

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

DIVISION BENCH

Criminal Appeal No.360/2002

Smt. (Dr.) Shailbala Mishra, wife of
 Dr. G.C. Mishra, aged about 46
 years, Senior Specialist (National
 Thermal Power Corporation),
 Vindhya Nagar, district Sidhi (M.P.).
 Presently posted at N.T.P.C.
 Hospital, Jamunipalli Korba,
 Chhattisgarh.

versus

The State of Madhya Pradesh
 through C.B.I., Jabalpur

For the appellant:	Shri S.C. Datt, learned Sr. Advocate with Shri Siddharth Datt, Advocate
For the Resp./State:	Shri Vikram Singh, learned counsel for the respondent/CBI

PRESENT: HONOURABLE SHRI JUSTICE RAKESH SAKSENA
HONOURABLE SHRI JUSTICE M.A. SIDDIQUI

Date of hearing: 15/09/2011
 Date of Judgment: 30/09/2011

J U D G M E N T

Per: Rakesh Saxena, J

Appellant has filed this appeal against the judgment dated 25th February 2002, passed by V Additional Sessions Judge and Special Judge (CBI), Jabalpur, in Special Case No.06/1999, convicting her under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentencing her to rigorous imprisonment for two years with fine of Rs.2000/- and rigorous imprisonment for two years with fine of Rs.3000/-, with default stipulations, on each count respectively.

2. Appellant/accused was tried on the allegation that she being a public

servant, as a doctor, in the Hospital of National Thermal Power Corporation (NTPC), district Sidhi (MP), demanded and accepted Rs.1500/-, as illegal gratification, other than the legal remuneration from complainant Subhash Chandra Pandey for doing family planning operation (TT) of his wife Amita Pandey and thus by obtaining pecuniary advantage for herself, committed the offence of criminal misconduct.

3. In short the prosecution case is that accused Dr. Shailbala Mishra was posted as a doctor/Senior Gynecological Specialist in Vindhya Nagar Super Thermal Power Project (for short VSTPP) hospital of NTPC. The NTPC hospital provided medical facilities to NTPC employees free of cost. It also provided medical facilities to other private persons on receiving prescribed charges. In June 1998, complainant Subhash Chandra Pandey and his wife Amita Pandey consulted accused on 3.6.1998 at VSTPP Hospital for the family planning operation of Amita Pandey after making payment of Rs.40/- in the hospital. Accused after checking Amita prescribed medicines and advised her for further check up vide prescription Ex.P/5. When complainant met accused subsequently on 20.6.1998, she made a demand of Rs.1500/- from him for performing TT Operation of Amita Pandey. Accused was not entitled to do private practice or to accept fees from patients privately. Therefore, instead of yielding to the illegal demand of accused, complainant wished to get her trapped by CBI and submitted a complaint to SP (CBI), Jabalpur, on 22.6.1998. SP (CBI) recorded the first information report and instructed CBI Inspector V.Dixit (PW-10) to proceed with the investigation. V. Dixit (PW-10) summoned two independent witnesses viz. Girish Narayan (PW-2) and T.K. Mandal (PW-4) and on 23.6.1998 alongwith complainant Subhash Chandra Pandey (PW-3) his wife Amita Pandey (PW-6) and Smt. Asha Rai Das (PW-1) went to VIP Guest House of NCL. Before trap proceeding was started by the CBI officials, a

demonstration about the treatment of phenolphthalein powder with sodium carbonate solution was given. Currency notes of Rs.1500/- were smeared with phenolphthalein powder and kept in the pocket of complainant (PW-3) with a direction to him to hand over them to accused as bribe. Smt. Asha Rai Das (PW-1) was asked to accompany complainant as a shadow witness. Pre-trap memorandum (Ex.P/2) was recorded.

4. After pre-trap proceedings, the trap party proceeded to the accused's official residence situated in NTPC colony, Vindhya Nagar. They reached there at about 13.30 Hrs. Thereafter, the complainant, his wife and Asha Raidas went inside the house of accused and discussed with her in the matter of operation. When accused demanded money, the complainant handed over tainted currency notes to her, who, after receiving them in her right hand, kept it on the table saying that the operation shall be performed next day. Complainant gave signal, whereupon Inspector V. Dixit alongwith other members of the trap party rushed to the house of accused. On hands of accused being washed with sodium carbonate solution, the solution gave pink colour. Solutions were sealed. Tainted currency notes were recovered by Girish Narayan (PW-2) from the table of accused. The numbers of notes were tallied with the numbers recorded in the memorandum. Recovery memo (Exp.P/3) and spot map (Ex.P/4) were prepared. Investigating officer collected the documents and recorded the statement of witnesses.

