

KRISHNA RAM  
V.  
STATE OF RAJASTHAN  
Criminal Appeal No. 402 of 2001

MARCH 17, 2009

**[LOKESHWAR SINGH PANTA AND B. SUDERSHAN  
REDDY, JJ.]**

*Prevention of Corruption Act, 1988 – ss. 7, 13(1)(d) r/w 13(2) and 20 – Prosecution for demand and acceptance of illegal gratification – Tainted money recovered from the possession of accused – Acquittal by trial court – Conviction by High Court – On appeal, held: Conviction justified – Demand and acceptance of illegal gratification proved – Evidence of prosecution witnesses are consistent and reliable – Once recovery of money from the possession of accused was proved, the burden of presumption u/s 20 shifted on the accused and the accused failed to rebut that presumption.*

*Code of criminal Procedure, 1973 – s. 378 – Appeal against acquittal – Scope of – Held: If two views are possible, one for acquittal and the other for conviction, appellate court not to interfere with unless the material on record leads to sole and inescapable conclusion of guilt of the accused.*

**Appellant-accused was prosecuted u/ss. 7 and 13 (1) (d) r/w s. 13 (2) of Prevention of Corruption Act, 1988. Trial court found the appellant not guilty and hence acquitted him. High Court convicted him. Hence the present appeal.**

**Dismissing the appeal, the Court**

**HELD: 1.1 The view taken by the trial court drawn on the evidence on record is unreasonable and perverse and the High Court has rightly interfered with the order of acquittal and convicted the appellant under Sections 7**

A and 13(1)(d) r/w Section 13 (2) of Prevention of Corruption Act, 1988. [Para 11] [446-C-D]

B *Kalyan Singh v. State of M.P.* (2006) 13 SCC 303; *T. Subramanian v. State of T.N.* (2006) 1 SCC 401; *State represented by Inspector of Police, Pudukottai, T.N. v. A. Parthiban* (2006) 11 SCC 473 – referred to.

C 1.2 The evidence of the complainant is found to be consistent and impeachable regarding the demand of Rs.500/- by the appellant as bribe money for giving favourable report in regard to the grant of permanent lease holder rights of the land to the complainant. His evidence is supported by contemporaneous documents prepared by the Investigating Officer before the money was delivered to the appellant. The complainant emphatically denied the suggestion of the appellant that Rs.500/- was sent to the appellant by DW-1 as repayment of the loan amount. The complainant, the investigating Officer and other witnesses who were present when the appellant was caught red handed by the Anti Corruption Team have been cross-examined at length by the defence, but nothing tangible has been extracted from their evidence to create any shadow of doubt that they are not truthful witnesses. They have given reliable and consistent version of the crime and their evidence inspires confidence. [Para 9] [465-F-G-H; 466-A]

F 1.3 Once it is proved that the money was recovered from the possession of the appellant, the burden of presumption as contemplated u/s. 20 of the P.C. Act, 1988 shifts upon the appellant, which he could not rebut through cross-examination of the prosecution witnesses or by adducing reliable and convincing evidence to prove that DW-1 advanced Rs.500/- as loan to the appellant through the complainant. [Para 9] [464-H; 465-A]

H 1.4 DW-1 has not given any reason why he chose the complainant alone to deliver a sum of Rs.500/- to the

appellant on the day when he was apprehended by the Anti Corruption Team. In these circumstances, the High Court has rightly concluded that the explanation given by the appellant was not probable and reasonable. [Para 9] [465-A-B] A

#### Case Law Reference B

(2006) 13 SCC 303      Referred to.      Para 6

(2006) 1 SCC 401      Referred to.      Para 6

(2006) 11 SCC 473      Referred to.      Para 10 C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 402 of 2001

From the Judgement and Order dated 22.12.2000 / 12.01.2001 of the High Court of Judicature for Rajasthan, Cr. A. No. 673 of 1999. D

Manoj Prasad, Ishar Singh, K.K. Srivastava, Janesh Singh, for the Appellant.

