

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on 07.11.2024
Pronounced on 06.02.2025

CrIa(AS) No. 2/2020

Union Territory of J&K

.....Appellant(s)/Petitioner(s)

Through: Ms. Monika Kohli, Sr. AAG

Vs

Ashu Jolly

..... Respondent(s)

Through: Mr. Abhinav Sharma, Sr. Adv. with
Mr. Abhirash Sharma, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This appeal is directed against the judgment of acquittal dated 02.03.2020 recorded by the court of learned Special Judge, Anti-Corruption, Jammu (for short 'the trial court') in case titled, 'State vs. Ashu Jolly', whereby the respondent has been acquitted of the charge for the commission of offences under section 5(1) (d) read with Section 5(2) and 4-A of Prevention of Corruption Act, 2006, registered with Police Station, Vigilance Organization, (Now, Anti-Corruption Bureau), Jammu.
2. The judgment has been assailed by the appellant on the ground that despite there being sufficient oral, documentary and scientific evidence in respect of conscious demand and acceptance of bribe by the respondent and subsequent recovery of the same from the respondent, the learned trial court has acquitted the respondent by sheer wrong and mis-appreciation of evidence.

3. Mrs. Monika Kohli, learned Senior AAG has submitted that the prosecution had proved the demand, acceptance and recovery of bribe of amount of ₹5,000 from the respondent, as such, the learned trial court could not have acquitted the respondent and in fact, the judgment is perverse and contrary to the evidence brought on record by the prosecution.
4. *Per contra*, Mr. Abhinav Sharma, learned senior counsel for the respondent has vehemently argued that the opinion formed by the learned trial court, while acquitting the respondent, cannot be termed as perverse, more particularly, when the statement of the complainant is contradictory in nature. He has further laid much stress that the statement of shadow witness, namely, Sushma Rani reveals that she allegedly made the pre-fixed signal to one Jagdev Singh, who was never associated with investigation and was not even produced as a witness during trial. Mr. Sharma has urged that the respondent was not a competent person/authority to clear the synopsis of the complainant and the synopsis was to be cleared by the panel duly constituted by the University, of which the respondent was never a member. Next, he contended that there was absolutely no evidence on record in respect of demand of bribe before registration of FIR and laying of trap and in view of this legal infirmity, the respondent could not have been convicted and as such, learned trial court after due appreciation of evidence has rightly acquitted the respondent.

Prosecution case:

5. Briefly stated the case projected by the prosecution in the chargesheet is that on 09.12.2016 a written complaint (Ext-P-1) was submitted by the complainant i.e. PW-1 stating therein that she was the student at Indira

Gandhi National Open University (IGNOU) under Roll No. 12547190 and had submitted her synopsis four times, but each time her synopsis was rejected. Her previous guide was Mohd. Zubair Kales but she had subsequently changed him. The respondent, Assistant Professor in Government College of Education, Canal Road Jammu was her Guide after Mohd. Zubair Kales. It was further stated that the respondent had demanded an amount of ₹10,000/- as bribe for clearing her synopsis and under the compelling circumstances, she was going to hand over the first instalment to her on that day only. On receipt of this information, FIR bearing No. 25 of 2016 was registered on 09.12.2016 at 1215 hours for commission of offences under sections 5(1)(d) read with section 5(2) and 4-A of the Prevention of Corruption Act, 2006. Inspector, Naresh Kumar was deputed as Investigating Officer by Senior Superintendent of Police (SSP) of the Vigilance Organization, Jammu on the same day itself. A trap team was constituted by the SSP, Vigilance Organization, headed by PW H. L. Pandita, Dy.S.P of Vigilance Organization Jammu and comprising of Sh. Zaffer Ahmed Inspector, Vikram Sharma, Inspector Constable Vikas Dutta and Head Constable Jagdev Singh. Besides above- mentioned officers, Sanjay Bhat was assigned the duty of smearing of currency notes, produced by the complainant with phenolphthalein powder. However, he was ordered to disassociate from the team. PWs Sushma Rani AEE PDD and Ajay Puri, AEE of PDD were associated as shadow and independent witnesses respectively. Thereafter, pre-trap demonstration was conducted. After the pre-trap proceedings, the trap team along with shadow and independent witnesses went to the office of the respondent at Government

College of Education, Canal Road, Jammu. PW-1 (complainant) along with PW-2 (shadow witness) as per instructions, proceeded towards the office of the respondent. The independent witnesses took their respective positions as per instructions imparted during pre-trap proceedings. After about 10 to 15 minutes, the shadow witness-Sushma Rani flashed a pre-fixed signal (scratching her head with right hand) and on seeing the signal, the members of trap team proceeded towards the spot. On reaching the spot, the complainant and the shadow witness pointed towards the lady sitting in the office and stated that she was the lady, who after demand, had accepted an amount of ₹ 5,000/- as bribe from the complainant and after counting, she had kept the same in the drawer of the office table placed in front of her. The Trap Laying Officer introduced himself as well as other team members to the respondent and asked her to cooperate during the proceedings. Constable, Vikas Dutta brought the trap kit and the solution of Sodium Carbonate. The shadow witness was asked to rinse her hands in the Sodium Carbonate Solution and on doing so, the colour of the solution of Sodium Carbonate did not change but when the respondent rinsed finger of her right hand, the colour of the solution turned pink. Thereafter, the solution was also preserved and sealed in a glass marked as 'A'. The same procedure was followed again, and the shadow witness and the respondent were asked to dip their left hand in the solution of Sodium Carbonate. This time also the colour of the solution, when the shadow witness dipped her hand did not change, but colour of the solution changed when the respondent dipped her left hand. The solution was preserved and sealed in a glass marked as 'B'. Thereafter, an amount of ₹5,000/- received as bribe by

the respondent was recovered from the office table placed in front of her. The serial numbers were tallied with the serial numbers of the notes noted during the pre-trap proceedings and the numbers of the currency notes recovered from the table of the respondent tallied with the numbers of the currency notes noted during pre-trap proceedings. After the conclusion of the investigation, charge against the respondent for commission of offences under section 5(1)(d) read with section 5(2) and 4-A of the Prevention of Corruption Act, 2006 was established against the respondent.

6. The charge sheet was laid before the trial court 03.03.2018. The respondent was charged for commission of offences under sections 5(1)(d) read with section 5(2) and 4-A of the Prevention of Corruption Act, 2006 on 18.05.2018. As the respondent did not plead guilty, the trial court directed the prosecution to lead evidence. The prosecution had cited as many as 16 witnesses, out of which 15 witnesses were examined. The respondent, however, did not choose to lead any evidence. After hearing the parties, the learned trial court acquitted the respondent.