5. After completion of the investigation and obtaining the sanction for prosecution of accused, charge sheet was filed.

6. Accused denied the charges and pleaded innocence. According to her, complainant Subbhash Chandra Pandey (PW-3) was a servant or relative of Dr. Anil Pandey. Dr. Anil Pandey entertained grudge against her husband Dr.G.C.Mishra (DW-2). In connivance with Dr. Anil Pandey, complainant made

false allegation of demand of bribe and fabricated the story of trap.

7. Prosecution, to substantiate its case, examined as many as ten witnesses. Accused also produced four witnesses viz. R.C. Kanojiya (DW-1), Dr. G.C. Mishra (DW-2), Bhagwan Shah (DW-3) and ASI L.D. Singh (DW-4).

8. Relying on the evidence of complainant (PW-3), Amita Pandey (PW-6), Inspector V.Dixit (PW-10), Asha Rai Das (PW-1), Girish Narayan (PW-2), T.K.Mandal (PW-4), Dr. M.K. Kulshrestha (PW-7), Ku. Lata Sharma (PW-8), B.C. Sharma (PW-9) and Rajendra Singh (PW-5), learned Special Judge held the appellant guilty of the charges and convicted and sentenced her as aforesaid.

9. It has not been disputed by the appellant that at the time of occurrence she was posted as Gynecological Specialist in VSTPP Hospital of NTPC at Vindhya Nagar and that she was a public servant.

10. Rajendra Singh (PW-5), who was posted as Chairman-cum-Managing Director (CMD) of NTP, New Delhi, stated that he was competent to remove a doctor/senior specialist posted in NTPC from service, as such he was competent to accord sanction for the prosecution against the accused. He stated that he accorded sanction (Ex.P/7) for the prosecution of the accused. Accused, before the trial Court though challenged that Rajendra Singh (PW-5) accorded sanction mechanically without applying mind, therefore, the sanction was not valid, but the said objection was not accepted by the trial court after due appraisal of the evidence on record. Learned counsel for the accused/appellant did not challenge the validity of sanction before this Court also. Apart from it, in view of the provisions of Section 19(3)(a) of the Prevention of Corruption Act, 1988) (for brevity referred to as 'Act') no finding, sentence or order passed by a special judge can be reversed or altered by court in appeal conformation or revision on the ground of absence of, or any

error, omission or irregularity in, the sanction required under sub-section(1), unless in the opinion of the court a failure of justice has in fact been occasioned thereby. Thus, we find that the learned special judge committed no error in holding that sanction accorded by Rajendra Singh (PW-5) was a valid sanction.

11. The next question before us is whether the accused demanded and accepted the illegal gratification from complainant Subhash Chandra Pandey (PW-3). Complainant (PW-3) stated that his wife Amita Pandey had to undergo family planning operation. Therefore, in the month of June 1998, he took her to hospital for getting her examined by accused Dr. Shailbala Mishra. A prescription slip (Ex.P/5) was given by some clerk whereon accused prescribed medicines. Accused then asked him to come with Amita Pandey at her quarter on 7th June, 1998. On 7th June 1998, when he went to the house of accused and asked about the charges, she demanded Rs.1500/-. On his saying that he was a poor labourer and that the TT operation was done free of charge, accused told him that he must bring Rs.1500/-, if he wished to get his wife operated. After about 13 days, when he arranged for the money, he contacted accused. She asked him to come on Tuesday with his wife for her operation on Wednesday. Thereafter he went to CBI office, Jabalpur.

12. Amita Pandey (PW-6) stated that she alongwith her husband went to NTPC hospital for family planning operation and consulted accused Dr. Shailbala Mishra. Accused checked her and made a demand of Rs.15,00/- as bribe. Despite the request made by her husband, accused did not yield to his request and asked them to give money at her quarter. Thereafter, her husband made a complaint in the CBI Office, Jabalpur.

