

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
CRA.NO.1013/2016

(SUDEEP

Vs

THE STATE OF MADHYA PRADESH)

RESERVED ON :25/4/2024

PRONOUNCED ON :8/7/2024

Appearance:

(SHRI VIVEK SINGH, LEARNED COUNSEL FOR THE PETITIONER)

(SHRI VAIBHAV JAIN, LEARNED COUNSEL FOR THE RESPONDENT)

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This criminal appeal has been filed under Section 374 of Cr.P.C. against the judgement dated 21/7/2016, passed in ST No.5/2014 by Special Judge Ratlam (MP); whereby, finding the appellant guilty, the learned Judge of the trial Court has convicted the appellant for offence under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter to be referred to as “Act of 1988”) and sentenced him under Section 7 of Act of 1988 for one year R.I. with fine of Rs.10,000/-, under Section 13(2) of Act of 1988 for 1 year R.I. with fine of Rs.10,000/- with default clause to undergo 3 months additional R.I. (2 counts).
- 3] In brief case of the prosecution is that against the appellant Sudeep Sharma, who was posted as Patwari Halka no.35 was given the charge of Patwari Halka No.32-A village Hartali, a complaint (Ex-P-9) was filed in the office of Special Police

Establishment Lokayukta, District Ujjain, by the complainant Bagdiram (PW-2) on 18.12.2013, in which it was stated that he is a resident of Gram Mathuri wherein he and his brothers have an ancestral land, whereas Patwari Sudeep Sharma has informed him that it is a revenue land in which certain pattas have to be distributed, and if he wants that his land should not be declared as revenue land, then he has to give him Rs.5000/- and since he (complainant-Bagdiram) did not want to pay bribe to the appellant, and wanted to trap him red-handed, the complaint is being filed. On such complaint, the complainant-Bagdiram was given a digital voice recorder, vide Panchanama (Ex.P-10), and he was apprised that he has to take the voice recorder to appellant Sudeep Sharma, Patwari and record the conversation between them regarding demand of bribe. Along with the complainant, constable Rakesh Bihari (PW-5) was also sent, and according to the case of prosecution, on 18.12.2013, the complainant Bagdiram again appeared in the office at around 7.00 p.m., and again submitted another application (Ex-P-12) to submit the voice recorder wherein he stated that he has recorded the conversation with the appellant secretly. The voice recorder was kept secured and Panchnama (Ex/P-11) was prepared and the matter was informed to the Superintendent of Police, who summoned two gazetted officers from Collectorate Office, Ujjain and thus, on 19.12.2013 when the complainant again appeared in the office of the

Lokayukt he was apprised of all the procedural formalities and was introduced to the witnesses, at that time Inspector Basant Shrivastava (PW-6) took out the digital voice recorder in which conversation between the complainant and the appellant on 18.12.2013 was recorded, and the complainant Bagdiram identified his own voice as also the voice of the appellant and with the help of the complainant and on the dictation of Basant Shrivastava, Assistant Grade II Ashok Khatri typed the conversation vide (Ex-P-13) and Inspector Basant Shrivastava (PW-6) also gave a certificate Ex-P-22 under Section 65(B) of the Evidence Act 1872 as the three CDs which were prepared in presence of the witnesses which were also played before them were kept in three different envelopes. Subsequently, the complainant was also asked to produce the currency notes which were to be given to the appellant, and thus the complainant, produced 10 notes of Rs.500/- denomination and after completing all the procedural formalities, a trap team was formed vide Trap Panchnama (Ex-P-14).

