the aforesaid suit was pending, the dealer, Sabzar Ahmad Dar, filed an application before the court of Additional District Judge, Anticorruption, Srinagar, on 5th August 2009 against appellant. The said Court directed SHO police station VOK for investigation.

Thereafter investigation was conducted and sanction for prosecution vide order dated 29th March 2010 was accorded for prosecution of appellant. Challan was presented.

9. Learned counsel has vehemently stated that a civil suit and three writ petitions were filed by dealer/complaint, but in those pleadings, he did not make a whisper as to alleged demand of bribe by appellant.

10. Learned counsel for appellant has pointedly invited attention of this Court to the fact that in the FIR, the complainant had nowhere mentioned that he had gone to appellant's residence and had paid the bribe money to him in presence of PWs, Mohammad Shaban and Bilal Ahmad Wani. In the application before Additional Sessions Judge, Anticorruption, Srinagar, complainant had stated that when supervisor refused to give the report and asked for Rs.10,000/-, he paid the amount to him but despite that he did not submit the report and without there being any order or permission, the supervisor dropped the ration at the residence of someone else, which is illegal. He accordingly prayed the court that it should find a solution to his problem. Though the Court had no jurisdiction to forward complaint to VOK for registering FIR against appellant, yet in terms of order dated 5th August 2009, it did so by forwarding the complaint to VOK and it was in pursuance of orders of Anticorruption Court that FIR no.26/2009 was registered against appellant.

11. Learned counsel for appellant in support of his submissions has placed reliance on ***Anil Kumar and others v. M. K. Ayippa and***

another, (2013) 10 SCC 705, to contend that the said judgement squarely covers the case in hand. He would contend that question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duties. The purpose of obtaining sanction is to see that public servant is not unnecessarily harassed on a complaint. He also states that since appellant is a public servant, a complaint, filed against him without a valid sanction order, could not have been entertained by the Anticorruption Court on the allegations of offences punishable under the provisions of the Prevention of Corruption Act. He also states that even though the power to order investigation under Section 156(3) Cr.P.C. can be exercised by a Magistrate of Special Judge at pre-cognizance stage, yet the government sanction cannot be given goby. He also states that requirement of sanction is prerequisite even to present a private complaint in respect of a public servant regarding the offence alleged to have been committed in discharge of his public duty. Learned counsel, thus, states that very registration of FIR and conducting of investigation by VOK being without jurisdiction and void ab initio, therefore, the whole proceedings including impugned judgement passed by the Trial Court is liable to be set-aside.

12. Learned counsel for appellant has also stated that Mohammad Shafi Sheikh, IO, in his statement before the Court has stated that after conducting investigation, he sent the file to Government for sanction, which was accorded vide order dated 29th March 2010. However, IO has not stated as to whether while forwarding the

case for grant of sanction, he placed all the facts of the case before the sanctioning authority or government. Learned counsel for appellant submits that prosecution is required to send the entire record including FIR, disclosure statement, statement of witnesses, recovery memo etcetera including the material documents, which may have tilted the balance in favour of accused, which in the present case is missing. In this regard, he has placed reliance on ***Central Bureau of Investigation v. Ashok Kumar Agarwal, (2014) 14 SCC 295***.

13. Learned counsel for appellant has also submitted that there is contradiction between contents of complaint/FIR and statement given by the complainant before the police and the court. The statement of complainant, and Mohammad Shaban Reshi and Bilal Ahmad Wani was recorded under Section 161 Cr.P.C., who appeared as prosecution witnesses before the Trial Court, but all the statements of these three witnesses run contrary and inconsistent to each other. In the complaint, it was alleged that complainant made an application on which report was not given by Supervisor and thereafter he moved another application, which was endorsed to Supervisor, who demanded Rs.10,000/- but complainant refused to pay the bribe, but thereafter he paid Rs.10,000/- to Supervisor and despite that he did not give the report. Contrary to this, complainant before the court stated that he along with Mohammad Shaban Reshi went to appellant when he was in his office and he took him aside, where he demanded Rs.10,000/- for giving the report. It was also stated by him that he

told appellant that he did not want earn commission to that extent and expressed inability to pay such a huge amount but accused directed complainant and PW-Mohammad Shaban Reshi, to visit his residence on next day along with bribe money and that they gave Rs.10,000/- to accused at his residence in presence of PWs, Mohammad Shaban Reshi and Bilal Ahmad Wani whereas complainant has not mentioned the names of said PWs in his complaint.

14. Learned counsel for appellant has also asserted that complainant and other two witnesses, who are alleged to have accompanied him to residence of appellant, are closed related to each other. The proposition of law is that position of a person, who offers bribe to a public servant is in the nature of an "accomplice" in the offence of accepting illegal gratification and it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. In this regard, he has placed reliance on ***M. O. Shamsudhin v. State of Kerala (1995) 3 SCC 351***, to submit that there is no corroboration to the statement of complainant, whose position is that of an accomplice, as such, it was unsafe for the Trial Court to rely on his statement and pass impugned judgement.