Manish Singhvi, AAG, Milind Kumar, Aruneshwar Gupta, for the Respondent. E

The Judgement of the Court was delivered by

**LOKESHWAR SINGH PANTA, J.**

1. This appeal arises out of the judgment and order dated 22.12.2000 passed by the High Court of Rajasthan, Bench at Jodhpur in S.B. Criminal Appeal No. 673 of 1999 by which the learned Single Judge of the High Court has set aside the order of acquittal of the accused and convicted him for offences under Sections 7 and 13(1)(D) read with Section 13(2) of the Prevention of Corruption Act, 1988 [for short "P.C. Act, 1988"] and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-. In default of payment of fine, the accused shall suffer further simple imprisonment for two months. F

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A 2. Brief facts, which led to the trial of the accused, are as under :

2.1] Krishna Ram – accused-appellant herein in the year 1991 was posted as *Patwari* and was Incharge of the Revenue Circle 84 RBB Tehsil Raisinghnagar, District Sri Ganganagar. On 20.03.1991, Gurmukh Singh-complainant [PW-2], resident of 85, RB visited the Rajasthan State Investigation Bureau (SB) Ganganagar Post and submitted an application to Hazari Lal [PW-8], Inspector Chowki Incharge in which he stated that he was holder of land measuring 10 *bighas* 5 *biswas* in Chak 85 RB and land measuring 12.5 *bighas* in Lakha Tiba on the basis of temporary cultivation lease. He wanted to convert his temporary lease into permanent lease for which purpose he filled in the requisite application form (Exhibit P7) and presented the same before Shri Jagmal Singh [PW-9], the Sub-Divisional Officer, Raisinghnagar, who in turn marked it to the *Tehsildar*, Raisinghnagar and handed over the original application to the complainant. The *Tehsildar* in turn marked the application to the *Patwari* concerned.

2.2] On 18.03.1991, PW-2 approached the appellant (Patwari) and presented the application (Ex.-P-7) to him for giving his report thereon. The complainant alleged that the appellant had demanded a sum of Rs.1,000/- as bribe money for giving favourable report in his (complaints) favour in regard to allotment of the lands to him on permanent lease holders rights. PW-2 pleaded to the appellant that he did not possess enough money to meet his demand whereupon the appellant asked the complainant to come to his house with an amount of Rs.500/- instead of Rs.1,000/- as demanded by him on an earlier occasion. It was also stated by the complainant that he was not willing to pay the bribe money to the appellant and wanted to get him apprehended by the police for demanding illegal gratification and it was with that sole object that the complaint (Ex.-P-13) came to be presented to PW-8 Hazari Lal-Inspector, Bureau Incharge of Chowki, Ganganagar. On receipt of the complaint of the complainant, PW-8 summoned Askaran (PW-

1) and Raje Ram (PW-3) employees of UIT, Ganganagar, who were introduced to the complainant and they were apprised of complete gist of the complaint. Both the witnesses had voluntarily agreed to participate in the trap proceedings proposed to be laid against the appellant. Four currency notes of Rs.100/- denomination and two notes of Rs.50/- denomination, i.e. total amounting to Rs.500/-, were arranged by the complainant for payment to the appellant. The Bureau employees then treated the currency notes with phenolphthalein powder which were kept in the left side pocket of the complainant's shirt who was instructed not to touch the money any more and the same shall be handed over to the appellant on his demand. The complainant was asked to give a signal to the members of the trapping party soon after payment of money to the appellant by putting his hand on his turban. The witnesses were also instructed to stand close by to the complainant to enable the police party to apprehend the appellant red handed. Thereafter, the trapping party reached near Gulbadiwali Haveli at Raisinghnagar where the appellant was residing. The appellant at that time was sitting with two or three persons in his house, but the complainant asked him to come outside the room on the first floor of the house and the members of the trapping party remained standing downstairs. Thereafter, upon signal being received from the complainant, the members of the trapping party immediately reached near to the appellant where PW-8 questioned him in the presence of the witnesses present there if he had accepted Rs.500/- as bribe from complainant Gurmukh Singh. The appellant's first stand was that Gurmukh Singh had given him Rs.500/- for making a favourable report on his application for allotment of land to him, but then hesitatingly he turned around and replied that Rs.500/- was paid to him as loan amount. The complainant reiterated and reasserted that on demand made by the appellant, he had given Rs.500/- as an illegal gratification to the appellant for doing his work. He stated that the appellant had accepted the amount and after counting the currency notes he pocketed them in left side pocket of his bushirt. The police constable immediately held both the wrists of the appellant and that appellant's hands turned pink when dipped in sodium carbonate solution, as a