4. It is further case of the prosecution, that on 19.12.2013, at around 14.30 in the noon, the trap team started from the office of Lokayukt at Ujjain and reached at around 17.00 hours at Ratlam, near Kalika Mandir from where the complainant Bagdiram walked to the nearby hotel followed by the witnesses Vishal Reshamiya (PW-7) and Rakesh Bihari (PW-5). The complainant stood behind the Collector office's back gate where the amount

was handed over by the complainant to the appellant, and at that time the appellant was caught by the trapper, and when his hands were washed with sodium carbonate, the solution turned pink and when he was asked as to whether he kept the money, the appellant informed that he had kept the money in right hand pocket of his jacket, and thus, bribe amount of Rs.5000/- comprising of 10 ten currency notes of Rs.500/- denomination were seized from the appellant and panchanama was prepared. After completing other procedural formalities and collecting other material evidence during the investigation, the charge sheet was filed against the appellant. In the trial, after the evidence was recorded, the learned special judge has convicted the appellant as aforesaid, and being aggrieved, the present criminal appeal has been preferred by the appellant.

5. Shri Vivek Singh, learned counsel appearing for the appellant has submitted that the appellant has been falsely implicated in the case as the prosecution has not been able to prove the case beyond reasonable doubt.

6. Shri Singh, has further submitted that the learned judge of the trial Court has erred in relying upon the testimony of the complainant Bagdiram (PW-2) and by overlooking the documentary evidence which is contrary to oral evidence of the complainant. It is also submitted that the prosecution has not come forward with the survey numbers of the land of the complainant and his brothers which are jointly owned by them,

and in the absence of the said evidence, the whole prosecution story falls to the ground.

7. Shri Singh, has also submitted that though the Exhibit D-2, D-3, D-4 have been admitted by the complainant which are the documents regarding the land, however, he has also admitted that his name does not find place in those documents which were filed by him only, and has also admitted that he did not furnish any documents to the Lokayukt office, demonstrating that the lands are the joint ancestral property of the family. It is also submitted in Exhibit D-2 the names of Bhavarlal, Bapulal and Dinesh Patel are mentioned as landlords whereas the name of the complainant Bagdiram is not mentioned, and thus, it is submitted that the testimony of the complainant was not reliable that he is also one of the co-owner of the land in question. It is further submitted that when Bagdiram was not even having any land in his name or jointly with his brothers, hence he could not have made any request for not including his land in the government land for allotment of Patta, and there was no occasion for the appellant to make any demand from the complainant to exclude his land from the government land. It is also submitted that the other co-owners of land have also not been called as witnesses of prosecution, in such circumstances, it cannot be said that the appellant ever demanded any amount to exclude the complainant's land from government land.

8. Counsel for the appellant has also drawn attention of this

Court to the deposition of Virendra Katare, Tahsildar (PW-1) who has also admitted that as per Exhibit D-6, the applicants were Babulal, Dinesh and Bhavarlal, who had received the land of respective Khasra No.26/1, area 0.400 hector against the land of Khasra No.219/4 area of 0.600 hector land in which the name of the complainant Bagdiram was never mentioned as possessor of the land, and in para 9 of his deposition he has also stated that private land cannot be given on patta by the Government and Patwari has no right to give land on patta (para 9 of statement PW-1).

9. Counsel for the appellant has also submitted that the appellant Sudeep had inspected the land bearing surveys No.31/1,32/4 and 112 in the presence of the villagers and Patta holders, and found that some people were erecting structures on the plot and thus, he had informed them that until the land is demarcated on the spot, no one should raise any construction and thus, immediately, stopped the construction which led to a dispute, and the names of those persons, who had raised the dispute is mentioned in panchnama Ex-D-32 in which the name of the complainant Bagdiram is also mentioned, thus, it is submitted that the complainant Bagdiram was already having an axe to grind against the appellant which has led to his false implication.

10. It is also submitted that the lands on which pattas were to be given were situated at survey no.32/1 32/4 and 112 lands

whereas as per Ex-D/2, which is complainant's document, refers to survey no.26/3 on which no Patta was to be given. It is also submitted that there is nothing on record to even suggest that the land bearing survey no.26/3 is the adjoining land of the aforesaid three survey numbers.