Prosecution Evidence:

7. **PW-1 complainant** has stated that she had completed her M.Ed and had submitted her synopsis four times, but each time, her synopsis were rejected. Her earlier Guide Zubair Kales asked her to approach the respondent. She was serving as Assistant Professor, Government College of Education at that time. On the last days of November or during the initial days of December, she went to the respondent and talked to her in respect of her problem. The respondent demanded ₹5,000/- for clearing her synopsis as bribe and further asked her that she would have to pay ₹

5000/- at the time of approval of the synopsis, as the same was required to be stamped by the Assistant Professor and she was assured that her synopsis would be cleared and the balance amount of ₹ 5,000/- was to be paid after the approval. She, being against the corruption, submitted a written report (Ext-P1) with the SSP Vigilance. She has deposed about the pre-trap proceedings conducted by the team headed by PW Hira Lal Pandita, Dy.SP. She produced ₹ 5,000/- comprising of two currency notes of ₹2,000/- denomination and two notes each of ₹500/- denomination. She deposed about the association of PW Sushma Rani as shadow witness, who was instructed to remain with her and hear the conversation and to keep an eye over the exchange of money between her and the respondent. She proved the pre-trap memo (Ext-P-5). She left the spot at 1.30 PM. The vehicles were parked at the distance short of the college. She and PW Sushma Rani went inside the premises, whereas the other team members took their respective positions. She entered the office of the respondent and talked to her. On enquiry by the respondent regarding presence of PW Sushma Rani, she replied that PW Sushma Rani was her relative. The respondent, while handing over her synopsis, asked her as to whether she had brought the money, whereupon she passed on the notes to the respondent, which the respondent after counting put in the drawer of her table. PW Sushma Rani went towards the door and flashed the pre-fixed signal to the team members. The TLO along with other members immediately came on spot. PW Sushma Rani narrated that the respondent had demanded the bribe and accepted the tainted money from her and had kept the same in the drawer of her table. Two lady Constables were

summoned, and trap kit was also brought by PW Vikas Dutta, who prepared the Sodium Carbonate solution. She has further stated that both right and left hands' washes of the respondent were taken one by one in the solution of Sodium Carbonate and the colour of the solution turned pink. They were seized on spot and marked as 'A' and 'B' respectively. PW Sushma Rani recovered the bribe money from the drawer of the respondent and serial numbers of currency notes were tallied with the numbers noted down by the independent witnesses during pre-trap proceedings. The two slips with the independent witnesses and bribe money were seized separately vide seizure memos ExtP5-VI and ExtP5-VII respectively. She also identified the currency notes and two bottles containing hands wash of the respondent and seizure memo thereof (ExtP5/VIII). She also proved seizure of the synopsis of 26 leaves (ExtP5/V). The seal used for affixing the stamp was kept on supurdnama by PW Ajay Puri vide supurdnama (ExtP5/III). The memo of post-trap proceedings was prepared and she proved the same (ExtP5/1). During cross-examination, she stated that she could not say as to why her synopsis was rejected four times. She was aware of the fact that a Guide could neither accept nor reject the synopsis and a panel was constituted for that purpose. Her previous guide was Zubair Kales, and she had chosen him as guide out of the list of the guides prepared by the IGNOU. She was forced to change her Guide as her previous Guide had told her that he was going out of the State. The job of the Guide was only to check synopsis and put a seal and signature thereupon. She admitted that her previous Guide had never rejected her synopsis but had only pointed out certain mistakes. She chose the accused

on the recommendation of her previous Guide. The role of the Guide is only to help in preparing the synopsis. She further stated that the accused had told her about the person, to whom the synopsis was to be handed over. She never filed any application with IGNOU for changing her Guide. The synopsis on the file was neither signed nor stamped by the respondent. She handed over ₹ 5,000/- to the respondent without checking the same. She further stated that the synopsis was lying on the table only, when the signal was flashed to Vigilance people, and they entered. She flashed the signal from the door only and did not go out of the room. She was accompanied by PW Sushma Rani, and she accompanied her till door. She also did not go outside the room. PW Sushma Rani had flashed the signal by scratching her head. She without examining the synopsis as to whether they were bearing the seal and signature of the respondent, handed over the bribe amount and went towards the door of the room. PW Sushma was two steps ahead of her. She did not pick up the synopsis which was lying on the table as the Vigilance Officials had instructed her to flash the signal immediately upon acceptance of the bribe. The respondent had told her about one Jagdev or Jagjit, which she did not remember completely and had again stated that the name was not disclosed but she (accused/respondent) had asked her to give her phone call. She denied the suggestion that the respondent did not demand any bribe, and her synopsis was not of requisite standard and she herself requested the respondent to get her synopsis cleared and put the bribe money into the drawer of the respondent on her own.

8. **PW Sushma Rani** stated that she was posted as AEE Sub-Division Canal EMR&E Wing, Directorate Office Jammu. On 09.12.2006, she was directed to report in the office of SSP VOJ on special duty and PW Ajay Puri, AEE was the other officer deputed along with her. Both of us reported at the said office and Mr. H. L. Pandita, Dy.SP and complainant were already there. SSP introduced us to them. The complainant produced ₹ 5,000/- comprising of two currency notes each of ₹ 2,000/- and ₹ 500/- denominations. PW H. L. Pandita gave us two papers and directed us to note down the numbers of those currency notes separately, which was done by her and Ajay Puri. We were directed to retain those papers with themselves. TLO requisitioned the trap kit and phenolphthalein powder. Constable Sanjay Bhat was directed to conduct the demonstration. She was asked by the TLO to conduct personal search of the complainant, who was allowed to retain mobile and ID Card. The other members of the team were searched by Mr. Ajay Puri, who were also allowed to carry their mobile set and Id Cards only. She kept the phenolphthalein smeared notes in the outer pocket of the handbag of the complainant as per the directions of the TLO, who directed the complainant not to shake hand with anybody and to pass on those notes to the complainant or to any other person as directed by the latter only, on demand as bribe. She was instructed by TLO to remain with the complainant as shadow witness and to observe the transaction carefully and to hear the conversation between the complainant and the respondent. Thereafter, all the trap team members including the complainant left for the Women College of Education, Canal Road by two vehicles of VOJ. The vehicles were parked at a short distance from the gate of the college. She

along with the complainant proceeded to the office of the respondent/accused. Respondent present in the court was sitting in her office alone. Respondent enquired from the complainant about her who told her that she was her relative. We sat down on the chair in front of the table of the accused. The complainant asked accused about her synopsis to which the respondent retorted as to whether complainant had with the money as demanded. Upon this, the complainant took out ₹ 5,000/- from the outer pocket of her bag which she had kept therein and handed over to the respondent, which were counted by the respondent and then kept in the drawer of her table. Thereafter, we stood up and walked towards the door of the room and she passed on the signal as directed, to the member of the trap team who was standing outside the room. Thereafter, all the team members rushed in, and the respondent got frightened. The team members gave their introduction and asked the accused to cooperate. Two lady constables were also summoned on spot. She explained to the TLO that accused had demanded and accepted the money. Trap kit was brought, and a solution of the Sodium Carbonate was prepared in a glass tumbler. She was asked to immerse her right hand and upon her doing so, the colour of the solution did not change but the colour got changed to pink, when the respondent dipped her right hand. The solution was preserved in a clear glass bottle (Ext-A). She further stated that once again a fresh solution of Sodium Carbonate was prepared and she was asked to dip her left hand therein and upon doing so, the colour of the solution remained unchanged. Thereafter, the respondent was asked to rinse her left hand in the same solution and upon her doing so, the solution turned pink. The solution so