15. The next submission of learned counsel for appellant is that evidence of eyewitnesses closely related to complainant has to pass the test of strict scrutiny and their evidence has to be cautiously evaluated and when there is contradiction and inconsistency in their statement, then that evidence has to be discarded. He relies on

P.Satyanarayana Murthy v. Inspector of Police, State of AP (2015) 10 SCC 152.

16. According to learned counsel for appellant, the Trial Court has not considered statement of appellant recorded under Section 342 Cr.P.C. in its true and correct perspective. He relies on ***Maheshwar Tigga v. State Jharkhand (2020) 10 SCC 108***. It is also stated that unless demand is proved, no offence under Section 5(2) of P.C. Act can be said to have been made out against accused. In this regard he has place reliance on ***G.V.Najudiah v. State (Delh), 1987 Supp. SCC 266*** and ***Selvaraj v. State of Karnataka, (2015) 10 SCC 230***. It is also stated that complainant deposed that Rs.10,000/- was given to appellant in kitchen, which is separate from residential house of appellant, whereas PWs, Mohammad Shaban Reshi and Bilal Ahmad Wani, who were accompanying complainant, in their statement, have deposed that the amount was paid inside the residential house. Contradictions are at galore in prosecution story. Learned counsel also states that if two views are possible on appraisal of evidence the benefit of reasonable doubt has to be given to the accused by the Appellate Court. In this regard he has relied upon ***Mandi v. State of West Bengal, 1995 Cr.LJ 2659***.

17. On the other hand, learned counsel for respondents has stated that prosecution has proved the case set up by it before the Trial Court. Prosecution adduced the evidence which proved that accused demanded the bribe from complainant and there is demand and acceptance of bribe which has been established by prosecution

during trial before the court below and accused failed to discharge burden to rebut. It is stated that accused by abuse of his official position as public servant under Section 5(1)(d) read with Section 5(2) of P.C.Act and section 161 RPC, demanded and accepted the bribe.

18. It is pertinent to mention here that this Court as an Appellate Court, in an appeal against conviction, has the duty to appreciate the evidence on record and if two views are possible on assessment and evaluation of evidence, the benefit of reasonable doubt has to be given to an accused inasmuch as it is not correct to suggest that the Appellate Court cannot legally interfere with the order of conviction where the Trial Court has found the evidence as reliable and that it cannot substitute the findings of the Sessions/Special Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. This is what has been held by the Supreme Court in Lal Mandi v. State of W.B. (supra); relevant portion thereof is beneficial to be reproduced hereunder:

> "To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made in Tota Singh's case, which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of accused which gets

> strengthened on his acquittal is not available on his conviction. An appellate court may give every reasonable weight to the conclusions arrived at by the trial court but it must be remembered that an appellate court is duty bound, in the same way as the trial court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence. The High Court failed to do so and its view is patently erroneous. Though this Court does not generally reappraise the evidence which has been considered by two courts below in an appeal by special leave but since the consideration of the evidence by the High Court was not proper, we have ourselves analysed the evidence on the record with the assistance of learned counsel for the parties"

19. In the above backdrop, analyzation of prosecution witnesses is must. Prosecution witness no.1, when was put to cross-examination before the Trial Court, admitted that he had filed a civil suit in District Court, Shopian, challenging stoppage of supply. He has even stated his suit was dismissed and thereafter he filed a writ petition in which he challenged the order of diverting of ration. The Trial Court appears to have not taken into account the fact that complainant/PW1, during cross examination, accepted and admitted that he had filed a civil suit as also writ petitions, in which he had arrayed accused/appellant as party respondent/ defendant, but in these proceedings, PW1 did not make a miniature averment as to any sort of demand of illegal gratification by accused. In his statement, it is even deposed by PW1 that villagers had filed complaint against him. He also stated that he did not know whether any committee was constituted by CAPD, which visited the village for verifying complaints against him. PW1 also stated during cross-examination that he did not know whether

accused had furnished the report against him on 23rd February 2009 that his licence may be cancelled.

20. Prosecution witness no.2 stated on cross-examination that before the day of occurrence the accused had not demanded money from complainant. He also stated that he did not know on which Sunday of which month of the year 2009, he visited the residence of accused along with complainant and whether that Sunday was of month of February, March or April 2009 and that in his statement recorded under Section 164-A Cr.P.C., it is not written that complainant had passed on the money to Mohd Shaban Reshi which is written in the statement.

21. PW3 stated, during cross-examination that he did not know what was the month and date when he visited the residence of accused and that he has heard the statement recorded under Section 164-A Cr.P.C. and it is not incorporated in the statement that accused had demanded bribe money from the complainant in his presence as he had stated in his statement under Section 164-A Cr.P.C. that accused had told him to come to AD office for collecting the report.