11. It is also submitted by Shri Singh that there is also nothing on record to suggest that the complainant Bagdiram is brother of Babulal, Dinesh and Bhavarlal. Thus, it is submitted that the prosecution has miserably failed to establish motive on the part of the appellant, and he has been falsely implicated by the complainant only on account of previous grudge which he bore against the appellant. It is also submitted that since the name of the complainant Bagdiram is not entered into Survey No.26/3 there was no question that the appellant would demand any bribe from him to include the aforesaid land as government land. It is submitted that the complainant has also not stated that as to on which place and day the appellant demanded bribe from him, thus, whether he had met the appellant is also a question which the prosecution has not proved.

12. So far as the voice recorder and transcript are concerned, it is submitted that they are rightly not relied upon by the trial court as the transcript do not indicate as to where and when the amount was to be given, whereas in Ex-P-12 which is an application filed by the complainant on 18.12,2013, it is mentioned that the appellant asked the complainant to come with Rs.5000/- in

evening on 19.12.2013. It is also submitted that no other person has overheard the discussion between the appellant and the complainant and thus, the sole testimony of Bagdiram (PW-2) cannot be relied upon to convict the appellant. It is also submitted that admittedly the case diary and transcript of panchnama Ex-P-13 has not been proved by the prosecution which has also been observed by the trial Court in para 27 to 29 of the judgment, and the certificate under Section 65(b) of the Indian Evidence Act, has also not been believed as even the original voice recorder was not submitted in evidence by the prosecution.

13. Counsel for the appellant has also drawn the attention of this Court to para 31 of the statement of Bagdiram (PW-2) complainant, which clearly indicates that he had not recorded the voice of the appellant, who had also not demanded Rs.5000/- from him. It is also submitted that the deposition of Bagdiram (PW-2) also reveals that he had no conversation with the appellant till he made complaint (Ex-P-9). It is also submitted that no independent witness has been examined by the prosecution, who can support the case of the prosecution and demand of bribe of Rs.5000/- by the appellant from the complainant, hence, on this count also the appeal deserves to be allowed.

14. It is also submitted that it has also been admitted by Bagdiram (PW-2) in paragraph 5 of his statement that after

shaking hands with the accused on his arrival, he also paid for the tea and put Rs.5000/- in the pocket of the appellant's jacket which clearly means that the appellant has not received the amount which was thrust in his pocket by the complainant after shaking hands with him, which also explains as to how and why the appellant's hand turned pink, and the complainant has also denied that he placed the amount in appellant's hand. It is also submitted that even admitting the prosecution case that it took more than one and half hour from travelling from Ujjain to Ratlam as the amount was given to the complainant at Ujjain, the possibility of complainant putting his hand in the pocket cannot be ruled out, and after he shook hands with the appellant, the powder which was transferred from the currency notes to the complainant's hand in his pocket also got stuck to the appellant's hand. Thus, it is submitted that the aforesaid aspect ought to have been looked into by the trial Court.

15. In support of his submissions learned counsel for the appellant Shri Vivek Singh, has also relied upon a decision rendered by this Court in the case of **Navkant Shirma Vs. State of M.P. reported as 2008 (2) JLJ 386.**

16. On the other-hand, Shri Vaibhav Jain, learned counsel for the respondent has vehemently opposed the prayer. It is submitted that no case for interference is made out as the learned judge of the trial Court has rightly convicted the appellant, as the appellant was caught red handed with a bribe of Rs.5000/-. It is

submitted that even if the complainant Bagdiram (PW-2) has not supported the case of the prosecution, still his evidence can be looked into in the light of the other evidence which the prosecution has collected during trial, as has also been held by the Supreme Court in the case of **Neeraj Dutta Vs. State Government of NCT of Delhi**, reported as (2023) 4 SCC 731, and it is also submitted that the documents have also been placed on record by the prosecution namely Ex-P/32 which clearly reveals that it was the same land regarding which the appellant had demanded the bribe under the threat that he would include the land of appellant and his brothers in the government land and would transfer the same through pattas to other person.