13. Learned counsel for the appellant contended that in respect to the demand of bribe the evidence of complainant (PW-3) and Amita Pandey

(PW-6) was contradictory. According to complainant (PW-3) no demand was made by accused in the hospital and he was asked to come to her house on 7th June 1998. On 7th June 1998, when he went to the house of accused and enquired about the charges, accused told that he would have to pay Rs.15,00/-. About 15 days thereafter, again he went to the house of accused. On the contrary, Amita Pandey (PW-6) stated that accused demanded Rs.1500/- in the hospital itself and just thereafter her husband went to make complaint in the office of CBI, Jabalpur.

14. Learned counsel for the respondent CBI stated that the evidence of complainant (PW-3) about the demand stood corroborated by the complaint (Ex.P/1) made by him to CBI Officer. ON perusal of complaint (Ex.P/1), which was made by the complainant on 22.6.1998, it appears that on 3.6.1998 accused asked him to contact at her residence and it was on 7.6.1998, when he went to her house, she made demand of Rs.1500/-. When he again went at the residence of accused on 20.6.1998, she again repeated her demand. As far as independent witness Girish Narayan (PW-2) is concerned, he stated that when CBI Inspector V.Dixit introduced him to complainant and gave him to read the complaint (Ex.P/1), he found written only that a doctor of NTPC demanded money for the operation; he did not remember the name of the doctor. It is to be noted that this witness did not say that complainant personally told to him that accused demanded Rs.1500/- from him. As such, it cannot be held that he verified the version of complainant about the demand being made by the accused. It is also apparent that Amita Pandey stated something, which was not stated by the complainant (PW-3) himself. It seems doubtful that accused demanded Rs.1500/- from Amita Pandey in the Hospital. The evidence of Amita Pandey (PW-6) is further inconsistent with the evidence of complainant that he thereafter directly went to make complaint at CBI

office. According to her, accused again demanded money at her residence when her husband went to her house. Thus, the evidence of Amita Pandey cannot be accepted about the demand of Rs.1500/- by the accused.

15. As far as the evidence of CBI Inspector V.Dixit (PW-10) is concerned, he stated that on 22.6.1998 Mr. A.K.S. Chauhan, Superintendent of Police, handed over him the FIR (Ex. P/14) alongwith the complaint made by Subhash Chandra (PW-3) for investigation. He though stated that he enquired from Subhash Chandra Pandey, but he did not specifically say that PW-3 told to him about the demand of bribe by accused. In these circumstances, there remained only the uncorroborated testimony of complainant Subhash Chandra Pandey (PW-3) about the demand of bribe by the accused.

16. Learned counsel for the appellant placing reliance on ***Pannalal Damodar Rathi Vs. State of Maharashtra-AIR 1979 SC 1191*** and ***M.O. Shamsudhin Vs. State of Kerala-(1995) 3 SCC 351*** submitted that in peculiar facts and circumstances of the case the evidence of complainant (PW-3) in respect to the demand of bribe by the accused did not appear reliable. He referred to the evidence of complainant (PW-3) wherein he stated that since he had no permanent job, he used to do work where-ever he got. He could earn only Rs.50/- daily. He knew that for TT operation no money was required. This operation could have been done in the four hospitals. Government used to give some money by incentive for the TT operation. Though he wished for the TT operation of his wife, but he did not go for operation after the incident out of fear. Despite the fact that he knew that camps were organized by the doctors for TT operation in several villages and that there were number of hospitals in which such kind of operations could be performed, but he did not get his wife operated. He admitted that he did not inform to any of the officers of the hospital about the demand made by the

accused. He could not offer any explanation as to why he did not opt for even free operation in any other hospital. According to him, as soon as he arranged for Rs.1500/-, instead of going to doctor, he went to CBI Officer. He admitted that he made a wrong statement in saying that he went to contact accused about 15 days after 7th June 1998. After 7th June 1998, he did not go to meet the accused and instead directly went to the residence of accused with CBI people.

