Raj Pal Vs. State

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Court : Delhi

Decided On : Jul-01-2014

Judge : G. S. Sistani

Appellant : Raj Pal

Respondent : State

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 432/2006 Judgment Pronounced on :

1. t July, 2014 % RAJ PAL Through : ..... Appellant Mr.Siddharth Aggarwal, Mr.Gautam Khazanchi & Mr.Vaibhav Sethi, Adv. versus STATE Through : ..... Respondent Mr.Feroz Khan Ghazi, Adv. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J.

1. The present appeal has been filed against the judgment dated 20.05.2005 passed by the Special Judge, Delhi and the order on sentence dated 22.05.2006 by which the appellant has been convicted under Section 7 and Section 13(2) of the Prevention of Corruption Act 1988. Under Section 7 the appellant has been sentenced to undergo rigorous imprisonment for a period of two years along with fine of Rs.7,000/- and in default of payment of fine to undergo simple imprisonment for a further period of three months. Under Section 13(2), the appellant has been sentenced to undergo four years rigorous imprisonment along

with fine of Rs.8,000/- and in default of payment of fine to undergo four months simple imprisonment.

2. The factual matrix of the prosecution case as revealed from the complaint dated 13.01.1987 of Shri Krishan Kumar S/o Sh.Chandgi Ram R/o Village Naya Bas, PS Narela, Delhi-82 which when translated reads as under:

I reside at the above mentioned address along with my children and I do agricultural work. I and my partner had purchased two acres of land in our village from Sh.Om Prakash and other about six months ago vide registered documents and about one month ago I had given an application for mutation of above land in my name and in this regard, I had met Halqa Patwari Rajpal many times and Patwari Rajpal demanded from me bribe of Rs.5,000/- for mutating the above land in my name and I have been told by Patwari Rajpal to bring Rs.2,500/- today at 2:00 p.m. in his office and my work would be done and Rs.2,500/- has to be paid by me to Patwari Rajpal after the above land is mutated in my name. I am against giving bribe but out of helplessness I have agreed to give bribe and so I have come to this office. I and my family does not have any enmity with Patwari Rajpal nor I owe any money to Patwari Rajpal. I have brought the bribe amount of Rs.2,500/-. Action be taken. I have heard my statement and the same is correct.

3. On the above said complaint, pre-raid proceedings were drawn and the raid was conducted and after successful completion of the raid, FIR No.4/97 was registered, the accused was arrested and after completion of the post-raid proceedings and the investigation, challan was filed in the Court u/S. 7/13 of the Prevention of Corruption Act, 1988. Accused was summoned and copy of the challan was supplied to him and thereafter the accused was heard on the point of charge and on 07.03.2002 charge u/S. 7, u/S. 13(1)(d) and u/S. 13(2) of the Prevention of Corruption Act, 1988 was framed against the accused Rajpal to which he pleaded not guilty and claimed trial.

4. During the trial, the prosecution has examined seventeen witnesses. Sh.Krishan Kumar PW-5 is the complainant of this case and Sh.Karamvir Singh PW-8 is the panch witness. Inspector Suresh Chand Sharma PW-15 is the main/star witness along with one official witness Sh. Ram Kumar, Kanungo (PW10).

5. Accused Rajpal in his statement u/S. 313 Cr.P.C. has denied the prosecution case and has stated as under:

I am innocent. Nothing was recovered from me nor I had accepted any bribe money from complainant Krishan Kumar. I had gone to the bus stand to see off one of my friend and when after seeing him off, I was returning to my office and reached near petrol pump, the complainant Krishan Kumar came there and he thrust the said GC notes and threw them on the ground immediately. The complainant made noise and attracted the police personnel in the Gypsy. He took the GC notes from the ground and handed over those GC notes to the police personnel in the Gypsy. In the meantime, the other members of the raiding party along with panch witness also arrived there. I was made to sit in the jeep and was taken to Anti Corruption Branch office and there this false case was fabricated against me.