17. Counsel for the respondent has also submitted that no case for interference is made out as the prosecution has proved the trap beyond reasonable doubt and the recovery of the amount of Rs.5000/- from the appellant's possession is sufficient to hold him guilty. It is also submitted that even as per Ex-D2 to D-17 it is apparent that in Gram Mathuri, the land of Bhavarlal, Babulal and Dinesh Patel lands are situated, who are the real brothers of the complainant, and hence he also had an interest in the aforesaid lands.

18. Shri Jain, has also relied upon the decision rendered by this Court in the case of **Ravikant Vs. State of M.P**, passed in **CRIMINAL APPEAL No. 280 of 2004 judgment dated 6.5.2024**.

19. Shri Jain, has also submitted that the learned judge of the trial court in para 28,29 and 75 of the judgment, has erred in holding that prosecution has not been able to prove the transcript Ex.P/13 of the voice recorder and the CD article 'O', despite the fact that even the certificate u/s.65(B) of the Evidence Act was proved in accordance with law. In support of his submission that in the absence of any cross-appeal by the State, it can assail such finding of the trial court which is against the prosecution, in an appeal against conviction, Shri Jain has also referred to s.386 of Cr.P.C. and has also relied upon **Ramdeo Rai Yadav Vs. State of Bihar reported as (1990) 2 SCC 675.**

20. In rebuttal, counsel for the appellant has submitted that since the State has not preferred any cross appeal, no case of interference is made out against the said findings. In the alternatively, it is submitted that even otherwise no case for interference is made out as the prosecution has not been able to prove its case beyond reasonable doubt.

21. Heard learned counsel for the parties and perused the record.

22. A perusal of the impugned order would reveal that although the learned judge of the trial Court has discarded the evidence regarding the voice recorder and the transcript prepared upon the same, however, has convicted the appellant on the basis of the other material available on record. Since Shri Vaibhav Jain, learned counsel for the respondent has taken a serious

exception to the said finding recorded by the trial Court, in respect of the CD, voice recorder and the transcript, and it is submitted that although the respondent State has not filed any cross appeal against the aforesaid findings, but the State can certainly challenge the aforesaid finding in the appeal preferred by the appellant/accused. 23. In support of his submissions, Shri Jain has also relied upon s.386 of Cr.P.C. Thus the question is whether this Court, in the appeal preferred by accused/appellant can interfere with the finding recorded in favour of the appellant and give a finding in favour of the Respondent/State. In this regard it would be apt to refer to relevant excerpts of Section 386 of Cr.P.C which read as under:

“386. Powers of the Appellate Court.—

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—
 i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

- (ii) alter the finding, maintaining the sentence, or
- (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same; ”

24. A bare perusal of the aforesaid Section clearly reveals that the appellate Court has the power to alter the finding, maintaining the sentence, in other words, this Court may not agree with the finding recorded by the trial Court to convict the accused/appellant, however, it can still convict the appellant by altering the finding recorded by the trial Court. Reference in this regard may also be had to the decision rendered by the Hon'ble Supreme Court in the case of *Ramdev Rao Yadav vs. State of Bihar* reported as (1990)2 SCC 675. Thus, this court is of the considered opinion that the respondent State was not required to file any separate appeal to challenge a finding recorded by the trial court, and the State can challenge the said finding in the present appeal preferred by the accuse/appellant.