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A result whereof the solution also turned pink colour. The appellant was asked to take out the money from the pocket of his bushirt and on counting the currency notes they were found to be the same which were paid by the complainant to the appellant. On personal search of the appellant, a sum of Rs.227/- was also  
B found in his pocket, besides Rs.500/- the bribe money. The bushirt of the appellant was dipped in the solution of sodium carbonate which also turned into pink colour and was taken into possession as an evidence. The relevant record was also taken in possession from the appellant. Site Plan was prepared after  
C conducting search of the room occupied by the appellant. The materials seized as evidence were kept in the *Malkhana*. FIR (Ex.P-16) was prepared and registered against the appellant in the police station at Head Office at Jaipur. The sample bottles were sent to Forensic Laboratory, Jaipur, and on receipt of the report (Exhibit P-17) and after completion of all the required  
D formalities, charge sheet was presented against the appellant in the court.

2.3] The appellant during the trial denied the charges and claimed to be tried. The prosecution examined as many as ten  
E witnesses and produced 19 documents and 12 articles as exhibits. The appellant in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 denied his involvement in the commission of the offence. He pleaded that there was some dispute regarding felling of a tree from the field  
F of one Gorai which on spot inspection of the appellant was found lying in the field of the complainant and, therefore, it was in this background that an attempt was made by the complainant to involve the appellant in a false case. He, examined Ramchandra (DW-1) in his defence and got two documents exhibited as D-1 and D-2.

G 3. Learned trial judge, on analysis of the entire oral and documentary evidence on record, found the appellant not guilty of the charges under Sections 7 and 13 (1) (d) read with Section 13 (2) of the P.C. Act, 1988 and accordingly acquitted him.

H 4. The State of Rajasthan, being dissatisfied with the

acquittal of the appellant, preferred S.B. Criminal Appeal No. 673 of 1999 in the High Court of Rajasthan at Jodhpur Bench. By judgment and order dated 22.12.2000, a learned Single Judge of the High Court has set aside the order of the trial court and held the appellant guilty of offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the P.C. Act of 1988 and imposed the aforesaid sentence upon him.

5. Aggrieved thereby, the appellant is before us by way of this appeal.

6. Mr. Manoj Prasad, learned counsel for the appellant, contended that the judgment of the High Court reversing the well-reasoned order of acquittal passed by the trial court is erroneous in law being against the well-established principles with regard to interference in appeal under Section 378 of the Criminal Procedure Code. In support of the contentions, reliance is placed on two decisions of this Court in *Kalyan Singh v. State of M.P.* [(2006) 13 SCC 303] and *T. Subramanian v. State of T.N.* [(2006) 1 SCC 401]. We have gone through the said decisions. There cannot be any quarrel with the settled propositions of law that if on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible one as held by the trial court for acquitting the accused and the other for convicting the accused, in such a situation, the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial court. It is also equally well-settled that where the material on record leads to a sole and inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court.

7. The learned counsel for the appellant next contended that the prosecution has miserably failed to prove beyond reasonable doubt that the appellant had made any demand of bribe from the complainant as alleged by him and therefore, the presumption as contemplated under Section 20 of the P.C. Act, 1988 has wrongly been applied by the High Court against the appellant and in favour of the prosecution. In support of this

A submission, reliance is placed on a decision of this Court in *T. Subramanian v. State of T.N.* [(2006) 1 SCC 401]. This Court in the above cited case, while considering the case of the accused for offences under Section Ss. 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 1947, has held that the accused had offered reasonable and probable explanation based on the evidence that the money was accepted by him as lease rent arrears and not illegal gratification.

8. In the light of the above settled propositions of law, we have made independent scrutiny of the evidence in the present case to find out whether the High Court's order of conviction of the appellant can be sustained or not.

