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Ramesh thete Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Dec-21-2009

Reported in : 2010(1)MPHT408

Judge : Rakesh Saksena and ;K.S. Chouhan, JJ.

Appellant : Ramesh thete

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

Rakesh Saksena, J.

1. Appellant has filed this appeal against the judgment dated 12-4-2007, passed by Special Judge (Prevention of Corruption Act), Bhopal, in Special Case No. 06/2005, convicting him under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentencing him to Rigorous Imprisonment for two years and fine of Rs. 5,000/- and Rigorous Imprisonment for two years and fine of Rs. 5,000/-, on each count respectively.

2. Facts of the case are that on 18-2-2002 and before, appellant Ramesh Thete, IAS, was posted as Director, Employment and Training, at Jabalpur. Complainant N.R. Borle was posted as Incharge Principal of the Industrial Training Institute,

Betul. It is undisputed that the appellant was a public servant. On 16-2-2002, complainant N.R. Borle made a complaint to Lokayukta that on 1-9-2001 he had withdrawn Rs. 1,72,372/- from the State Bank of India, Branch Betul, for distributing the salary of the employees, but the same could not be disbursed, as the accountant had gone on leave. Since there was no alternative, he deposited the aforesaid amount in his personal account in Nagrik Bank, Betul and as it was Sunday on 2-1 -2001, he took out the aforesaid amount from the Bank on 3-1-2001 and distributed the salary of the employees. Excess cash was kept in the cash box with the accountant of the Institution. Some persons made a complaint against him to the effect that he had misused the Government money. An enquiry was ordered by the Collector. Sub Divisional Magistrate, Betul conducted the enquiry, but found nothing against him. However, it was held that he should not have deposited the aforesaid amount in his personal account. On 1-2- 2002, accused made a phone call to him saying that he would suspend him. He summoned him to Jabalpur. On 6-2-2002, when he met accused at his residence, he told that he had issued a notice to him and that he should arrange Rs. 1 lac, otherwise he will have to face the consequences. He further asked him to bring Rs. 1 lac, from Kewate (P.W. 15) also. Again on 11-2-2002 and 13-2-2002 accused threatened him on telephone that if Rs. 1 lac is not given to him, he would be suspended. Since he did not wish to give the bribe and wanted the accused to be caught red handed, he managed an amount of Rs. 1 lac by obtaining loan from the State Bank of India, Branch Betul on 16-2-2002 and submitted a written complaint (Exh. P-7) to Superintendent of Police, Special Police Establishment, Bhopal. Superintendent of Police, Lokayukta requisitioned two witnesses, viz., Dr. D.C. Pyasi, Veterinary Surgeon and Dr. Shrivastava. On 17-2-2002, complainant was asked to contact the accused on mobile phone for fixing the place for delivering the bribe money. This talk was arranged by way of conference and was recorded in a micro cassette recorder. Its transcript was prepared and seized vide seizure memo (Exh. P-10). Accused asked complainant to come to Bhopal on 18-2-2002 and meet him in Mantralaya, Vallabh Bhawan, Bhopal. Thereafter police registered a case under Section 7 of the Prevention of Corruption Act against the accused.

3. On 18-2-2002, a trap was arranged. The numbers of currency notes of Rs. 500/- denomination were noted by Dy. S.P., M.S. Nain (P.W. 21). Currency notes were treated with phenolphthalein powder and were kept in the pocket of complainant. He was given necessary instructions. A mini tape recorder was also provided to him with a direction to record the conversation taking place between him and the accused at the time of handing over the bribe money. Again, for fixing the place for giving the bribe money when complainant made a call to accused on his mobile phone, accused asked him to come to Hotel Nisarg situated in M.P. Nagar, Bhopal, where he was staying in Room No. 204. This conversation was again recorded and a transcript was prepared as memorandum (Exh. P-l 7).