6. Counsel for the appellant submits that the prosecution has failed to establish the foundational facts and thus on this ground alone the appeal is liable to be allowed.
7. Counsel for the appellant submits that the impugned judgment is contrary to the law and facts established. There is no legal evidence against the appellant justifying his conviction in the present case. It is also the case of the appellant that the Trial Court erred in law by convicting the appellant under Section 7 and under Section 13(2) of the Prevention of Corruption Act 1988.

8. Mr.Aggarwal, counsel for the appellant submits that ingredients of acceptance of alleged bribe was not proved beyond reasonable doubt by the prosecution. The trial court failed to appreciate that even the complainant, PW-5 did not support the case of the prosecution on material points. This witness was declared hostile and cross-examined by the learned APP. It is thus contended that since the said witness has made inconsistent statements at different stages of examination, as such his testimony is unreliable and unworthy of credence and on the basis of his statement order of conviction could not have been based. It is also contended by counsel for the appellant that even the Panch witness, PW8 has not supported the version of the prosecution on material points. PW-8, Sh.Karambir Singh, who was an officer from the Irrigation and Flood Control Department, was an independent

witness. Counsel for the appellant strongly relied on the evidence of this witness and more particularly wherein he has testified that he was informed by his senior officer that an innocent person had been implicated. The portion of this testimony relied upon by counsel for the appellant reads as under:

I had informed my senior officer that on the previous date anti-corruption branch official had falsely implicated an innocent person who had not demanded any bribe and the complainant himself had put the money in the shirt pocket of the accused.

This fact deposed by an independent witness of the prosecution, went a long way in proving the innocence and false implication of the appellant.

9. It is thus contended that implicit reliance should not have been placed on the sole testimony of the raid officer, PW-15, to hold the appellant guilty. It is contended that the testimony of PW-15, raid officer was not only full of contradictions, but his evidence was not corroborated by the evidence of any other witnesses.

10. Mr.Aggarwal, next submits that the ld. trial court failed to appreciate that the version of the complainant was not plausible as the complainant is alleged to have paid bribe to the appellant who was working as Patwari at the relevant time for the purpose of mutation of the land purchased by him in 1994. The responsibility of getting mutation done was of the Tehsildar or Kanungo and not of the Patwari. As such, the story of the complainant does not inspire confidence. Reliance is placed on the deposition of PW-10 Rajkumar, Kanungo, DC Office, which reads as under:

The application for mutation is moved before the Tehsildar and then the same is marked downward to Kanungo after registering the same and by mentioning the application number etc. It is correct that no application was given to Patwari for mutation.

11. Attention of the court is drawn on para 13 of the Impugned judgment, which reads as under:

It is true that legally and officially, the application for mutation has to be made to the Tehsildar concerned who marks the same to Kanungo concerned and legally

application for mutation does not lie before the Patwari. But this does not stop the Patwari from unofficially taking the application for mutation and getting it officially processed for consideration.

12. It is contended by Mr.Aggarwal that such a finding is based on conjectures and is not supported by any material on record and the Ld. Trial Court has proceeded with a fixed notion to convict the appellant and then has tried to build the imaginary evidence to support the same, which is not permissible in law. Once it was held that the application for mutation was not to be moved before the Patwari, this fact, in itself, was sufficient to discredit the case of the prosecution regarding alleged demand of bribe for a work which was not within his domain or jurisdiction.