22. PW5 stated that fair price shop which was allotted complainant was not functional during his posting and government had opened a ration outlet shop and that there was a complaint against complainant lodged by consumers and enquiry committee had also submitted the enquiry report.

23. Worth to be seen is the statement of PW6. In examination-in-chief, the witness stated that villagers were divided in two factions and

one party got diverted the fair price shop to some other place by using influence. In cross-examination, witness stated that he has no knowledge about any enquiry which was conducted about allegations against complainant and that he was supporting complainant and did not know which political party was supporting the other faction of villagers.

24. Another prosecution witness no.9 on cross examination stated that 90% villagers were against complainant and that file, which was shown to him, contained allegations against complainant.

25. PW10 stated during cross examination that the record which was shown to him in the court was regarding the complaints of consumers against complainant and that the report of supervisor, the complaints of consumers were found correct.

26. PW11, who investigated the case, during cross-examination, stated that whatever he had seized as a evidence in case column no.8 in FIR is blank and that it is not indicated that why complainant had given information at a belated stage. He also stated that the statement of complainant under Section 164-A Cr.P.C. is also silent about the same and so no reason has been given and that it is indicated in the written report of the complainant that accused had not forwarded or submitted the report but it is not indicated that why he had lodged FIR at a belated stage and there is no mention in challan about the delay of four months in lodging the complaint.

27. PW12 stated that no specific date about the demand or acceptance of bribe has been mentioned in the challan, but month of May/June 2009 has been mentioned for demand/acceptance of the bribe.

28. The Trial Court has also not appreciated the fact that PW3, who claimed to have accompanied complainant to the residence of accused, to allegedly give the bribe money to accused, was not knowing or mentioned the month and date of demand and acceptance of bribe. There is no corroboration of prosecution story when analyzed in the context of statements of prosecution witnesses. From the above discussion the very foundation of prosecution case is shaken to a great extent. The question of demand and acceptance of any bribe amount, muchless recovery of the same from the person of the accused, ought to have been taken note of by the Trial Court along with other material circumstances, one of which is the question whether any demand was at all made by appellant for the bribe.

29. It is pertinent to mention here that there is no denial to the fact that there had been complaints against complainant by the villagers, which fact has even been admitted and accepted by the prosecution witnesses. In ***A. Subair v. State of Kerala, (2009) 6 SCC 587***, the Supreme Court has laid down that illegal gratification has to be proved like any criminal offence and when the evidence produced by prosecution has neither quality nor credibility, it would be unsafe to rest the conviction on such evidence. The Supreme Court while recording acquittal, has laid down thus:

> "Mere recovery of currency notes (Rs. 20/- and Rs.5/-) denomination, in the facts of the present case, by itself cannot be held to be proper or sufficient proof of the demand and acceptance of bribe. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. It is true that the judgments of the courts below are rendered concurrently but having considered the matter thoughtfully, we find that

> the High Court as well as the Special Judge committed manifest errors on account of unwarranted inferences. The evidence on record in this case is not sufficient to bring home the guilt of the appellant. The appellant is entitled to the benefit of doubt."

30. In ***State of Kerala v. C. P. Rao, (2011) 6 SCC 450***, the Supreme Court has laid down that recovery of tainted money is not sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe. In ***G.V. Nanjundiah v. State (Delhi Admn.), 1987 Supp. SCC 266***, it was laid down that the allegation of bribe taking should be considered along with other material circumstances. Demand has to be proved by adducing clinching evidence.

31. In the present case, the Trial Court has miserably failed to appreciate the case in its right perspective. The record available before the Trial Court speaks volumes about the complainant inasmuch as the story of prosecution is based on assumptions and presumptions.

In reiteration of the golden principle that runs through the web of administration of justice in criminal case, the Supreme Court in ***Sujit Biswas v. State of Assam, (2013) 12 SCC 406***, has held that suspicion, however grave it may be, cannot take place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the

Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case as well as the quality and credibility of evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt but a fair doubt that is based upon reason and common sense.

32. Perusal of the material in the present case on the file as also the Trial Court record, when analyzed on the touchstone of legal principles insinuated hereinabove, leaves no manner of doubt that the prosecution in the instant case has failed to prove clearly and explicitly the demand of illegal gratification and, resultantly, the appeal deserves to be allowed and impugned judgement and order recording conviction and sentence of appellant/accused person deserves to be set-aside.

33. For the foregoing reasons, the Appeal is **allowed**. The conviction of appellant/accused person recorded by the learned Trial Judge in connection with commission of the offences punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and Section 161 RPC in case FIR No.26/2009 of Police Station VOK, is **set-aside**. The appellant/accused is ordered to be acquitted.

34. Trial Court record be sent down.

(Vinod Chatterji Koul)
Judge

Srinagar
31.01.2024
Ajaz Ahmad, Secy

Whether approved for reporting? Yes.