4. Complainant went to Hotel Nisarg in an auto. The trap team followed him in a private vehicle. Complainant knocked the door of the room No. 204, which was opened by the accused. He went in the room and informed the accused that he had brought the money. Accused asked him that he had to bring Rs. 2 lacs. Complainant replied that Kewate did not give money, therefore, he brought only Rs. 1 lac. Accused, instead of taking money in his hand or speaking, indicated him by gesture to put the money on a stool kept the room. Accused then asked him to go and send his driver, viz., Yadav. Complainant went out and gave prearranged signal, on which members of the trap party went at the door of the room No. 204, which was closed from inside. Driver Yadav also reached there and ringed the bell. Accused opened the door and Dy. S.P., M.S. Nain (P.W. 21) and other members of the trap party entered the room. After introducing themselves, they washed the hands of the accused with sodium carbonate solution. The solution gave negative result. The tape recorder was obtained from the complainant and its transcript was prepared and translated in Hindi, as, according to the complainant, the conversation had taken place in Marathi. The memorandum of transcript was Exh. P-50. When Dy. S.P., M.S. Nain, removed the pillow kept on the stool, the bundles of currency notes were found kept on it. The numbers of the currency notes tallied with the preliminary memorandum. The pillow was washed with sodium carbonate solution, the solution turned pink. The currency notes were seized vide seizure memo (Exh. P-35) and the memorandum of the proceedings (Exh. P-42) was drawn. After seizing the documents, i.e., service record of the accused, records of the hotel etc. and after obtaining the requisite sanction from

the Government of India (Exh. P-77), charge-sheet was filed under Sections 7 and 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act.

5. Accused abjured his guilt and pleaded false implication. According to him, the employees of the Industrial Training Institute, Betul had made complaints against the complainant, which was enquired by Joint Director, R.N. Thakur and alongwith enquiry report dated 5-2-2002, a recommendation was sent to remove the complainant from the post of Incharge Principal. Therefore, apprehending his removal by the accused, complainant concocted a false case. He neither demanded bribe, nor he obtained or accepted the same. Complainant wanted to meet him personally for discussing the matter of transfer of some employees. After attending the meeting of Lok Sewa Samiti at Vallabh Bhawan, Bhopal, when he was in the hotel and was taking meals, complainant had come to meet him for discussing about the list of employees under transfer. When he came back from bathroom after washing hands, complainant asked his permission to go. He asked him to send his driver. After 15-20 minutes, when driver came and he opened the door, trap party entered the room and enquired about taking bribe from him. When he denied, members of the trap party washed his hands and picked up a pillow from the stool and found the bundles of currency notes. According to him, either complainant had placed the aforesaid money when he was in the bathroom for washing his hands or any member of the trap party had kept it, when his hands were being washed by the Dy. S.P.

6. To substantiate its case, prosecution examined 22 witnesses and exhibited the documents (Exh. P-1 to P-126). In his defence, the accused examined R.N. Thakur (D.W. 1), the then Joint Director, Industrial Training Institute, Bhopal, and exhibited the documents (Exh. D-1 to D-11).

7. Learned Trial Judge, mainly relying on the evidence of complainant N.R. Borle (P.W. 3), Dr. D.C. Pyasi (P.W. 6) and Dy. Superintendent of Police, M.S. Nain (P.W. 21), held the accused guilty and convicted and sentenced him as mentioned above.

8. Shri S.C. Datt, learned Senior Counsel for the appellant/accused submitted that the evidence of complainant N.R. Borle (P.W. 3) was wholly unreliable. The Trial