13. Mr.Aggarwal also submits that the Ld. Trial Court failed to appreciate that there was no demand proved in the case, which is an essential ingredient for conviction in a Prevention of Corruption Act case. The complainant in his cross examination by the Ld. APP, stated that the application for mutation was moved by him on 10.9.96. Firstly, this was not borne out from the record produced by PW-10, Sh.Raj Kumar as it did not contain an application by the complainant dated 10.9.96. The record showed that there was only one application for mutation moved by Krishan Kumar dated 15.7.97 which was after the date of alleged raid / incident. Therefore, the theory of an application for mutation being moved prior to the raid and the story of any bribe being demanded therefor by the appellant becomes impossible or at least improbable. Secondly, the Ld. Trial Court failed to appreciate that the appellant has duly proved on record that he was on leave from 31.8.1996 upto 14.9.1996 while as per evidence of the complainant, the application was submitted by him on 10.9.1996 which is not borne out from the record produced. Being on leave, there could have been no occasion for the appellant to either accept the application or to demand bribe from the complainant for a purported work of which he had no jurisdiction. This crucial fact has been lightly brushed aside by the ld. Trial Court.

14. It is also urged before this court by counsel for the appellant that the ld. Trial Court erred in holding in para 14 of the impugned judgment as under:

Therefore, the fact of accused being on leave on 10.9.1996 and thereafter on 30.9.1996 is of no consequence because it cannot be said with certainty by the complainant or any prudent person after such along time gap as to on which specific date, the application for mutation was given to the accused because no such application has been officially received as per revenue record Exhibit PW-13/A. Otherwise also, it cannot be said with authority that corrupt Government servant on leave would not come to his office to collect the bribe when on leave.

15. Mr.Aggarwal submits that in case, the specific date when the application for mutation was given by the complainant, was not clearly brought on record beyond reasonable doubt during trial, the said fact was fatal for the entire prosecution case since the case revolved around the alleged bribe demanded for allowing the application for mutation. The ld. Trial Court further erred in holding that the factum of accused being on leave on the relevant dates was of no consequence and further based on conjectures held that the appellant would have come to the office to collect the bribe despite being on leave.

16. Mr.Aggarwal next contends that the date of purchase of land by the complainant is also shrouded in doubt. In his examination-in-chief, PW5, Shri Krishan Kumar stated that he purchased the land in 1997. He further stated that the application for mutation was moved by him after about 1 years of the purchase of land. This would bring the date of moving the application for mutation to 1998 or afterwards, whereas the present case pertains to January, 1997. Thereafter, in the cross- examination by the ld. APP, the said witness stated that he had moved an application for mutation on 10.9.96. The two dates 1997 and September, 1996 cannot be reconciled as the complainant could not have applied for mutation before purchase of land. The complainant thereafter, changed the version to state that he had purchased the land in the year 1994. If the date of moving application by the complainant, for the sake of argument is taken to be 10.9.96, then the ld. Trial Court failed to appreciate that the complainant (PW-5) could not explain the gap of two / three years between purchase of land in question by him and moving an application for seeking mutation in his name, which factor made the entire prosecution story doubtful.

17. Lastly it is contended by Mr.Aggarwal that the ld. Trial Court failed to appreciate that the complainant (PW-5) as well as Panch witness (PW-8) did not support the post-raid report Ex.PW-5/C, which fact completely demolished the prosecution theory regarding acceptance of bribe. Even otherwise there are material contradictions in the evidence of PW-5, PW8 and PW-15 which go to the root of the matter and thus the evidences of all the three witnesses are unreliable and not trustworthy.

18. Per contra, Mr.Ghazi, learned counsel for the State, submits that the prosecution has been able to establish its case beyond any shadow of doubt. Counsel further submits that there is no dispute that the appellant was a Patwari at the relevant time, he was apprehended at the spot and currency notes were seized from his possession. It is further contended that there was no dispute that a complaint was filed by PW-5 and he identified his signatures on the pre-raid proceedings (PW-5/B). It is also the contention of the learned counsel for the State that there is no contradiction between the case of the prosecution and statement of PW-8, who is the panch witness, who has admitted his signatures on post-raid proceedings (PW-5/C).