25. In such circumstances, this Court would be required to look into the finding recorded by the trial Court in favour of the appellant and against the prosecution/respondent that the voice recording, and the transcript cannot be relied upon on the basis of the decision rendered by the Hon'ble Supreme Court in the case of *Anwar P.V (Supra)*. Thus, first of all it

would be necessary to refer to the finding recorded by the trial Court in this regard in relevant paras 27, 28 and 29, which read as under:

27. अन्य संपुष्टिकारक साक्ष्य पर विचार करने के पूर्व सर्वप्रथम वाईस रिकार्डर और प्रारम्भिक पंचनामा से संपुष्टि के संबंध में विचार करना उचित है। इन दस्तावेजों के संबंध में अन्वेषक बसन्त श्रीवास्तव ने अपने परीक्षण में बताया है कि उन्होंने फरियादी के द्वारा आवेदन पत्र प्रस्तुत किये जाने और पुलिस अधीक्षक के द्वारा निर्देशित किये जाने पर मामले में फरियादी से पूछताछ की थी और रिश्वत की मांग की तस्दीक के लिये फरियादी को कार्यालयीन वाईस रिकार्डर दिया था। फरियादी वह वाईस रिकार्डर लेकर गया था। उसके साथ आरक्षक राकेश बिहारी को भेजा गया था। वह वाईस रिकार्डर फरियादी ने वाईस रिकार्डिंग के उपरांत पुनः कार्यालय में प्रस्तुत किया था। इस वाईस रिकार्डर को दिये जाने और लिये जाने के पंचनामे बनाये गये थे और दिनांक 19.12.13 को विज्ञप्त पंचों के समक्ष वाईस रिकार्डर को सुनाया गया था। आवेदक/फरियादी ने उसमें अपनी और पटवारी सुदीप शर्मा की आवाज को पहचाना। उस वार्ता का ट्रांसकिप्ट पंचनामा बनाया गया था। उस वाईस रिकार्डर की तीन सीडी बनाई गई थी। उनको सीलबंद किया गया था और सीडी बनाने के संबंध में उसने स्वयं साक्ष्य अधिनियम की धारा 65 बी के अंतर्गत प्रमाण पत्र दिया गया है, जो प्र.पी-22 है।

28. बचाव पक्ष की ओर से न्याय दृष्टांत अनवर पी. वी. वि. पी. के. बशीर एवं अन्य (माननीय उच्च न्यायालय की सिविल अपील क्र. 4226/2012), कैलाश वि. सुरेशचन्द्र (2012 (1) एमपीएलजे. के आधार पर यह तर्क प्रस्तुत किया गया है कि मूल वाईस रिकार्डर न्यायालय में प्रस्तुत नहीं किया है, जो सीडी और ट्रांसकिप्ट पंचनामा प्रस्तुत किया गया है वह द्वितीयक साक्ष्य है, जो सीडी और ट्रांसकिप्ट पंचनामा प्रस्तुत किया गया है वह द्वितीयक साक्ष्य है और उसके संबंध में दिया गया प्रमाण पत्र विधि अनुरूप नहीं है। उपरोक्त न्याय दृष्टांत अनवर पी.वी. वाले मामले में माननीय उच्चतम न्यायालय के द्वारा प्रतिपादित निर्णय के पैरा-14 और 16 में प्रमाण पत्र के संबंध में प्रतिपादन किया गया है। उनके अवलोकन से यह दर्शित होता है कि उपरोक्त प्रमाण पत्र विधिक प्रावधान के अनुरूप नहीं है। सीडी और ट्रांसकिप्ट पंचनामा साक्ष्य में ग्राह्य नहीं है। इसलिये ये दस्तावेज संपुष्टिकारक साक्ष्य के रूप में अभियोजन के लिये सहायक नहीं है।