Court erred in holding that the demand of bribe by the accused was proved beyond doubt. Except the sole evidence of complainant, there was no corroborating evidence. The complainant entertained a grudge against the accused, as he apprehended action of his removal at his hands, as there were number of complaints by the employees against him and there was recommendations of his removal by the Joint Director of the Department. The evidence of tape recording of the conversation was itself disbelieved by the Trial Court, as no intelligible sounds were found in the tape recorded, when played before the Court. During the trap proceeding, no shadow witness was kept, who could have given the correct account of the conversation which took place between complainant and the accused. It was admitted by the complainant that he had written letter to MLA Mr. Daga about the transfer of employees of the Department without obtaining permission from the officers for the reasons that he suspected that accused would favour the employees, who opposed him. Counsel submitted that the seizure of money kept on the stool under a pillow indicated that the accused had not accepted the money and had no knowledge of the same. It could not be held that he was in conscious possession of the money. It was established that he did not touch the money even when he was all alone in the room, which was proved by the fact that the solution of the sodium carbonate did not turn pink when his hands were washed with. On the other hand, Shri Aditya Adhikari, learned Counsel for the SPE, Lokayukta, submitted that the evidence of complainant was wholly reliable. Since it was established that there had been a telephonic talk between complainant and the accused and it was categorically stated by the complainant that accused had made demand, it was established that accused made demand of bribe. Merely by seizure of currency notes from the stool, it could not be held that the money was not accepted by the accused. It was proved by the complainant that accused had asked the complainant to put the bundles of notes on the stool. According to him, the finding of conviction recorded by the Trial Court was fully justified.

9. We have heard the learned Counsel for the parties and perused the impugned judgment and evidence on record carefully.

10. Before us, learned Counsel for the appellant has not challenged the validity of the sanction order (Exh. P-77). This order was proved by Under Secretary Shri D.P. Khatri (P.W. 13). Admittedly, the accused was an I.A.S. Officer of M.P. Cadre and he could have been removed only by Government of India. The sanction order (Exh. P-77) was passed by the Under Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. It was by order and in the name of the President of India. After going through the sanction order, we find that the Union Government had granted valid sanction for prosecution of the accused. It is not disputed that at the relevant time the accused was a public servant.

11. Shri S.C. Datt, learned Senior Counsel, appearing for the appellant, submitted that the evidence of N.R. Borle (P.W. 3), bribe giver, was not reliable. He was an interested witness having grudge against the accused. There was no corroboration with regard to the alleged demand of bribe by the. accused and since the bribe money was recovered lying on a stool under the pillow even untouched by the accused, the explanation given by the accused that he was innocent and the money was planted by the complainant or any other member of the trap party appeared reasonable and probable. This was father reinforced by the fact that the hands of accused did not turn red when washed with chemical solution of sodium carbonate. He placed reliance on Ayyasami v. State of T.N. : AIR 1992 SC 644.

12. On examining the evidence of complainant N.R. Borle (P.W. 3) in respect to acceptance of bribe, we find that firstly when he made a call to accused, he called him at Mantralaya, Vallabh Bhawan and after some time when he again talked to him, he called him to the Room No. 204 of Hotel Nisarg. B.R. Vishwakarma (P.W. 2) Dy. Secretary of Technical Education and Training Department stated that on 18-2-2002 a meeting of Lok Lekha Committee was called in the Department of Education Mantralaya, Vallabh Bhawan. Accused and other officers of Technical Education were invited in the meeting. Meeting was held in the room of the Secretary, Technical Education. It appears quite improbable that the accused would have asked complainant to handover bribe money to him in Vallabh Bhawan where the meeting of officers was being held. It also seems unnatural that accused, who asked the complainant to bring money, did not take the money in his

hand and directed the complainant by gesture to put it on the stool without even touching it. According to complainant (P.W. 3), he twice asked the accused whether he should put the money on the table, but he did not speak and merely asked him to call Yadav, his driver. Admittedly, there was no shadow witness, who could have heard or seen what transpired between the accused and the complainant at that juncture. Though a micro cassette recorder was provided to complainant to record the conversation, taking place between him and the accused, but when the said cassette was played before the Court, except a noise of fan, nothing was found discernible. This throws a thick cloud of suspicion on the veracity of the evidence of complainant. Probably, because of the fact that there was a tape recorded, which was recorded the conversation going on in the room, the complainant gave the story that accused did not speak and only made a gesture. This part of his evidence finds no corroboration from any other piece of evidence. The transcript of the tape recorder, prepared by the trap party, cannot be accepted as a substitute of the tape recording itself.