19. Mr.Ghazi contends that the appellant cannot gain any advantage on account of the collusion between the complainant, PW-5, and the panch witness, PW-8, who resiled from their statements. It is further contended that it is a settled position of law that the portion of the evidence, which is reliable and undisputed, can be relied upon to record a finding of conviction against an accused person, which according to learned counsel for the State the trial court has done. It is next submitted that the trial court was well within its right to evaluate the evidence, which was placed on record.

20. Reliance is placed on Ram Chander v. State (Govt. of NCT of Delhi), reported at 2009 CRL.L.J.

4058, more particularly para 23 by learned counsel for the State, to show that in order to prove the demand of money, the testimony of the complainant as well as from the complaint made by him, if proved in accordance with law, can be relied upon. Relevant portion of para 23 reads as under:

23. Thus, the legal position which emerges regarding appreciation of evidence in a trap case can be summarized as under:

21. (i) To succeed in such a case, the prosecution is obliged to prove the previous demand of bribe, its acceptance and the recovery of the tainted money; (ii) The demand can be proved by the testimony of the complainant as well from the complaint made by him if proved in accordance with law. It is further contended by Mr.Ghazi, that the complainant has not supported the case of the prosecution but his complaint stands duly proved as he has himself admitted his signatures on the complaint.

22. Strong reliance has been placed by counsel for the State on the testimony of PW15, who is the raiding officer. It is contended that the evidence of PW-15 is reliable and trustworthy and once the Court has come to such a conclusion, the evidence of PW-15 alone can be a ground to convict the appellant. It is further submitted that the evidence of PW-15 finds support from the documents as also the statement of PW-5 which was recorded at the stage of pre-raid proceedings. It is next contended that PW-5 and PW-8 were won over by the appellant, which is evident from the observations made by the trial court and in fact on account of the deliberate dissuading version of the prosecution, the trial court had decided to proceed against them under Section 344 of the Code of Criminal Procedure. It is also contended that there is no bar to pass an order on conviction on the sole evidence of the raiding officer provided his evidence is trustworthy and reliable. In this case according to learned counsel for the State the evidence of the raiding officer is trustworthy and thus the trial court has rightly relied upon the same.

23. Learned counsel for the State submits that simply to say that Patwari does not carry out the mutation, and, thus, the allegations made against the petitioner are false, is without any basis as although the mutation is to be carried out by the Tehsildar, the Patwari plays a very vital role and the file has to be passed through him.

24. Another submission made by learned counsel for the State is that the appellant has in its statement under Section 313 Cr.P.C. failed to give any explanation as to why he would be falsely implicated by the raiding officer. Counsel further submits

that perusal of the statement under Section 313 Cr.P.C. would leave no room for doubt that the currency notes were handed over to the appellant and also the presence of the panch witnesses. It is thus contended that the appeal of the appellant is without any merit and the same is liable to be rejected.

25. I have heard counsel for the parties and carefully examined the evidence and documents placed on record.

26. The case of the prosecution was that the appellant was a Patwari in BDO Office, Patwar Khana, Alipur, Delhi. It is alleged that Shri Krishan Kumar (the complainant) PW-5 purchased two acres of land in the year 1994 and on 10.09.1996 gave an application for mutation of the said land in his name to the appellant and further met the appellant on 20.09.1996 in relation to the same. Further as per the prosecution that after submission of the application for mutation the complainant(PW-5) met the Patwari i.e. the appellant on 13.01.1997, who demanded bribe of Rs.5,000/- for doing the mutation. The appellant asked the complainant to pay a sum of Rs. 2,500/- on 13.01.1997 afternoon and the remaining sum of Rs.2,500/- after the mutation is done. On 13.01.1997, the Complainant/PW5 approached the anti corruption department and a complaint dated 13.01.1997 was registered, after which the pre-raid proceedings were drawn and a raid was conducted. After the completion of the raid, FIR bearing No.4/97 was registered and the appellant was arrested.