obtained was again preserved in a separate bottle (ExtB). Both the bottles were seized by the TLO on spot. Thereafter, she was asked to check the drawer of the table of the accused. She checked the drawer of the table of the respondent and recovered the money paid by the complainant, which was lying therein. She and PW Ajay Puri matched the numbers of those notes with the numbers noted by us on separate slips, which were found to be same. TLO seized those notes and the two slips on spot. She searched the purse of the respondent on the directions of the TLO and the articles recovered therefrom, were also seized which included mobile set, pen drive, I card, official seal of the respondent and Rs. 82/- coins. Seal was kept on the suburdnama of Sh. Ajay Puri after taking impression on a paper. The file of M.Ed synopsis of the complainant was also recovered from the accused and seized on spot by the TLO. The respondent was arrested and her husband was informed on his cell phone, who also came on spot. Principal of the college was also informed, who also came on spot and no damage certificate was taken from her. Memo of post-trap proceedings was prepared and signatures of the members of the team were obtained thereupon. She had seen the bottles marked as Ext A and B, which were the same. She also identified the bribe money-currency notes, which were the same as per the serial numbers noted by her on the slip. She also identified the paper slip (ExtP 2) prepared by her and bearing her signature. She also identified the application (Ext P1) of the complainant. She read the pre-trap memo and identified her signatures (Ext-P5). She also identified her signatures on site plan (ExtP5/II), supurdnama of seal (ExtP5/III), arrest memo (ExtP5/IV), memo of impressions of seal (Ext-

P1/2), seizure memo of synopsis of MEd (Ext-P5/V), seizure cum recovery memo of currency notes (Ext-P5/VII), seizure memo of washes of both hands (ExtP5/VIII) and memo of post trap proceedings ExtP5/I. She also identified the seized synopsis comprising of 26 pages. During cross-examination, she stated that they left for the spot at about 1.30 PM and reached College within 15/20 minutes. One member of the team was visible to her from the chair whereas she was seated inside the office of the accused, however, he was not visible to the respondent, who was on the other side of the table to her. The member standing in the veranda was a Constable, whose name was perhaps Jagdev. She passed on the signal to the said Constable. The double shutters of the door of office of the accused opened inside the room. She was seated on the chair towards right side of the accused. The position of Jagdev constable was not mentioned in the site plan. The other members became visible only after she walked a few steps towards the entrance. She did not remember whether she asked complainant the reasons why her thesis was rejected earlier four times, but it was mentioned in the application that earlier Guide was a different fellow. She asked the complainant as to whether she was having any hostility towards the accused, to which she replied in negative. The respondent asked the complainant as to whether she had brought the money but did not mention the bribe money specifically. She did not remember whether the accused put her signatures or seal before or after accepting the money, however, she shuffled the pages of synopsis before accepting the money but did not ask any thing about the same before or after accepting the money. The complainant did not walk up to the door of the room by

taking the synopsis with her. She had mentioned in the statement before Police that the accused demanded the money. She was instructed to pass the particular signal on demand and acceptance of bribe. However, the complainant was not asked to do so. She passed the signal after walking near and from the door. The complainant also walked up to the door along with her, but she did not see her passing the particular signal to the trap members. She did not feel it necessary to ask the complainant as to why her synopsis was rejected four times earlier but now, she feels that she should have asked that question also. The bribe was demanded for clearing the synopsis and not for getting the same cleared.

9. **PW Ajay Puri** has stated on identical lines as that of PW Sushma Rani. He stated that he and his colleague Sushma Rani asked some questions to the complainant and after getting the answers, they were satisfied that the complaint was genuine. The complainant produced ₹ 5,000 comprising of two currency notes each of ₹ 2000/- and ₹ 500 denominations and on the directions of Dy.SP, he and Sushma noted down the serial numbers of those notes on separate paper slips, which were retained by them. PW Sushma Rani was instructed to remain as near as possible to the complainant and hear conversation between the complainant & the accused and to watch their activities. The complainant was instructed to hand over the tainted currency notes only on demand of bribe by the accused and Sushma Rani was instructed to flash a particular signal on demand and acceptance of bribe thereafter. He was searched by the TLO and later he searched all the members of the team, who were allowed to retain mobile sets and ID Card only. The complainant was searched by Sushma Rani.

The complainant was further instructed not to shake hand with anybody including accused. The vehicles were parked on the main road outside the gate of the college. The complainant and Sushma Rani proceeded inside and he along with PW Pandita TLO stayed at the main gate. Two trap team members also went inside, and one stood outside the room of the office of the accused, whereas the other took position on one side. After about fifteen minutes, he was signalled by PW Pandita, and we rushed inside. On entering the office room, which was a big hall, accused was sitting on her chair with the table in her front. Sushma Rani narrated that the accused had demanded and accepted the tainted money, as bribe which she had kept in the drawer of her table after counting. Thereafter, the TLO introduced himself to the accused and introduced her with the other members of the team. Trap kit was requisitioned, and a solution of sodium carbonate was prepared in the glass tumbler. PW Sushma Rani was made to dip her right hand's fingers therein and upon her dipping the fingers, the colour of solution remained unchanged. Afterwards, accused was asked to rinse her right hand's fingers in the same solution and upon her doing so, the colour of the solution turned pink. That solution was sealed and marked as 'A'. Fresh solution of Sodium Carbonate was prepared in another glass tumbler and Shushma Rani was made to dip her left hand's fingers therein, but the colour of solution remained unchanged. Thereafter, accused Prof. Jolly rinsed her left hand's fingers in the solution, and it turned into pink. That solution was also preserved in another bottle which was sealed and marked as 'B'. Thereafter, on the direction of TLO, PW Sushma Rani searched the drawer of the accused and recovered the bribe money. He and Sushma Rani

confirmed the serial numbers of those notes recorded by us on separate slips, which matched. In the meanwhile, TLO called two lady constables, who also arrived on spot. Sushma Rani conducted the search of the accused on the directions of TLO and recovered a mobile phone, coins of ₹ 70-80 in total, a pen drive and I-card. Principal of the college of the accused was also called on spot. Different memos were prepared on spot with respect to proceedings conducted on spot and the seal-a fingering used as stamp during the proceedings was kept on his supurdrama. He produced the same in the court. The synopsis was recovered from the accused and seized on spot. Site plan was also prepared and the whole of the proceedings went on smoothly. A post-trap memo was also prepared regarding the proceedings conducted on spot, which was signed by all the team members as witnesses. He identified the two bottles marked as 'A' and 'B' in the court, carrying his signatures, though the colour had faded. He was also showed the seized currency notes and his slip which were the same. He identified his signatures on the pre-trap memo (Ext p-5), post trap memo (Ext. P5/9), siteplan (Ext. P-5/II), supurdnama (Ext. P5/III), arrest memo (Ext. P-5/IV), impression of seal memo (Ext. P5 1/2) and seizure memo of file Mark -2, seizure memo of two paper slips (Ext. P5/VI), memo of seizure and recovery of tainted currency notes ((Ext. P5/VII) and seizure memo of hand washes of both hands of accused (Ext. P-5/VIII). During cross-examination, he stated that he got the telephone call from the office of Chief Engineer. He reached at the office of VOJ at about 12:30 PM. It took about 30 to 40 minutes to complete the pre-trap proceedings. He went through the complaint filed by the complainant. He did not remember the