9. Gurumukh Singh (PW-2) has proved on record that on demand of the appellant, he had paid Rs.500/- to him as illegal gratification, for recording favourable report on the application marked to the appellant by *Tehsildar* for allotment of permanent lease to the complainant. Four currency notes of Rs.100/- denomination and two currency notes of Rs.50/- denomination were handed over to the appellant by PW-2 on the day of the incident, which before giving to him were treated by the trapping party with phenolphthalein powder. The trapping party on search of the pocket of bushirt of the appellant recovered those currency notes from his personal possession. At the first instance, the appellant had admitted his guilt, but recovering swiftly he changed his stand and stated to the Investigating Officer that the money was handed over to him by the complainant as loan amount on behalf of DW-1. It is the evidence of DW-1 that except the money in question no money transaction ever took place between him and the appellant. Thus, it is proved that a sum of Rs.500/- was recovered by the officials of Anti-Corruption Bureau [for short "ACB"] from the bushirt pocket of the appellant on the day of incident. Once it is proved that the money was recovered from the possession of the appellant, the burden of presumption as contemplated under Section 20 of the P.C. Act, 1988 shifts upon the appellant, which he could not rebut through cross-examination of the prosecution witnesses or by adducing reliable and convincing evidence to prove that DW-1 advanced

Rs.500/- as loan to the appellant through the complainant. DW- A  
1 Ram Chandra, has not given any reason why he chose the  
complainant alone to deliver a sum of Rs.500/- to the appellant  
on the day when he was apprehended by the Anti Corruption  
Team. In these circumstances, the High Court has rightly  
concluded that the explanation given by the appellant was not B  
probable and reasonable. The currency notes of Rs.500/- were  
recovered from the possession of the appellant which were got  
treated with phenolphthalein powder by PW Hazari Lal-Inspector  
in the presence of the witnesses. The members of the trapping  
party alongwith complainant went to the house of the appellant C  
at Raisingh Nagar where the bribe money was handed over to  
the appellant by the complainant. PW-8 introduced himself to  
the appellant and asked him if he had accepted bribe money  
from the complainant, the appellant replied that it was not bribe  
money but the amount of loan repayment. The complainant has D  
categorically stated that it was not loan amount but bribe money  
demanded by the appellant from him. The appellant took out  
the currency notes of Rs.500/- from the pocket of his bushirt in  
presence of the witnesses. The numbers of the notes recovered  
had matched with the numbers noted in the ACB office before  
the complainant handed over them to the appellant. The bushirt E  
worn by the appellant was washed in sodium carbonate solution  
and same turned into pink colour. The evidence of the  
complainant is found to be consistent and impeachable  
regarding the demand of Rs.500/- by the appellant as bribe  
money for giving favourable report in regard to the grant of F  
permanent lease holder rights of the land to the complainant.  
His evidence is supported by contemporaneous documents  
prepared by the Investigating Officer before the money was  
delivered to the appellant. The complainant emphatically  
denied the suggestion of the appellant that Rs.500/- was sent G  
to the appellant by DW-1 as repayment of the loan amount. The  
complainant, the Investigating Officer and other witnesses who  
were present when the appellant was caught red handed by the  
Anti Corruption Team have been cross-examined at length by  
the defence, but nothing tangible has been extracted from their  
evidence to create any shadow of doubt that they are not truthful H

A witnesses. They have given reliable and consistent version of the crime and their evidence inspires confidence.

B 10. In *State represented by Inspector of Police, Pudukottai, T.N. v. A. Parthiban* [(2006) 11 SCC 473] this Court has held that every acceptance of illegal gratification, whether preceded by a demand or not, would be covered by Section 7 of the Act. But, if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1)(d) of the P.C. Act.

C 11. Having regard to the entire evidence discussed above and having carefully and closely considered the judgments of the trial court and the High Court, it appears that the view taken by the trial court drawn on the evidence on record is found to be unreasonable and perverse and the High Court has rightly interfered with the order of acquittal and convicted the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act, 1988.

E 12. The learned Single Judge of the High Court, instead of imposing separate sentence upon the appellant under Sections 7 and 13(1)(d) of P.C. Act, 1988, has in his wisdom imposed sentence of one year rigorous imprisonment with a fine of Rs. 500/- upon the appellant under Section 13(2) of the P.C. Act, 1988 and in default of payment of fine, the appellant shall undergo two months further simple imprisonment.

F 13. No other point has been raised by the appellant. We, thus, find no merit and substance in any of the submissions made on behalf of the appellant.

14. In the result, for the afore-stated reasons, there is no merit in this appeal and it is, accordingly, dismissed.

G 15. The accused appellant is on bail, granted by this Court by order dated 30th March, 2001. He shall be taken into custody forthwith to serve out the remaining part of the substantive sentence.