17. In case of ***Pannalal Damodar Rathi*** (supra), it has been observed by the Apex Court that if the version of the complainant is not corroborated on the crucial aspect of demand, his evidence on this aspect cannot be relied on. In case of ***M.O. Shamsudhin*** (supra), the Apex Court held that the extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances. However, the evidence of complainant must be tested in the same way as an interested or partisan witness. As a rule of prudence, the Court has to scrutinize the evidence of such interested witnesses carefully. As far as the question of corroboration is concerned, the corroborating evidence can be even by way of circumstantial evidence.

18. Complainant (PW-3) further stated that he did not know that on the prescription (Ex.P/5) accused referred his wife to Dr. Kulshreshta (Anesthetist) for investigation of blood and urine. He did not know that the operation was not possible in the absence of above investigation. He even did not know that no date for operation was given in Ex.P/5. On perusal of Ex.P/5, the OPD card of Amita Pandey (PW-6), it appears that she was referred to Room No.15 for investigation by Dr. Kulshreshta and some medicines were also prescribed. However, it does not appear that any date for the operation was given. Similarly, Amita Pandey (PW-6) stated that after the first check up by the accused, she took medicines one or two days only. Though she was referred

to Dr. Kulshreshta in room No.15 for investigation of Urine and blood, but she did not go there because her husband did not take her there. After the occurrence, she did not undergo operation and gave birth to a female child.

19. On the basis of above circumstances, learned counsel for the appellant submitted that it is apparent that complainant (PW-3) and Amita Pandey (PW-6) did not wish the family planning operation to be done; they only wanted to create a drama for concocting a false trap in connivance with BAMS doctor Anil Pandey, who entertained grudge against the accused and also against her husband Dr.G.C.Mishra (DW-2).

20. As far as the trap and acceptance of bribe money by the accused, complainant (PW-3) stated that after applying the phenolphthalein powder to the fifteen 100/- rupee notes, CBI Inspector put them in the front pocket of his shirt and instructed him to give them to accused when she demanded. In this respect, pre-trap memorandum (Ex.P/2) was drawn in the guest house of NCL, Singraul. His signatures and signatures of his wife were obtained on Ex.P/2. Thereafter trap party proceeded for Vindhya Nagar where accused resided. He, his wife and witness Asha Rai Das went on a scooter whereas other members of the trap party proceeded in Armada Jeep and a Fiat Car. He, Amita Pandey and Asha Rai Das went in the house of accused and gave prescription slip to her. Accused wrote some medicines on slip and asked him to reach hospital at 6.00 pm and also demanded money. He gave marked currency notes to her, which she took first in her right hand then in left hand and thereafter kept on the table. When he gave signal, CBI people entered the house of accused and enquired about money. Accused told that the money was forcibly put on the table. However, when the hands of accused were washed with solution, the solution turned pink. The number of the currency notes also tallied with memorandum (Ex.P/2).

21. Learned counsel for the appellant argued that the evidence of complainant was not reliable as it was discrepant and contradictory to the evidence of other witnesses, who participated in the trap. He pointed out that though complainant stated that he, his wife and witness Asha Rai Das went on a scooter, but CBI Inspector V.Dixit (PW-10) stated that all the members of the trap party went in two vehicles. He denied that complainant went on scooter or a motorcycle. Learned counsel pointed out further discrepancies between the evidence of prosecution witnesses as to whether Amita Pandey (PW-6) remained present at the guest house when the pre-trap memorandum (Ex.P/2) was recorded. According to complainant (PW-3), his wife was present in the guest house and she signed the pre-trap memorandum (Ex.P/2) there. Similar statement was given by Inspector V.Dixit (PW-10) also, however, independent witness Asha Rai Das, a shadow witness, though admitted the demonstration of phenolphthalein powder at guest house, but disclosed that nothing was written or recorded there. According to her, the trap party at first proceeded for the office of accused, but when it came to know that accused had left for her residence, they proceeded to her house. She categorically stated that before reaching the house of accused, complainant (PW-3) was asked to fetch his wife. When Amita Pandey reached there, they went to the house of accused. Asha Rai Das (PW-1) categorically denied that Amita Pandey was present in the guest house. She further stated that pre-trap memorandum (Ex.P/2) was not prepared at the guest house; it was drawn at the house of accused. In these circumstances, learned Special Judge too held that Amita Pandey (PW-6) was not present in the pre-trap proceeding, but she joined the trap-party on way.