exact words, but it was written in the complaint that synopsis of the complainant was rejected earlier, and she had also changed her Guide. He did not question the complainant as to why the synopsis was rejected four times earlier by her Guide Mohd. Zubair. He also did not question the complainant whether the accused had the authority to clear the synopsis. Neither complainant nor independent witness was visible to him from the place where he was standing. He did not check whether accused had approved/cleared the synopsis of the complainant.

10. **PW Inspector Vikram Sharma** has stated that he was posted at VOJ (now ACB), Jammu. On 9th of Dec., SSP VOJ constituted a trap team in FIR 25/2016 for laying the trap. Mr. H. L Pandita, DySP was the T.L.O and other members were Inspector Hari Singh, Inspector Zafar Amin, Inspector Mushtaq Ahmed, Const. Vikas Dutta, Const. Jagdev Singh, besides him. Const. Sanjay Bhat was assigned the job of dusting and demonstration. He reported at the office of SSP at about 12:25 PM. Complainant Sonia Sharma, Mr. Ajay Puri AEE, Shushma Rani AEE both from PDD and other team members were already there. TLO introduced all the trap team members to complainant and the reasons for assembling. Both the AEEs were informed that they would be the independent witnesses to the proceedings. IO handed over the case file to TLO. Independent witnesses were made to read over the complaint, who asked certain questions to the complainant to ascertain the genuineness of the complaint. It was alleged that the accused was demanding ₹5,000 for clearing her synopsis for M.Ed. The complainant produced ₹5,000/- comprising of two notes each of Rs 2,000/- and Rs 500/- denominations, as it was alleged that ₹5,000/- were to

be paid as advance and the balance amount of ₹ 5,000/- was to be paid after clearance of her synopsis. Both the independent witnesses noted down the serial numbers of those notes on separate papers provided by TLO, which they were allowed to retain with themselves. TLO requisitioned the trap kit and phenolphthalein powder through Const. Sanjay Bhat. Const. Sanjay Bhat smeared the notes produced by the complainant as bribe money, with phenolphthalein powder and prepared a solution of Sodium Carbonate in a glass tumbler. Mr. Ajay Puri AEE was made to rinse his right hand's fingers in that solution, but the colour of the solution remained unchanged. Thereafter, he was told to dry his hands and then touch the phenolphthalein smeared notes and then rinse his fingers in the same solution again. Upon doing so, the colour of the solution turned pink, the process was explained to the members of the team and thereafter the solution was destroyed. Thereafter, Sanjay Bhat was disassociated from the trap team. Thereafter Sushma Rani AEE searched the complainant, who was allowed to retain mobile set and I card only. On the directions of TLO, Sushma Rani put the phenolphthalein smeared notes in the outer pocket of the purse of the complainant, who was cautioned not to shake hands with anybody and to handover those notes to complainant only on demand as bribe. Sushma Rani AEE was named as shadow witness and was directed to remain with the complainant and to watch the transaction carefully and try to overhear the conversation between complainant and accused. PW Ajay Puri conducted the search of other members of the trap team, who were allowed to retain I cards, pens only besides mobile sets. A pre-trap memo was prepared which was readover to all the members of trap team and their

signatures were obtained as witnesses thereto. At about 1.30 PM, we proceeded from the office towards Govt. College of Education Canal Road by two Govt. vehicles and reached there at about 1.45 PM. The vehicles were parked at some distance from the gate of the college and complainant along with shadow witness Sushma Rani walked to the office of accused whereas the other team members took their positions outside. After about 10/15 minutes, the independent/shadow witness passed the pre-fixed signal and all the team members rushed to the room of the accused and shadow witness narrated that the accused, who was seated on her chair, had demanded and accepted the bribe and had kept the bribe money in the drawer of her table. TLO introduced himself and other members of the team to the accused and asked her to cooperate with them. On being questioned, the accused disclosed her name, designation and residential address. During same time, two lady constables also reached there. On the directions of the TLO, Constable Vikas Dutta brought the trap kit and prepared a solution of Sodium Carbonate. Shadow witness Sushma Rani was made to dip her right hand's fingers in that solution, but the colour of that solution remained unchanged. Thereafter, accused lady was made to dip/rinse her right hand's fingers in that solution which turned pink, and it was preserved in a bottle marked as 'A' and sealed on spot. A fresh solution of Sodium Carbonate was prepared and the process was repeated to obtain the left hand's wash of accused which also turned pink and it was preserved in another bottle which was sealed on spot and marked as 'B'. Both the bottles were seized on spot and the seizure memos were prepared. On the directions of the TLO, shadow witness recovered the bribe money

from the drawer of the table of the accused, which were tallied with the serial numbers noted by both the independent witnesses and were found to be same. The bribe money and two slips containing the numbers on those notes were also seized on spot and the seizure memo was signed by the witnesses. Besides him, on the directions of TLO, PW Sushma Rani conducted the search of the accused and some coins of ₹ 80-82/-, mobile, official seal, pen drive, I card etc. were recovered which were seized on spot. The seal used for sealing the bottles etc. were given to PW Ajay Puri after taking its impression on a paper. On the directions of TLO, the accused produced the synopsis of complainant comprising of about twenty-seven pages, which was also seized on spot. During the proceedings, Principal of the college also reached on spot. The accused was arrested on spot and a memo of arrest was prepared and husband of accused was informed telephonically, who also reached on spot. A memo of post-trap proceedings was also prepared and was signed by him and others as witnesses. After completion of the proceedings, the team returned at about 4:00 PM. He also identified the initial application (Ext. P1) submitted by the complainant. On being shown, he also identified the order constituting trap team (Ext. P6), pretrap memo (Ext. P5), post trap proceedings memo (Ext.-P5/I), site plan (Ext-P5/II), memo of supurdnama of seal (Ext.-P5/III), memo of arrest of accused (Ext-P/IV) seizure memo of synopsis file (Ext. P5/V), seizure memo of two slips (Ext. P5/VI), seizure cum recovery memo (Ext. P5/VII) and seizure memo of both hands wash of accused (Ext P5/VIII). During cross-examination, he stated that he met the complainant at the retiring room of SSP for the first time. Bribe was

neither demanded nor accepted in his presence. Independent witnesses didn't question the complainant as to why her synopses were rejected four times earlier, but she narrated that she had changed the Guide. PW Ajay Puri was searched by the TLO, but the shadow witness was not searched by anybody however, these facts are not mentioned in his statement recorded under Section 161 Cr.PC. The purse of the complainant was not seized. He was standing about 25 feet away from the office of the accused in the park. None of the team members was standing in the veranda. The happenings inside the room were not visible to him. TLO didn't obtain the signatures of Principal or husband of the accused on the arrest memo. The shadow witness flashed the pre-arranged signal to a member who was constable and all the team members were having eye-contact with each other. That constable was standing about twenty-five feet in front of the room, whereas he was standing towards left side and that constable was almost in front of the door. None of the witnesses was examined in his presence.