13. Another fact, which goes against the prosecution, is that the hands of the accused were not found containing traces of phenolphthalein. According to complainant, when he left the room of accused and went to call driver Yadav, then, after receiving his signal, trap party came and he, Yadav and the members of the trap party asked the accused to open the door. As soon as door was opened and the trap party was introduced to accused, hands of accused were washed and the tape recorder was taken from complainant by the Dy. S.P., M.S. Nain (P.W. 21) and they all became busy in playing the tape recorder and preparing the script. The complainant got so busy that he even did not sign the final memorandum of the proceeding. After some time, the pillow was removed from the stool and the currency notes were found. It cannot be assumed that when complainant had left the room and accused had closed the door from inside, he would not touch the money and let it lie there where the complainant had kept the same. He would have certainly taken care of the money and kept it somewhere as soon as the complainant had gone and before he expected his driver to come. D.C. Pyasi (P.W. 6) stated that when he alongwith the trap party entered the room of the hotel and asked the accused about the bribe money, he did not say anything, then all the members of the trap party searched everywhere in the room and when Dr.

V.B. Shrivastava removed the pillow, they found two bundles of currency notes on a stool. Dr. V.B. Shrivastava, who is said to have removed the pillow, was not examined before the Court. Dr. D.C. Pyasi (P.W. 6) admitted that about 10-12 persons of the trap party had entered the room and they had not given their search before their entering the room. According to him, the complainant himself pointed out the place where the money was kept. There appears discrepancy in the evidence of this witness, at one place he stated that the members of the trap party searched for money at all places in the room whereas at another place he stated that the complainant pointed out where the money was kept. Similar statement was given by Dy. S.P., M.S. Main (P.W. 21). M.S. Nain admitted that though he had directed Dr. D.C. Pyasi (P.W. 6) to accompany the complainant when the money was delivered to accused and to hear the conversation, but Dr. D.C. Pyasi (P.W. 6) did not do it. He also admitted that after about half an hour after their entering in the room he asked about the bribe money and that before the pillow was picked up from the stool, the hands of members of the trap party and the complainant were already washed. This gives some idea about the gap of time between their entry in the room and actual recovery of money.

14. In Ayyasami (supra), the Apex Court observed:

We have heard learned Counsel for parties. There is no independent evidence to show that the appellant demanded Rs. 100/- as bribe from the complainant. The chemical solution did not inculpate him. The money was recovered from the drawer. There is no evidence apart from the complainant to show that the money was placed in the drawer by the complainant at the asking of the appellant. Under the circumstances we agree with.

15. Learned Counsel for the State placing reliance on B. Noha v. Slate of Kerala (2006) 12 SCC 277, argued that if the evidence shows that when complainant told to accused that he had brought the money, as directed by the accused, the accused asked him to take a cut and give the same to him and when it was proved that there was voluntary and conscious acceptance of money, there was no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It had only to be deduced from the facts and circumstances obtained in a particular

case. He further placed reliance on the case of State of A.P. v. Jeevratnam : (2004) VI SCC 488, where the complainant had booked a room and money was handed over to accused in the room of the hotel. In that case, complainant deposed that the accused asked whether he had brought the money demanded as a bribe, he then opened his bag and offered the marked currency amounting to Rs. 10,000/-, but the accused asked him to put the money into the briefcase and, therefore, he put the amount into the briefcase. Accused took the briefcase and was about to leave the room when he gave the prearranged signal and CBI nabbed the accused. In those circumstances, the Apex Court held that by the evidence it was clearly established that accused demanded and accepted the money.

16. In M.W. Mohiuddin v. State of Maharashtra : (1995) 3 SCC 567, also situation was somewhat similar. Accused had asked the complainant to wrap the money in the handkerchief and to keep the money so wrapped in a bag. Bag was kept on a col in front of room. Apex Court held that the accused had obtained the money as it was under the hold and control of the accused.

17. In all the aforesaid cases the testimony of complainant was found reliable and stood corroborated either by the evidence of a shadow witness or some other kind of evidence, but the situation in the present case appeared otherwise.