22. Another discrepancy to which learned counsel for the appellant drew our attention is that complainant (PW-3) stated that his wife did not live in village

Tharpathar, and that only about 15 days ago she came to Singrauli. Contrary to it, Amita Pandey (PW-6) stated that she had been living in village Telgaon with her parents since about last one year. Her husband also lived there with her. She had no house at Singrauli. In para-22, Amita Pandey (PW-6) denied that her husband called her to Tharpathar 15 days back. She disclosed that her husband used to do nothing, he and children lived with her parents. Thus, evidence of prosecution witnesses appear discrepant on the point of residence of Amita (PW-6) and the complainant in Singrauli. Learned counsel submitted that in such circumstances it appeared quite strange that complainant suddenly felt so much interested for the family planning operation of his wife that he approached to accused only once and on the alleged demand of money took Rs.1500/- and went directly to Jabalpur and made complaint to CBI. He referred to para-26 of the evidence of complainant (PW-3) wherein he admitted that he had never gone to CBI Office in past, it was on the information given by a person he went there, but he refused to disclose the name of that person. According to him, Police Station of Vindhya Nagar was about one kilometer away from the house of accused, but he did not give information to police that accused was demanding bribe.

23. According to complainant (PW-3), when he, his wife Amita Pandey and Asha Rai Das went to the house of accused and gave prescription slip (Ex.P/5) to her, she demanded and accepted money from him, but, according to accused, the money was forcibly put on the table. In para-9, complainant (PW-3) admitted that when CBI officials enquired from the accused about the money, she told that it was forcibly put on the table. Asha Rai Das (PW-1) stated that when complainant requested accused to do the operation of his wife, accused told that she had already taken leave and she could not do the operation, but when complainant insisted saying he had to go back to village

before rains and that with great difficulty he could manage for money, she agreed for the operation. Complainant then gave money in her hands, which she put on the table and started writing prescription. She asked him to get the blood etc. of patient checked up for operation. In para-7, she denied that accused demanded money from the complainant for the operation. There had been no talk about the money before her. This witness was however declared hostile and was confronted with her police statement (Ex.P/6) wherein it was mentioned that accused demanded and accepted the bribe.

24. The fact that the members of the trap party went inside the house and got the hands of accused washed with sodium carbonate solution, the colour of the solution turned pink stood established by the evidence of complainant (PW-3) and other witnesses. However, according to Girish Narayan (PW-2), T.K. Mandal (PW-4) and V. Dixit (PW-10), they found the tainted currency notes kept on the table. It has been stated by T.K. Mandal (PW-4) that when Inspector V.Dixit asked accused about money, she told that she did not make any demand. When he (PW-4) asked as to why the money was then found on the table, she told that she was framed; complainant had forcibly given money. Thus, there appears no doubt that tainted money was found in the possession of accused, but the question remains whether the said money was received/accepted by the accused voluntarily.

25. Learned counsel for the appellant submitted that the evidence of complainant Subhash Chandra Pandey (PW-3) was not trustworthy. He happened to be a person related to Dr. Anil Pandey, who entertained grudge against the accused and her husband Dr.G.C. Mishra. Dr. G.C. Mishra, who was also a doctor in NTPC hospital, had not extended the ad-hoc employment of Dr.Anil Pandey. The story of demand and trap was concocted by Dr. Anil Pandey. If complainant, at all, was interested in the TT operation of his wife,

he could have got it done in the same hospital by some other doctor or at any other hospital, but he did not make any effort for the same, knowing fully well that TT operations were used to be done free of charge, rather incentive was provided for such operations.

26. As admitted by Asha Rai Das (PW-1), complainant Subhash Chandra Pandey (PW-3) and T.K. Mandal (PW-4), when the accused was trapped, immediately she told that money was forcibly given and she was framed up.