11. **PW Inspector, Hari Singh** stated that in December 2016, he was posted with VOJ (now ACB). On 9th of December 2016, SSP VOJ constituted a trap team and DySP was made the Trap Laying Officer, whereas he, Insp. Zaffer, Insp. Mushtaq and Insp. Vikram Sharma and two constables were nominated as members. The responsibility of dusting and pre-trap demonstration was entrusted to Constable Sanjay Bhat. All the trap team members assembled at the office of SSP and complainant and two independent witnesses, namely, Sushma Rani and Ajay Puri, both AEEs, PWD were already there. TLO introduced team to the complainant and the independent witnesses, and they were further apprised of the purpose of

their assembling. Insp. Naresh Sharma IO handed over the CD file to the TLO and all the witnesses read the complaint. Independent witnesses put some questions to the complainant-Sonia to ascertain the genuineness of her complaint. The complainant produced ₹5,000/- comprising of two notes each of ₹2,000/- and ₹500/- denominations. Both the independent witnesses noted down the serial numbers on separate paper slips, which they retained with themselves. Trap Kit and phenolphthalein powder were requisitioned and the GC notes produced by the complainant were dusted with phenolphthalein powder. He has deposed about the effects of handling phenolphthalein smeared notes when washed afterwards with the solution of Sodium Carbonate. Independent witness searched the complainant, who was allowed to retain mobile- set and I-card only. The phenolphthalein smeared notes were kept by the independent witness in the outer pocket of the purse of the complainant, who was instructed not to touch those notes and to hand over the same to the accused only on her specific demand as bribe. Sushama Rani was named as shadow witness and was instructed to remain with the complainant and observe the transaction and to hear the conversation between the complainant and the accused and then to pass a particular signal on acceptance of the bribe. PW Ajay Puri was named as independent witness, and he searched all the members of the trap team before they left to lay the trap after washing their hands properly. On the directions of the TLO, complainant and shadow witness proceeded to the office of the accused and other members took their respective positions outside. After 10-15 minutes, shadow witness flashed the prefixed signal whereafter all the team members rushed into the office of the accused.

Complainant and shadow witness pointed towards accused and told that the accused had demanded and accepted the bribe money and had kept the same in the drawer of her table after counting. TLO introduced himself to the accused and informed her about the complaint against her. In the meanwhile, two lady Constables also arrived. On the directions of TLO, a trap kit was brought, and a solution of Sodium Carbonate was prepared in the tumbler in which shadow witness was made to dip her righthand fingers. But the colour of the solution remained unchanged. Later, accused-Ashu was made to rinse her right hand fingers and on doing so, the colour of the solution turned pink. The solution so obtained was preserved in a clean bottle which was sealed on spot. Again, the same process was repeated and the left hand of the accused was rinsed in the solution of Sodium Carbonate, which turned the colour of solution to light pink. It was also preserved in another clean bottle which was sealed. Both the bottles were marked as Ext. 'A' and 'B' and were seized. On the directions of the TLO, shadow witnesses searched the drawer of the table of the accused and recovered ₹ 5,000/- bribe money and serial numbers of those notes were tallied with the numbers noted down by the two independent witnesses on slips with them. The bribe money and two slips were also seized. The articles recovered on personal search were detailed in the memo. Impressions of seal were taken on a paper, and the seal was given on supurdnama to PW Ajay Puri. The synopsis file submitted by the complainant was called from the accused and was seized. In this regard, memo of the post trap proceedings was prepared. He identified the two bottles Ext. A and B and the bribe money. He identified the order

constituting trap team (Ext. P6), pre-trap memo (Ext. P5), post trap memo (Ext. P5/I), site plan (Ext. P5/II), memo of supurdrama and impression seal (Ext. P5/III), memo of arrest of accused (Ext. P5/IV), seized memo of synopsis file, (Ext. P5/V), seizure memo with respect to paper slips (Ext. P5/VI), seizure memo with respect to recovery-seizure of bribe money (Ext. P5/VII) and seizure memo of hand washes (Ext. P5/VIII) on the file, carrying his signatures. He identified the synopsis file and two slips on the file. During cross-examination, he stated that they assembled at the office of SSP at about 12:15 PM. All the official members entered at the same time, however, the complainant and the independent witnesses were already there. He does not know whether the independent witnesses questioned the complainant about the authority with the accused to approve the synopsis. The hands of independent witness had dried when she touched the phenolphthalein powder-stained notes after rinsing initially in the solution of Sodium Carbonate, so there was no pinkish stain on those notes. It is true that all the trap team members were first searched by the independent witness and thereafter, they washed their hands. He was standing at the corridor about 25-30 feet away from the office room of accused. He did not remember whether the shutters of the door of the office of the accused opened inwards. It is true that persons inside the room were not visible to him. He cannot say about the conversation between the complainant and the accused. He has no personal knowledge of the demand or acceptance of bribe money inside the office. He did not go through the synopsis seized on spot. Principal Ms. Kaushal Samnotra was called, and she was present when post trap proceedings were conducted. He does not

know whether her signatures were obtained on any of the post trap memos, but she issued a no-damage certificate. The husband of the accused was informed telephonically about the arrest of accused, who also reached on spot. The purse of the complainant in which bribe money was kept was not seized. The proceedings concluded on spot at about 4.00 PM, and we returned to office.

12. **PW Zaffer Amin** stated that besides him, there were other members of the trap team including Inspector Vikram Sharma, Inspector Hari Singh and others. Mr. H. L. Pandita was the Trap Laying Officer. He has stated about the pre-trap proceedings and further that they reached Government College of Education at 1.50 PM. The vehicles were stopped at some distance from the college. He has further stated that the complainant along with witness Sushma Kumari went towards the office of the accused, and they assumed their respective positions. After about 10 to 15 minutes, PW Sushma Rani flashed pre-fixed signal to Trap Laying Officer and thereupon, the Trap Laying Officer along with team members went inside the office of the respondent. He has deposed in respect of the recovery of the bribe amount from the drawer of the table and, also in respect of the hands wash of the respondent. He proved the documents. (ExtP5/1, ExtP5/II ExtP/III, ExtP5/IV, ExtP5/V, ExtP5/VII, ExtP5/VII, ExtP5/VIII). During cross-examination, he stated that he was 25 ft. away from the place of occurrence and door of the room was not visible to him. He expressed ignorance as to whether the pre-fixed signal was flashed by the PW Sushma Rani from inside the room or outside.