29. प्रतिपरीक्षण पैरा-31 में प्रमाण पत्र देने वाले साक्षी बसन्त श्रीवास्तव ने यह स्वीकार किया है कि उन्हें यह मालूम नहीं है कि वाईस रिकार्डर से सीडी बनाने के लिये किस साफ्टवेयर का उपयोग किया जाता है। मुख्य परीक्षण के पैरा-5 में इस साक्षी ने यह बताया है कि उन्होंने ट्रांसकिप्ट पंचनामा अशोक खत्री से टाईप कराया था। तत्पश्चात उक्त वाईस रिकार्डर को कार्यालय के कम्प्यूटर पर अटैच कर उसमें दर्ज वार्तालाप की तीन अलग-अलग सीडी तैयार करवायी थी। इस साक्षी का ऐसा कोई कथन नहीं है कि उसने स्वयं वे सीडीयां तैयार की थी। उसका ऐसा भी कथन नहीं है कि जिस कम्प्यूटर से वे सीडीयां बनाई थी वह कम्प्यूटर इसी साक्षी के नियंत्रण में था। अभियोजन की ओर से प्रस्तुत और निर्भरित दस्तावेज प्र.पी-13 के अंतीम चरण में यह उल्लेख की सीडी अशोक खत्री सहायक ग्रेड-2 से बनवायी गई थी। इससे यह स्पष्ट है कि सीडी प्रमाण

पत्र देने वाले साक्षी बसन्त श्रीवास्तव के द्वारा नहीं बनाई गई थी बल्कि वह अशोक खत्री के द्वारा बनाई गई थी। इसलिये बसन्त श्रीवास्तव के द्वारा दिया गया प्रमाण पत्र विधि की आवश्यकताओं की पूर्ति नहीं करता। इसलिये इस न्यायालय के मत में उपरोक्त न्याय दृष्टांत के प्रकाश में अभियोज उक्त सीडी और ट्रांसक्रिप्ट पंचनामा की साक्ष्य से कोई सहायता प्राप्त नहीं कर सकता। इसलिये यह संपुष्टिकारक साक्ष्य अभियोजन के लिये उपलब्ध नहीं है।

26. So far as the relevant paras of Anwar P.V (Supra) are concerned para 14 and 16 reads as under:-

“14.Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that

computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

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16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

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27. In the case at hand, the certificate has been proved as Ex.P/22, at the instance of Inspector Basant Shrivastava (PW-6) there appears to be no infirmity in his certification. Ex.P/22 reads as under:-

प्रमाण— पत्र अंतर्गत धारा 65(बी) साक्ष्य अधिनियम

अपराध क्रमांक	0 / 95 / 2013
धारा	7, भ्र.नि.अधि. 1988
स्थान	विपुस्था, लोकायुक्त कार्यालय, उज्जैन
दिनांक	19.12.13

—00—

यह प्रमाणित किया जाता है कि प्रकरण में आज दिनांक 19.12.13 को कार्यालय के शासकीय टेप रिकार्डर में संग्रहित फाईल 550791 को कम्प्यूटर के माध्यम से टेपांकित मूल वार्तालप को सी.डी. में ट्रांसफर किया गया जो टेप रिकार्डर में टेपांकित असल वार्तालप की हुबजू नकल है। इसमें कोई कांटछाट या छेड़छाट नहीं की गई है। सीडीयो को लिफाफे में रखकर सीलबंद किया गया।

बसंत श्रीवास्तव
निरीक्षक
विशेष पुलिस स्थापना
लोकायुक्त कार्यालय, उज्जैन
संभाग - उज्जैन

28. A perusal of the aforesaid certificate reveals that the C.D. filed along with the same is prepared from a government Tape Recorder through a computer. It is not stated if the computer itself belonged to the Lokayukt department or not. Apart from that, the conditions as enumerated u/s.65B(2) of the Evidence Act have also not been complied with as held by the Supreme Court in the case of **Anvar P.V. Vs. P.K.Basir and other in Civil Appeal No.4226/2012**. Thus, in the considered opinion of this court, the finding recorded by the trial court is based upon the proper reading of the decision in the case of **Anvar P.V. (supra)**, which clearly provides that the certificate as provided u/s.65B(4) of the Evidence Act must deal with the conditions as