27. The appellant had taken the stand that he is innocent and had not accepted any bribe money. On 13.01.1997, he had gone to the bus stand and while returning to his office when he reached a petrol pump, complainant Shri Krishan Kumar came to him and thrust some notes in his pocket, which he threw on the ground. He further averred that after he threw the money on the ground, the complainant made noise and called the Police, and that the complainant then picked up the notes lying on the ground and handed it to the police personnel. The appellant was arrested and taken to the anti-corruption Branch.

28. It may be noted that PW10 (Kanungo) testified regarding the process of mutation and the fact that the applications are to be made to the Tehsildar. No role was ascribed to the Patwari regarding the process of mutation. The accused also

took the stand in his statement under Section 313 Cr.P.C. that he has no role to play in an application for mutation since the application is made to the Tehsildar concerned who marks the same to the Naib Tehsildar or office of the Kanungo. A Patwari, such as the appellant only comes into the picture if and when called upon to submit a report by the office of the Kanungo.

29. The defense examined the Revenue Record Clerk, Smt. Madhu Gupta (DW1) to show that on 10.09.1996 (when the application for mutation was submitted by the Complainant/PW5 to the appellant), the appellant was actually on leave. The appellant was on leave even on 30.09.1996 when the complainant claims he met the appellant in his office with regard to the said mutation.

30. The first submission of counsel for the appellant is that the prosecution has failed to establish the foundational facts in this case. In the case of State of Maharashtra v. Dnyaneshwar Laxman Rao, reported in (2009) 15 SCC200 the Apex Court has held as under:

7. Allegedly, nearabout the Veterinary Hospital, on demand of the amount of bribe by the respondent, the same was paid. He was apprehended by the raiding party. Upon obtaining sanction for the prosecution of the respondent, a case under Sections 7 and 13(1)(d) was initiated against him. The respondent entered the plea of innocence. Charges were framed against him.

16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of

the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

31. Careful examination of the evidence shows that the prosecution has failed to prove that the complainant made any application for mutation prior to the registration of the present case in the office of the Tehsildar or even to the appellant.

32. Complainant/PW-5 in his first 161 statement on the basis of which the complaint dated 13.01.1997 came to be registered, has stated that he purchased the land 6 months ago and gave the application for mutation one month ago. Whereas in his supplementary statement dated 02.01.1999 he states that he purchased the land in 1994 and applied for its mutation on 10.09.1996 to the appellant. When PW-5 stepped into the witness box on 23.03.2005, he testified that he purchased the land sometime in 1997 and gave an application for mutation a year and a half after purchasing the land. But on the same day in the post lunch session, PW-5 testified that he actually gave the application to the appellant in 1996 but he did not keep a copy nor was any receipt given. Thereafter PW-5 was declared hostile and cross-examined by the learned PP, during which he stated that he had purchased the land in 1994 and not 1997.

33. Subsequently on 23.05.2005, while being cross-examined by the learned PP, PW-5 suddenly remembers 03.01.1994 as the date on which he purchased the land. It may be noticed that the prosecution had accepted the version of the complainant and the date of application was accepted as 10.9.1996. The official record produced by DW-1 shows that the edifice of the prosecution case is false inasmuch as the appellant was on leave on this date and for about two weeks.

34. Evidence of PW-10, who is the kanungo produced the original register regarding applications for mutation (Ex.PW-13/A) which will clearly shows that there exists no application for mutation dated 10.09.1996 in the name of the Complainant. The only application in the name of the Complainant is dated 15.07.1997, which is 6 months after the date of the incident.

35. While the complainant PW-5 is categorical in asserting he submitted the application to the appellant on 10.09.1996 in his office, the appellant has led defence evidence to show that he was actually on leave on 10.09.1996 and the same has not been rebutted by the prosecution.