18. In Parinalal Damodar Rathi v. State of Maharashtra : AIR 1979 SC 1191, the Apex Court had held that:

There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the IPC making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in malerial particulars connecting the accused with the crime has to be insisted upon.

19. In State of T.N. v. Krishnan and Anr. 2001 AIR SCW 241, the Apex Court observed:

That apart, it is an admitted case that the amount of Rs. 4000/-, tainted money, which is alleged to have been demanded, was recovered from under a pair of trousers from the cot in room No. 19 at Tilak Lodge by the trap party. According to respondent No. 1, he was in bathroom and, when he came out, he found P.W. 1, 2 and 3 sitting on the cot when the raid party suddenly appeared and picked up the amount of Rs. 4000/- from under a pair of trousers. The fact that P.W. 1, 2 and 3 were already sitting on the cot where the pair of trousers was lying from underneath which the amount was recovered is not disputed. Under these circumstances, it does probablize the defence version given by the respondents that the bribe money was planted by P.W. 1, 2 and 3, who were engaged in illicit distillation and sale of Arrack, to falsely trap the respondents, who were serving in the Prohibition Wing of the Police, by placing the amount under the trousers of the respondent No. 1.

20. Distinguishing Pannalal Damodar Rathi (supra), in M.O. Shamsudhin v. State of Kerala : (1995) 3 SCC 351, the Apex Court held that:

The person offering a bribe to a Public Officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same regorous tests which are generally applied to a case of an approver. Though bribe-givers are generally treated to be in the nature of accomplices but among them there are various types and gradations. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving the trap cannot succeed. ...

In trap cases, if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices in that sense but are only partisan or interested witnesses who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested which may vary from case to case and the corroboration in the case of

such interested witnesses can be in a general way and not as one required in material particulars as in the case of an approver.... In such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the Court depending upon the facts and circumstances of each case. However, as a rule of prudence, the Court has to scrutinise the evidence of such interested witnesses carefully.

Thus, the complainant can be treated as an interested witness and his evidence has to be scrutinized carefully. If the evidence of complainant is found reliable and finds some corroboration, it can be acted upon.

21. The factual situation in the present case is somewhat different. Here, according to the complainant, though money was kept on a stool on the indication of the accused, but except the uncorroborated testimony of the complainant, there is no other evidence in that regard. Though the conversation, which took place between accused and the complainant, was allegedly recorded in a micro cassette recorder, but that was not found containing any such conversation. Even though a shadow witness was instructed to accompany the complainant, but that was not done and, apart from all that, the trap party entered the room and without giving its search, after about half an hour, after their entry in the room, on the pointing of the complainant, recovered the tainted currency notes from a stool kept underneath a pillow.

22. It is essential for holding the possession and acceptance of the bribe money by the accused that it was voluntary and conscious.

23. Shiv Sagar Rai (P.W. 14), Purchase Manager of Hotel Nisarg, who proved various bills of the hotel to establish that accused had stayed in his hotel on 18-2-2002, admitted that on that day lunch was served to accused on 13.23 hours in room No. 204. His bill was Exh. P-49, which was prepared by the computer. The bill (Exh. P-49) contained the signature of the accused also. This fact probablizes the explanation furnished by the accused that at about 1.23 p.m. he had taken meals. The burden on the accused to prove his explanation or the defence is not the same as lie on the shoulders of the prosecution. If the explanation furnished by the accused is substantiated to probablize his defence, it discharges the burden of

accused.

24. After carefully appreciating the evidence of complainant N.R. Borle (P.W. 3), Dr. D.C. Pyasi (P.W. 6) and Dy. S.P., M.S. Nain (P.W. 21), we are unable to hold that the tainted money recovered from the room of the hotel could be deemed to be the in the voluntary or conscious possession of the accused. In these circumstances, the possibility that the explanation given by the accused that the currency notes were planted by the complainant or any of the member of the trap party, when he had gone in the bathroom for washing his hands after taking meals, could not be ruled out.