13. **PW Sanjay Bhat** stated that in the year, 2017 he was serving with Vigilance Organization, Jammu and he was assigned the job of dusting. The complainant-Sonia Sharma and independent witnesses-Sushma Rani AEE and Ajay Puri AEE and other team members were present. He was introduced to the team members, thereafter, Sonia Sharma handed over ₹ 5,000/- comprising of two currency notes each of ₹ 2000 and ₹ 500 denominations. The serial numbers of currency notes were noted by the independent witnesses separately and retained with themselves. Thereafter, one trap kit briefcase and phenolphthalein powder were brought from the Malkhana and one solution of Sodium Carbonate was prepared. Thereafter, he sprinkled the phenolphthalein power on the currency notes. He identified the signature of SSP Vigilance Organization on the order by virtue of which the trap team was conducted (ExtP6). During cross-examination, he stated that order dated 09.12.2016 was not signed by the SSP Vigilance Organization Jammu in his presence.
14. **PW Inspector Mushtaq Ahmed** stated that in the month of December, he was working in the Vigilance Organization, Jammu. He was part of the trap team constituted by the SSP Vigilance Organization Jammu. H. L. Pandita, Dy.SP was the Trap Laying Officer. Constable Sanjay Bhat was assigned the job of dusting the currency notes. When he came to the office, the Trap Laying Officer, independent witnesses, team members were present. He has deposed about the instructions imparted to the independent witnesses-PWs Sushma Rani and Ajay Puri. The complaint was read over to the complainant, and she was also questioned by the independent witnesses. He has deposed about the demand made by the

accused/respondent from the complainant and has also stated about the pre-trap proceedings. He has further stated that after the completion of the pre-trap proceedings, they went to College of Education, Canal Road Jammu and the vehicles were parked outside the college, and they took their respective positions. The complainant and the independent witness Sushma Rani went inside the office. After 10 to 15 minutes, the shadow witness flashed the pre-fixed signal to the members of trap team and the team members went inside the office. The complainant stated that the accused/respondent-Ashu Jolly had received bribe amount, who was sitting on the chair. The Trap Laying Officer introduced himself and the members to the accused/respondent. Thereafter, solution of Sodium Carbonate was prepared, the hands of the accused were washed and the colour of the solution turned into pink and thereafter, the bribe amount of ₹ 5000/- was recovered from the drawer of the table of the respondent. He has also deposed about the initial washing of the hands of the shadow witness. The currency notes were tallied with the numbers noted by the independent witnesses, and they were found to be same. He also proved the ExtP5/1, ExtP5/II, ExtP5/III, ExtP5/ IV,ExtP5/V,ExtP5/VII, ExtP5/VIII. During cross-examination, he stated that the complainant had not mentioned the name of earlier Guide in the application filed by her. He expressed ignorance about the questions posed by independent witnesses to the complainant. He was standing at the distance of 25 ft from the place of occurrence. The accused/respondent was not visible to him from the place, where he was standing. The proceedings were conducted from 2 to 4.30

PM. Principal had come on spot prior to the arrest of the accused/respondent.

15. **PW Bansi Lal** stated that he was posted as Executive Magistrate Jammu. He has deposed about the resealing of the seized material, so that the same could be sent to FSL Jammu. He identified the signatures of the SSP on the communication (ExtP-13). He had resealed exhibit A and B and he also proved the letter dated 14.12.2016. He also identified his signatures on Exhibit A and B.

16. **PW Dr. Joginder Kumar Yadav** has stated that in the year 2016, he was posted as Regional Director, IGNOU, Regional Centre, Jammu. He had written a letter dated 28.12.2016 in response to the letter dated 21.12.2016. He proved the contents of the letter. He also identified the record annexed with the said letter (EXTP-9). The record was of empanelled supervisors for M.A. Edu./M.Ed Guides and the empanelment was done by the Headquarters. The respondent-Ashu Jolly also figured in the list of empanelled Supervisors/Guides. During cross-examination, he stated that the complainant sent her synopsis number of times for approval, but they were rejected thrice, as her synopsis was not in accordance with the guidelines. This is true that the Guide of the complainant could have sent the synopsis again for approval after rectifying the same. The complainant had not made any application for change of Guide. The job of the Guide is to rectify the synopsis and not to pass. There is a separate panel for passing the synopsis.

17. **PW Professor Kaushal Samotra** stated that on 09.12.2016, he was posted as Principal, Government College of Education, Jammu and the respondent

was posted there as Assistant Professor. The Vigilance Officials informed him that the respondent had been trapped while demanding and accepting bribe. On the asking of the SSP, Vigilance Organization, Jammu, he provided photocopies of the Service Book, Posting and Appointment Orders, Joining Report which were attested by him. He proved the letter (EXTP-10) and, also identified the copies of three documents forwarded by him marked as M10, M10/1 and M10/2 respectively. He further stated that he does not know Sonia Sharma-complainant in the case, and she was not on the rolls of the College. He had not seen personally the accused demanding and accepting the bribe.

18. **PW Pawan Abrol, Scientific Officer, FSL, Jammu** stated that he examined the contents of the bottles and as per his report, Phenolphthalein and Sodium Carbonate were found present in Exhibit Nos. P-2406/2016 and P-2407/2016. He proved the report- Ext.P-11.
19. **PW Hira Lal Pandita, Dy. SP, Trap Laying Officer (TLO)** stated that after perusing the written complaint of the complainant, he also made the independent witnesses to go through the same, who questioned the complainant as well. The complaint of the complainant was primarily that bribe was demanded for clearing her synopsis and it was rejected four times earlier. She had demanded ₹5000 as first instalment, to be paid that day. He deposed about the pre-trap proceedings. He further stated that the complainant was instructed to hand over those notes only on demand as bribe to the respondent or the person directed by her. Sushma Rani was associated as shadow witness and was apprised of her role. Thereafter, the team members accompanied by the complainant and independent witnesses

left for Canal Road by two official vehicles. After reaching the spot, the team members proceeded inside the Government College of Education. The complainant and witness proceeded inside the room of the respondent, that was in third row of three rooms and the other team members took positions in the lawn and veranda. After 10 minutes, the shadow witness flashed the pre-fixed stop signal as directed. He along with other team members rushed inside and found the respondent present in the office sitting on her table towards the left side. The complainant and the independent witness introduced themselves to the accused and further narrated that the accused had demanded, accepted the bribe money and had kept the same in the drawer of her table. Principal of the College was also called on spot. He deposed about the washing of the fingers of the respondent and changing of the colour of the solution. The drawer of the table of the accused was searched through PW Sushma Rani and bribe money was recovered from there. The money was found to be the same currency notes which were produced by the complainant for payment of bribe. The bribe money was seized and the two slips with the witnesses containing their serial numbers were also seized. The synopsis submitted by the complainant was also recovered from the respondent and seized on spot. He prepared the site plan, and the independent witnesses were allowed to go to their office. No damage certificate was obtained from the Principal. He identified two bottles marked as A & B shown to him in the court and also the bribe money. He was also shown the complaint lodged by the complainant (EXT-P1), FIR registered (EXT-P1/I), memo of pre-trap proceedings (EXT-P5), order of SSP constituting trap team (EXT-P6),