36. PW-10 who is a prosecution witness has testified that an application for mutation is never made to an officer of the nature of the appellant i.e. a Patwari. It is further explained by the appellant in his examination under Section 313 that an application for mutation is made to the Tehsildar concerned and is further marked to the Kanungo following the due process. It is not the case of the prosecution that PW-5 had made the application to the Tehsildar, who had marked the same to the Kanungo, who had in turn called for any sort of report from the Patwari concerned.

37. In view of the statement made by the complainant under Section 161 Cr.P.C. and the evidence recorded in court along with the evidence of PW-10, it cannot be said that the prosecution has been able to prove the basic and foundational facts in this case.

38. It has been strongly urged before this Court that there are material contradictions in the evidence of PW-5 i.e. the complainant, PW-8, the independent witness and PW-15, the panch witness.

39. The evidence of PW-5, PW-8 and PW-15 has been carefully examined. As per PW-5, he visited the office of the accused between 1:00 and 1:30 p.m. waited for him and went for searching him at 2:30 p.m. Further according to this witness since the appellant was not present in the office he alone went to search for him and found him at a nearby petrol station. In the cross-examination, he goes on to state that he reached the office of the appellant at 2:30 p.m. and even up to 4:00 p.m. the appellant did not turn up. While according to PW-8, he reached the office of the appellant with PW-5 at 12:30 p.m. waited for him for an hour, when the appellant came back. As per PW-15, he reached at Patwaris office at 1:40 p.m.; raid team was informed by PW-5 and PW-8 went back to the office of the appellant thinking that he might have come back.

40. It may also be noticed that while PW-5 has stated that he met the appellant near the petrol pump when he was coming back he put the money in the shirt pocket of the appellant. He also deposed that the appellant did not touch the notes and only threw them out of his pocket, seeing the police gypsy nearby. PW-8 had a different story to tell, as according to him he and PW-5 entered into the office of the appellant, upon which PW-5 put the money in the pocket of the appellant, which he immediately threw out. While PW-15, who possibly could not have had personal knowledge as to what happened inside the office before he received the signal, has deposed that the appellant himself took out the notes from his pocket on his instructions i.e. PW-15 he was apprehended and caught red handed.

41. There is also material contradictions with regard to the spot where the proceedings took place. While PW-5 has testified that no proceedings took place at the spot where the appellant was apprehended; and the proceedings of hand wash, shirt wash and documentations were made at the Old Secretariat. According to PW-8 after raid the appellant was brought back with PW-5 to the ACB office, however, as per PW-15, all proceedings after trap took place at the spot i.e. hand-wash, shirt-wash and all documents. The contradictions in the evidence of PW-5, 8 and 15 would show that there is no consistency between the complainant, independent witness and the raid officer, even as to the time and place of raid. There is no conclusive evidence as to whether the money was handed over in the office of the appellant or in the open area near the petrol pump, as per the testimony of the complainant, PW-5.

42. PW-5 has claimed to have been alone and near a Petrol Pump when he thrust the money in the pocket of the accused. PW-8 claims that it was thrust forcibly in the office of the appellant in front of him and the appellant was falsely implicated. Therefore even the independent witness and the complainant have deposed in complete contradiction to each other. In such a case, the Raid Officer PW-15 cannot claim to have known what happened when he was not present when the alleged transaction took place and hence the prosecution cannot claim to have proved either demand of any illegal gratification nor acceptance of the same.

43. Even recovery of the GC notes from the appellant has not been proved in accordance with law as it is PW-5s own case that he picked up the money from the floor and handed it over to the police whereas the Raid Officer/PW-15 claims that the appellant himself took out the money out of his shirt pocket on being challenged.

44. In the case of Surja Mal Vs. State (Delhi Administration) reported at (1979) 4 SCC725 it was held as under:

. In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Moreover, the appellant in his statement under Section 342 has denied the recovery of the money and has stated that he had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement Under Section 342 Cr. PC. Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. We, therefore, allow the appeal, set aside the conviction and sentences passed against the appellant. The appellant will now be discharged from his bail bonds.