25. As far as question of demand of bribe by the accused is concerned, again there is sole evidence of complainant (P.W. 3). We have already discussed that there was no shadow witness in the case. Therefore, whether any demand was made by the accused at the time of delivery of bribe money to accused, except the evidence of complainant (P.W. 3), there is no other evidence. Though, according to prosecution, complainant was given a micro cassette recorder and he recorded the conversation, which took place between him and the accused, yet the said tape was not found audible. In the absence of the said tape recorded version, the transcript prepared by the Investigating Officer and other witnesses cannot be accepted.

26. According to complainant (P.W. 3), since he had deposited the amount of salary of the employees in his personal account, a complaint was made against him, which was enquired on the orders of Collector, Betul. This enquiry was done by ADM Mr. Shrivastava on 4-9-2001. After about one month of that, accused telephoned him that he had misused the money of employees, therefore, he would suspend him. Despite the fact that he tried to pursue him that there was no fault on his part, the accused told that there would be an enquiry. On 6-2-2002, when he went to Jabalpur and met accused, he demanded Rs. 1 lac and he further asked him to bring Rs. 1 lac from Security Officer, S.R. Kewate also. When he asked Kewate for Rs. 1 lac, he refused to give. According to complainant, again on 11-2-2002, accused telephoned him and made a demand of money. When he replied that he could not arrange the same, accused threatened him that he will have to

face consequences, he then went to Bhopal to make a complaint in the Office of Lokayukta. He arranged Rs. 1 lac by borrowing loan from the Bank and went to Bhopal and submitted a written complaint (Exh. P-7). In cross-examination, complainant (P.W. 3) stated that in fact the accused had telephoned him after about 2-3 months of 1-9-2001. His earlier version that accused telephoned him after about one month of 4-9-2001 was not correct. It is quite possible that the phone might have come in the month of December and for the first time after receiving the phone from the accused, he had gone to Jabalpur on 6-2-2002. On 6-2-2002, accused told him that he would be suspended. Again he stated that accused had told about his suspension on 1-2-2002. He admitted that since before 6-2-2002 complaints were being made against him by the employees of his department and, an enquiry was being done by the Joint Director. Complainant (P.W. 3) repeated that accused had made demand of Rs. 1 lac on 1-2-2002. However, the fact that the accused made demand of money on 1-2-2002 was found absent in the complaint (Exh. P-7) and his police statement (Exh. D-5). On being confronted with the aforesaid previous statements, complainant (P.W. 3) stated that on 2-2-2002 accused had told him that he should meet him at his residence, otherwise he would take action against him, but it was not correct that on 2-2-2002 he demanded Rs. 1 lac from him. At a later stage, again he stated that he had informed to police that demand of Rs. 1 lac was made on 2-2-2002 and on his not doing so accused had told him that he would be suspended, but these facts were found missing in Exh. P-7 and Exh. D-5. The evidence of this witness is discrepant pertaining to above fact because every time he changed his version. He ultimately said that the demand of Rs. 1 lac was made on 6-2-2002.

27. Learned Counsel for the appellant submitted that this witness [N.R. Borle (P.W. 3)] was telling so many lies that it was not safe to place reliance on his statement. In Para 19 of his statement, he stated that he had gone to Jabalpur for meeting the accused on 4-2-2002 and had come back to Betul on 6-2-2002. According to him, from 4th February, 2002 to 6th February, 2002 he was not present in his office at Betul. However, in the attendance register (Exh. D-1), his initials were found on 5th and 6th February, 2002, but, subsequently, by overwriting, the words 'O.T.' (On Tour) were recorded. He denied the suggestion that he made manipulations in the original attendance register (Exh. D-1) after the