memo of post-trap proceedings (EXT-P5/I), site plan (EXT-P5/II), memo of supurdnama of seal (EXT-P5/III) arrest memo of respondent (EXT-P5/IV), seizure memo of synopsis (EXT-P5/V) and also the seized synopsis Mark-2, seizure memo of two paper slips (EXT-P5/VI) and two slips EXT-P2, EXT-P3, recovery-cum-seizure memo of bribe money (EXT-P5/VII) and seizure memo of the hands wash of the respondent (EXT-P5/VIII) and he admitted the same to be true. He also identified no damage certificate (EXTP-12). During cross-examination, he stated that he had put certain questions to the complainant for satisfaction of the genuineness of the complaint. He questioned the complainant as to why her synopsis was rejected four times earlier, to which she replied that it was not cleared for want of payment of bribe. The complainant had made no mention about demands made previously and the amounts demanded. PW Sushma Rani gave signal from the door. He was standing at Point 4 at the time of trap. He had not mentioned the position of any trap members. He did not go through the synopsis.

20. **PW SSP Shabir Ahmed Malik** stated that he was posted as SSP VOJ in the year 2016. He received the written application from Sonia Sharma against the accused-Ashu Jolly, wherein she had alleged that the respondent was demanding Rs. 10,000/- for clearing her synopsis for M.Ed. He further stated that she was to pay her first instalment of ₹ 5,000 that day as per the agreement. He registered the FIR No. 25/2016 immediately and entrusted the investigation to Inspector Naresh Sharma. He also constituted a trap team headed by Dy.SP. H. L. Pandita and wrote to Chief Engineer PDD for deputing two gazetted officers as independent witnesses. He identified the

application filed by the complainant (EXT-P-1). He also identified the FIR (EXT-P-1/1) and order constituting trap team (EXT-P6). He also identified the letter written to Chief Engineer PDD (EXT-P-15). During cross-examination, he stated that the complainant was accompanied by her husband.

21. **PW Naresh Sharma, Inspector**, stated that in the year, 2016, he was posted in the Vigilance Organization Jammu. He had investigated the FIR No. 25/2016 pursuant to the order of SSP Vigilance Organization Jammu. He examined the complaint submitted by the complainant-Sonia Sharma and thereafter handed over the file to Hira Lal Pandita, who conducted the pre-trap and post-trap proceedings. He recorded the statements of the witnesses. He also got the bottles marked as A and B resealed from the Tehsildar Jammu and sent to FSL for their examination. He also obtained the report of the expert. As per his investigation, the respondent had committed an offence under sections 5(1)(d) read with section 5(2) and 4A of the Prevention of Corruption Act. He also obtained the sanction for prosecution of the respondent and produced the chargesheet before the concerned court. During cross-examination, he stated that after taking over the investigation, he did not go on leave. This is wrong that he had not given any priority to that case. Rather the charge sheet was filed within four months. He had recorded the statement of the complainant on 11.02.2017. This is true that the complainant had not levelled any allegation against Zubair Ahmed. The initial approval is given by the Guide; however, it is the panel of experts who accords final approval to the

synopsis. No documentary evidence emerged investigation in respect of selection of the respondent as Guide by the complainant.

Appreciation of evidence:

22. Before this Court proceeds ahead to adjudicate the contentions raised by the appellant, it would be apt to take note of judgments of the Hon'ble Supreme Court in respect of the scope of the interference in appeal arising out of judgment of acquittal.
23. In *Chandrappa v. State of Karnataka*¹, the Hon'ble Apex Court has held as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) **An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.**

(5) **If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not**

¹ (2007) 4 SCC 415

disturb the finding of acquittal recorded by the trial court.”

(emphasis added)

24. In **Bhupatbhai Bachubhai Chavda & Anr. v. State of Gujarat**², the Hon’ble Supreme Court of India has held as under:

“It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. **After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record.** Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. **Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal.** The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.”

(emphasis added)

25. Thus, from the law laid down by Hon’ble the Supreme Court in the judgments (supra), it is evident that interference with the judgment of acquittal is warranted only when the judgment is perverse, or the vital evidence has been ignored by the trial court while acquitting the accused or the opinion formed by the trial court is not possible or implausible. Only because other view better than that of the learned trial court is also possible, on the same set of evidence led by the parties, the judgment of acquittal cannot be interfered with.
26. Now, this Court would examine as to whether the appellant has succeeded in making out a case for interference or not. The allegations against the

² 2024 INSC 295

respondent are that the respondent while being posted as Assistant Professor in Govt. College of Education, Canal Road, Jammu demanded illegal gratification of ₹ 10,000/- from the complainant-Sonia Sharma for clearing her synopsis and on 9th December, 2016, the respondent demanded and accepted ₹ 5,000/- as the first instalment of agreed amount from the complainant, which was subsequently recovered from the drawer of the office table placed in front of the respondent. The cause for making demand of ₹ 10,000/- projected by the prosecution is for clearing the synopsis of the complainant. This is not being denied by the respondent that she was working as Assistant Professor in the Month of December, 2016. PW-Sonia Sharma has stated that her synopsis was being rejected repeatedly and her guide Mr. Zubair Kales finally advised her to approach the respondent, as such, she called her during the last days of November/initial days of December and the respondent assured that her synopsis would be cleared but she would be required to pay ₹ 10,000/- to her as bribe out of which ₹ 5000/- would be paid by her at the time of approval of synopsis by Assistant Professor, when she would sign and stamp the same and another ₹ 5,000/- were to be paid after the approval. During cross-examination, she admitted that she was conscious of the fact that a guide could neither accept nor reject the synopsis and the panel was constituted for that purpose. She admitted that she had herself chosen her previous guide Mr. Zubair Kales from the list of guides placed at the office of IGNOU and she changed her guide as she was told by her previous guide that he was going out of State. She admitted that the job of the guide is only to check the synopsis and put his seal and signatures thereon and it

was correct that her previous guide had never rejected her synopsis but had only pointed out the mistakes. She further stated that she chose the respondent as her guide on the recommendation of her previous guide. The role of the guide is to help the student in preparing the synopsis. She further admitted that she never filed any application with the IGNOU for changing her guide.