45. It would be useful to reproduce the observations made by the Supreme Court of India in the case of Banarasi Dass v. State of Haryana, reported at (2010) 4 SCC450wherein the Apex Court has reiterated that the conviction of the accused cannot be founded on the basis of inference and offence should be proved against an accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence:

19. The above findings recorded by the High Court show that the Court relied upon the statements of PW-10 and PW-11. It is further noticed that recovery of currency notes Ex. P-1 to P-4 from the shirt pocket of the accused, examined in light of Ex. PC and PD, there was sufficient evidence to record the finding of guilt against the

accused. The Court remained uninfluenced by the fact that the shadow witness had turned hostile, as it was the opinion of the Court that recovery witnesses fully satisfied the requisite ingredients. We must notice that the High Court has fallen in error in so far as it has drawn the inference of demand and receipt of the illegal gratification from the fact that the money was recovered from the accused.

20. It is a settled canon of criminal jurisprudence conviction of an accused cannot be founded on the inference. The offence should be proved against the beyond reasonable doubt either by direct evidence or Crl.A.432-2006 that the basis of accused circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, P-10 and P-11 were neither the eye- witnesses to the demand nor to the acceptance of money by the accused from Smt. Sat Pal Kaur (PW-2).

21. It is unfortunate but true that both PW-2 and PW-4 made statements before the Court which were quite different from the one made by them before the police during the investigation under Section 161 of the IPC. Gurmej Singh (PW-4) completely denied the incident and refused to acknowledge that the sum of Rs. 900/only was demanded by the accused from PW-2 in his presence and that the money was accepted in the Patwar-khana by the accused. PW-2 obviously has not stated the complete truth before the Court. Though after being declared hostile in her cross-examination she has supported some part of the prosecution case, but she has virtually denied the essential ingredients to bring home the guilt of the accused either under Section 5 (2) of the Act or under Section 161 of the IPC. She seems to have forgiven the accused for making such a demand and made such a statement before the Court that the Court should also ignore the offence.

22. We are not and should not even be taken to have suggested that PW-10 and PW-11 have not made correct statement before the Court or that the Court has disbelieved any part of their statement. But, fact of the matter remains that their statement with regard to demand and acceptance is based on hearsay i.e. what was told to them together by PW-2 and even by PW-4 at that stage. The money

was certainly recovered from the pocket of the accused vide memo Ex. P-D. We, therefore, do not accept the contention on behalf of the accused that the amount was not recovered and the recovery is improper in law. Ex. P-D has duly been attested by witnesses. Thus, it cannot be said that the recovery from the pocket of the accused is unsustainable in law and is of no consequence.

23. To constitute an offence under Section 161 of the IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5 (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused.

24. In the case of M.K. Harshan v. State of Kerala [1996 (11) SCC720, this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under : "8. ..... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable".

46. In this case, neither the complainant nor the panch witness has supported the case of the prosecution. The trial court has convicted the appellant on the basis of evidence of PW-15 taking into consideration that the evidence of the trap witness can be relied upon even without corroboration if it inspires confidence.

47. In this case, however, I find that the prosecution has failed even to establish the fundamental facts as the evidence brought on record would show that no application filed by the complainant for mutation was available in the record prior to the date of the incident and in fact an application was available post the date of incident i.e. 15.7.1997, an aspect which goes to the root of the matter. The date when the application was filed before the appellant has also not been proved as the official record produced shows that the appellant was on leave on the said date for a period of approximately two weeks. The material contradictions with regard to time, place of the raid and how the money was handed over along with the fact that the appellant being tehsildar was not directly responsible for carrying out mutation, thus, relying solely on the evidence of PW-15 would not be safe to sustain the order of conviction. Accordingly, present appeal is allowed. The appellant is already on bail. Let bail bonds be cancelled. G.S.SISTANI, J JULY01 2014 ssn/msr