enumerated u/s.65B(2). It is true that in the absence of the primary source of evidence, the electronic record can be proved by way of secondary evidence, provided it is produced along with the proper certificate u/s.64(4)B of the Evidence Act. Although, it is also found that Article "O" which is the C.D. of the voice recorded, was played in the Court and the complainant Bagdiram (PW-2) has affirmed that in the voice recorder, the voices are of him as also of the present appellant Sudeep Sharma, but this evidence is of no avail to the prosecution in the light of the fact that the C.D. has not be found to be proved in accordance with law. Thus, in such circumstances, it was incumbent upon the prosecution to produce the original voice recorder in the court. In such circumstances, the finding recorded by the trial court that the Transcript and the CDs are not admissible in evidence does not call for any interference and is hereby affirmed.

29. However, even excluding the aforesaid electronic evidence from the consideration, the presumption u/s.20 of the Act of 1988 is still required to be discharged by the appellant as admittedly, he has been trapped red handed along with Rs.5000/-.

30. It is found that the complainant Bagdiram's allegation was that the appellant was bent upon to declare his personal land as the government land, and for not doing the same the appellant was demanding bribe from him. Thus, so far as the demand which was allegedly raised by the appellant and its acceptance are concerned, they must be considered on the basis of other

evidence produced on record.

31. On perusal of the statement of the accused under Section 313 of the CRPC, it is found that he has denied having received any amount from the complainant and his defence is that certain complaints were received by him from the villagers of Gram Mathuri that their patta lands were being encroached upon, and at the direction of the Tahsildar, he had gone to the spot along with Revenue Inspector where Ratanlal called the complainant Bagdiram, and Bagdiram interfered in the demarcation work, and told him not to disturb the possession of the villagers and had also threatened him. It is also stated by him that he had remained on the disputed land from morning to the evening of 18.12.2013, and has also stated that the complainant Bagdiram (PW-2) is also a leader, and on the patta land, Ratanlal and Ishwarlal had encroached upon, in which he had interfered and had not listened to Bagdiram (PW-2), hence he was having a grudge against him.

32. It is also found that Sub-Inspector, Dinesh Patel (PW-) has admitted in Para 4 of his deposition that voice recorder has not been produced in the Court, he has also admitted that during investigation it had also come to his knowledge that the complainant had spoken to the appellant on mobile phone but he did not collect the call details as mobile phone numbers were not available. He has also admitted that in Ex-P/12, at the time of arrest of the appellant, his mobile number was also checked but still he did not make any efforts to get the call details.

33. Complainant Bagdiram (PW-2), in para 29 of his cross examination has also stated that he had an altercation with the appellant on the day when he had reached on the spot when the demarcation of the land was taking place, and prior to that also some dispute had arisen between them regarding demarcation, and he got angry because according to him the appellant was not carrying out the demarcation properly. It is also found that Bagdiram (PW-2) has nowhere stated in his deposition that he happens to be the real brother of Babulal, Bhavarlal and Dinesh. Similarly, on perusal of the evidence produced on record, it is found that not a single document has been produced by the complainant on record to demonstrate that he also holds any land in the village Mathuri.

34. Bagdiram (PW-2) has also stated that before sliding Rs.5000/- in the pocket of the jacket of the appellant, he also shook his hand, and he has denied that he had placed the aforesaid amount in the hands of the appellant.

35. Although, Bagdiram (PW-2) has been declared hostile, but even in his cross examination by the prosecution, he has also admitted that in the documents Ex-D-2, D-3 and D-4, the dispute was of demarcation, however in all these three documents his name is not mentioned, but he has stated that this land is ancestral land, and he has also admitted that in respect of the aforesaid land his brother Babulal, Dinesh and Bhawarlal had not complained about demarcation. He has also admitted that in para

29, that on the day when the demarcation was being carried out there were around 20-25 persons present and he had taken objection for not carrying out the demarcation correctly and also had an altercation with the officer present including the appellant and he was angry at him for wrong demarcation.