27. Though the prosecution has examined Mr. Joginder Kumar Yadav and Trap Laying Officer to prove that the respondent was in the list of empanelled supervisors for MA Edu./M Edu.but there is nothing on record to establish that respondent acted as a guide of complainant-PW-1 Sonia Sharma and rather Ext P-9 proves that complanant-PW-1 Sonia Sharma having enrolment No. 125417190 programme M.Ed. was carrying out her project under Zubair Kales and the office of the Regional Director had received no communication from learner side regarding preparation of synopsis under the guidance of Ashu Jolly i.e. the respondent. Further PW Joginder Kumar Yadav has stated that job of the guide is not to pass the synopsis and rather synopsis to be approved by a separate panel. In view of the above, this Court is of the considered view that the prosecution has miserably failed to prove that the respondent was acting as a guide of the complainant in pursuing her M.Ed course from IGNOU, Jammu.

28. In the complaint i.e. Ext P-1 dated 09.12.2016, it was stated by the complainant-Sonia Sharma that her synopsis was rejected four times and she had changed her guide as Ashu Jolly- respondent. She was demanding ₹ 10,000/- as bribe from her for clearing her synopsis and under the compelling circumstances, she was going to hand over first instalment of ₹

5,000/- to her. The Exp-1 gives the impression that because of repeated rejections of her synopsis, she voluntarily changed her previous guide i.e. Mohd Zubair Kales, whereas in her deposition before the Court, she has stated that as her previous guide Mohd Zubair Kales was going out of the State, so he asked her to get in contact with the respondent. PW H .L Pandita, Trap Laying Officer in his deposition stated that the complaint of the complainant was primarily that bribe was being demanded from her for clearing her synopsis. He has further stated in cross-examination that the complainant had told her that her synopsis was not cleared earlier for want of bribe. There is no evidence in respect of earlier demand of bribe as to who demanded the bribe initially as the synopsis was rejected earlier four times and it is not the case of the prosecution that the synopsis was not cleared earlier, prior to the respondent coming into picture for want of bribe. Under such circumstances, Mohd Zubair Kales was the material witness, but he has not been associated with the investigation by the Investigating Officer and no explanation is forthcoming from the prosecution for not associating Mohd Zubair Kales with the investigation. There are contradictions between the initial story projected by the complainant in her application (ExtP-1) and her subsequent deposition in the court. This material contradiction alongwith the lack of any evidence in respect of engagement of the respondent as a guide, causes a serious dent in the prosecution case.

29. It was vehemently argued by Ms. Monika Kohli, learned Sr. AAG that the prosecution has proved the demand and acceptance of money by the respondent and the subsequent recovery of bribe money from the table

lying in front of the respondent. In the evidence of PW-1 Sonia Sharma, it has come that out of ₹ 10,000/- demanded as bribe by the respondent, ₹ 5,000/- were to be paid by her at the time of approval of synopsis when Assistant Professor was to sign and stamp the same and another ₹ 5000/- were to be paid after the final approval. During cross-examination, she admitted that the synopsis on the file was neither signed nor stamped by the respondent and she handed over ₹ 5,000/- to the respondent without checking the same. A sum of ₹ 5,000/- was to be paid by the complainant-PW-1-Sonia Sharma when respondent was to approve and put her seal and signature on the synopsis but it is quite surprising that PW-Sonia Sharma without ascertaining as to whether the respondent had signed and put her seal on the synopsis, paid an amount of ₹ 5,000/- to her. This is also a material discrepancy in the prosecution case, particularly when the amount was to be paid by the complainant only at the time of signature and seal of the respondent and it is difficult to believe that the complainant without ascertaining the seal and signature on the synopsis would pay ₹ 5,000/- to the respondent.

30. Further, this Court finds that there are contradictions between the statement of PW-1 Sonia Sharma and shadow witness PW-Sushma Rani. PW-1 Sonia Sharma has stated that the respondent while handing over the synopsis to her asked as to whether she had brought the money and then the complainant took out the currency notes from her purse and handed over the same to the respondent. If she was handed over the synopsis, then why didn't she take the synopsis along with her, particularly when the bribe was paid for that. PW-2 Sushma Rani-shadow witness has stated that the

complainant asked the respondent about her synopsis, to which the respondent retorted as to whether she had brought the money as demanded and thereupon the complainant took out ₹ 5,000/- from her bag and handed over the same to the respondent. The complainant PW-1 Sonia Sharma has nowhere stated that the respondent asked the complainant as to whether she had brought the money “as demanded” and further in her cross-examination, PW-2 Sushma Sharma has stated that she did not remember whether the respondent put her signatures and seal on the synopsis before accepting the money, however, she shuffled the pages of the synopsis before accepting the money but did not ask anything about the same before or after taking money. From the statement of the shadow witness, it is not forthcoming as to whether, synopsis was handed over to the complainant or not. Thus, there are material contradictions between the statement of the complainant and shadow witness in respect of mode and manner in which the demand of ₹ 5,000/- was made by the respondent and the amount was accepted by her. These contradictions cause serious doubt, the benefit of which must go to the accused/respondent.

31. It is also apt to observe here that PW Sushma Rani-shadow witness in her cross-examination has stated that the member standing in the veranda was a constable whose name was perhaps Jagdev. She passed signal to the said constable. PW Inspector Vikram Sharma has deposed that Constable Jagdev Singh was part of trap team. Besides Zubair Ahmed Kales, he was another important witness more particularly in view of statement made by PW Sushma Kumari, who has not been associated with investigation and consequently not cited as witness in a chargesheet. This omission also

causes serious doubt about the prosecution case. In **‘Takhaji Hiraji v. Thakore Kubersing Chamansing & Others’**³, Hon’ble the Supreme Court of India has observed as under:

“19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. **It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.** On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.”

(emphasis added)

32. Hon’ble the Supreme Court of India in **P. Satyanarayana Murthy vs. The Dist. Inspector of Police and Anr**⁴, has held as under:

“18. This Court in *A. Subair vs. State of Kerala* (2009) 6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

19. In *State of Kerala and another vs. C.P. Rao* (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same

³ 2001 AIR SC 2328

⁴ 2015 AIR SC 3549

offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. **The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand.** Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.”

Emphasis added

33. Thus, in view of the law laid down by Hon'ble the Supreme Court as mentioned above, the proof of demand of illegal gratification is gravamen of an offence under Section 5(1) (d) read with Section 5(2) and 4-A of Prevention of Corruption Act, 2006 and in absence of the same, the charge therefor would obviously fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, without proof of the demand would not be sufficient to bring home the charge against the respondent.

34. This court has examined the judgment passed by the learned trial court and finds that the learned trial court has not taken into consideration the

statements of few witnesses and even if this court remands the matter back to the learned trial court on that ground, it would be of no consequence as the prosecution case has various inconsistencies, infirmities and material contradictions and in such circumstances the acquittal of the respondent cannot be reversed. Learned trial court has already noted the infirmities as pointed out by this court hereinabove and the opinion formed by the learned trial court while acquitting the respondent can neither be termed as perverse nor impossible, as such, this Court does not find any reason to show indulgence.

35. In light of what has been said, considered and discussed as above, the judgment of the learned trial court is upheld. The present appeal is found to be misconceived and the same is, accordingly, **dismissed**.
36. Record of the trial court be sent back forthwith.

(RAJNESH OSWAL)
JUDGE

Jammu
06.02.2025
Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No