trap of the accused was conducted. Though he manipulated his initials of attendance on 6th February, 2002, yet at another place from 'C to C' his initials were intact, which were made after checking the attendance of other employees. He admitted that he did not submit any TA bill for 6-2-2002. He was unable to say whether it was some official work, though he spent fare of Rs. 100/-on each side and stayed for three days in a hotel in Jabalpur. He even did not remember the name of hotel. He did not submit any TA bill because he had gone to Jabalpur on some oral orders. He admitted that though whenever he went on tour, he obtained a certificate from the Directorate in proof of attendance, but he did not obtain any certificate in respect of 5th and 6th February, 2002. On 6-2-2002, he met accused at his bungalow where he made demand of Rs. 1 lac from him and also instructed him to bring Rs. 1 lac from Kewate. According to this witness, he did not ask the accused as to for what purpose he should bring Rs. 1 lac from Kewate. According to him, he asked Kewate that Rs. 1 lac was demanded by accused from him, but Shantaram Kewate (P.W. 15) denied that N.R. Borle (P.W. 3) told anything to him.

28. On close examination of the evidence of complainant, N.R. Borle (P.W. 3), we find that his evidence in respect to demand of Rs. 1 lac by way of bribe by the accused is discrepant and contradictory.

29. R.N. Thakur (D.W. 1), Joint Director of the Industrial Training Institute, proved the documents (Exh. D-2 and Exh. D-3), which were respectively the applications for grant of casual leave and permission to leave the headquarter on 11th and 12th February, 2002. According to R.N. Thakur (D.W. 1), N.R. Borle sent an application for grant of casual leave and another for grant of permission to leave the head quarter on 11th and 12th February, 2002. He had sanctioned the leave as well permission to leave the headquarter.

30. Learned Counsel for the appellant submitted that from the record, the evidence of complainant that accused talked to him on phone on 11-2-2002 when he was at his house at Betul and demanded money stands belied. Though the accused tried to explain that he had gone on leave only for one day, i.e., on 11 -2-2002 and had got his leave for 12-2-2002 cancelled, yet merely by making a phone call by accused, it is not established that accused demanded bribe from him on

telephone. At, all the steps in the case, there is only sole testimony of complainant in regard to making of demand of bribe by the accused. There is absolutely no independent corroboration. Even if the complainant, the bribe giver, is an accomplice, yet, in our opinion, in view of the proposition given by the Apex Court in M.O. Shamsudhin (supra), he should be categorized as an interested witness. The testimony of an interested witness can be accepted if it is unbiased and reliable. R.N. Thakur (P.W. 25) deposed that a letter (Exh. P-25) was issued by the accused on 7-2-2002 directing all the principals of the institutions to furnish information about the employees, who were posted at one place since last 10 years. This information was sought for the transfer of such employees. He also proved number of complaints made against Mr. Borle in respect of which accused had ordered enquiry against him. R.N. Thakur had also recommended that on the post of head of the institution only such person should be appointed, who was not inferior to the cadre of Superintendent, Mr. N.R. Borle was an employee of lower cadre. In these circumstances, it can readily be inferred that N.R. Borle (P.W. 3) must have entertained some grudge against the accused, as he would have expected some action at his hands against him. In such circumstances, the evidence of complainant N.R. Borle (P.W. 3) could not be held to be wholly reliable in the absence of some kind of independent corroboration. Though, these circumstances on one hand may furnish evidence of motive on the part of accused to make a demand of bribe, yet they also probablize that the complainant might have cooked up a false story of demand of bribe with a view to save himself from any kind of action against him at the hands of accused. It is well settled that if two inferences are possible from a set of evidence, the inference favouring the accused has to be accepted. In the fact situation of the present case, we do not find it safe to rely on the evidence of complainant N.R. Borle (P.W. 3) on the question of demand of bribe allegedly made by the accused.

31. We are of the view that the Trial Court has not appreciated the evidence on record in proper and correct perspective while recording the finding of conviction of accused. The prosecution has failed to establish beyond reasonable doubt that accused/appellant demanded and accepted the bribe.

32. For the reasons aforesaid, this appeal is allowed. The impugned judgment of conviction and sentence passed by the Trial Court is set aside. Appellant is acquitted.

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