36. A scrutiny of deposition of complainant Bagdiram(PW-2) would reveal that he has admitted that the appellant was demanding a sum of Rs.5000/- to Rs.10,000/- from him to exclude his land from the government land, and hence, he had also lodged a complaint (Ex-P-9) on which he had also signed. He has also admitted that on the date of trap when he met with the appellant near the tea stall, he shook hands with him and also paid for the tea, and as the appellant started to leave, he put Rs.5000/- in his jacket's pocket.

37. The appellant has also given a separate statement under Section 313(5) of the CPRC putting up his defence, and has also examined two witnesses, Khanaiyalal (DW-1) and Raju (DW-2), who are the residents of village Mathuri and village Shaipuri respectively, and have deposed that the complainant Bagdiram and his family members had no land in village Mathuri, and also Babulal, Bhavarlal and Dinesh are the residents of Mathuri but they have no relationship with Bagdiram. Raju (DW-2) has also stated that although he is a resident of Shairpur but his aunt's Leela Bai's land is at Mathuri which he is taking care of as his aunt has no children, and in his cross examination he has also

stated that the father's name of Babulal, Bhavarlal and Dinesh is Poonam Chand and he does not know if Bagdiram (PW-2) happens to be the brother of these persons.

38. In his statement under Section 313(5) of CRPC, the appellant has also stated that when he met the complainant on 19.12.2013, after he called him to the tea shop for a cup of tea he had gone to meet him and after shaking hands with him he also had tea for which payment of which was made by the complainant Bagdiram (PW-2) however, as he was receiving call from one hand and from other hand he had a glass of tea, at that time complainant Bagdiram (PW-2) slid Rs.5000/- in his jacket's pocket and before he could do anything he was trapped by the police party. He has also stated that since Bagdiram (PW-2) was having previous enmity with him hence, he has been falsely implicated by complainant Bagdiram (PW-2).

39. On perusal of the aforesaid statement, viz-a-viz the deposition of the complainant, it is found that the story of the complainant also corroborates with the stand taken by the appellant, and considering the fact that the complainant has also stated in para 36 of his cross examination he has also stated that he had put his hands in his pocket owing to his habit only, and not to see if the currency notes given to him are secured or not. He has also admitted that they travelled for around two hours from Ujjain to Ratlam. In such circumstances, the contention of counsel for the appellant that the complainant had slipped his

hand into his own pocket in which the currency notes were kept, and subsequently, he also shooked his hand with the appellant, appears plausible, thus, the defence of the appellant that the sodium carbonate powder transferred from the hands of the complainant to the hand of the appellant, without transfer of money through hands, cannot be said to be far-fetched.

40. Thus, in the light of the fact that the complainant himself has stated that he had kept money in the pocket of the appellant, and not in his hands, coupled with the fact that the prosecution has also not been able to prove that the complainant had any land in his own name or jointly with his family members, it is difficult to believe that the appellant would demand any bribe to exclude his land and from government land, and there appears to be no occasion for the appellant to demand any bribe to exclude the same from the government land. Hence, it can also not be said that the demand has been proved by the prosecution beyond reasonable doubt.

41. In such facts and circumstances of the case, this Court is of the considered opinion that the learned judge of the trial Court has erred in convicting the appellant only on the basis of written complaint(Ex-P-9) filed by him, and is of the considered opinion that it would be unsafe to convict the appellant in the absence of corroborative evidence relating to demand and acceptance of bribe.

42. Although learned counsel for the appellant has relied

upon score of judgments, however, the reference to the same is not necessary under the facts and circumstances of the case when this court has already found that the prosecution itself has not been able to prove its case beyond reasonable doubt.

43. In view of the same, **the impugned judgment dated 21/7/2016 is set aside**, and the appellant is acquitted from all the charges. The appellant is already on bail, his bail bonds are hereby discharged.

43. Accordingly, **the appeal stands allowed.**

(SUBODH ABHYANKAR)
JUDGE

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