27. Dr. G.C.Mishra (DW-2) stated that at the relevant time he was Chief Medical Officer in NTPC Hospital, Vindhya Nagar. His wife (accused) was posted in the same hospital as a Gynecologist. No doctor in his department was permitted to do private practice. At the time of alleged trap, he was also present in the house. When complainant came there and gave prescription to accused, she told him that they were going out on leave and also that because investigations of his wife in respect of blood and urine for anesthesia were not done, no operation could be done, but complainant insisted that she will have to do the operation. Accused suggested him that he should get the operation done by some other doctor, but he did not heed to it. On his suggestion, accused wrote some medicines on the prescription, but, in the meanwhile, he put the money on the table and police people rushed inside and made recovery. Since Dr. Anil Pandey was inimical to them, Subhash Chandra Pandey (PW-3), who was his relative, got his wife trapped. ASI L.D. Singh (DW-4) deposed that on a complaint made by Subhash Chandra Pandey against Dr. G.C. Mishra, he made enquiry and came to know that Subhash Chandra Pandey used to work in the Shivam Hospital of Dr. Anil Pandey. Dr. G.C. Mishra (DW-2) stated that Dr. Anil Pandey had started a private hospital viz. Shivam Nursing Home and accused had assured him that she will also join the same, but due to mismanagement of the Nursing Home, she dropped that

idea. Therefore, Dr. Anil Pandey got annoyed with her. Because of that grudge, he with the help of Subhash Chandra Pandey got his wife embroiled in the case.

28. Learned counsel for the appellant, referring to the evidence of Dr. M.K.Kulshreshta (PW-7) and Dr. Lata Sharma (PW-8), submitted that doctors of NTPC Hospital were not authorized for private practice. Vide prescription Ex.P/5 Dr. Shailbala Mishra had checked up Amita Pandey and prescribed certain medicines related to TT operation. Blood, urine tests etc. were also prescribed and the patient was referred to anesthetist. According to him, though usual instructions given to patient before operation were mentioned in Ex.P/5, but no date of admission for operation was given. The medicines mentioned in Ex.P/5 were to be given after the check up by anesthetist. He stated that for TT operation, nothing was used to be charged whether the patient was worker of NTPC or not, rather some incentive was given to patients. Days for the operation by a particular doctor were fixed. The operation day of accused Dr. Shailbala Mishra was Thursday. Dr. Kulshrestha stated that on 26th and 27th June 1998 an All India Conference of NTPC doctors was scheduled in Andhra Pradesh. Accused and her husband had to participate in the said conference. Accused had taken leave from 25.6.1998 to 4.7.1998. The evidence of Dr. Kulshrestha finds support from the evidence of Dr. Lata Sharam (PW-8). She reiterated that from 25.6.1998 to 4.7.1998 tour programme of accused and her husband was sanctioned. On 23.6.1998 advance of Rs.8800/- was paid to them and the reservation of the aeroplane was also done. However, on 25.6.1998, the said tour programme was cancelled.

29. Learned counsel for the CBI placing reliance on the ratio of ***M.W.Mohiuddin vs. State of Maharashtra-(1995) 3 SCC 567*** and

Kanshi Ram vs. State of Punjab-(2005) 12 SCC 641 submitted that once the receipt of money by the accused is proved beyond doubt and no reasonable explanation is offered by the accused as to how the tainted money came into his possession, it would be presumed under Section 20 that accused accepted bribe. Learned counsel submitted that since in the instant case it was established that accused was found in possession of the tainted money and no reasonable explanation was offered by her, it has to be presumed that she accepted the bribe.

30. In case of ***M.W. Mohiuddin*** (supra), where accused asked complainant to wrap the money in his handkerchief and to keep the same on a packet kept on a cot, the Apex Court held that since the complainant had parted with the tainted money and the same came under the hold and control of accused, it cannot be said that accused had not come into possession of the money. When the money came into possession of the accused, the only inference was that he accepted the same and thus obtained pecuniary advantage.

31. In ***Kanshiram*** (supra), the Apex Court held that when receipt of money by the accused was proved and no reasonable explanation was offered by the accused as to how the said money came into his possession, it had to be presumed that accused accepted the bribe.

32. For legal presumption under Section 20, the only requirement is that it must be proved that accused accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. Proof of a fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. In reaching the conclusion, the court can use the process of inferences to be drawn from facts produced or proved. Such

inferences are akin to presumption in law. Law gives absolute discretion to the court to presume the existence of any fact, which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-a-vis the fact of the particular case (*Please see: **State of Andhra Pradesh vs. C. Uma Maheswara Rao and another-AIR 2004 SC 2042***).

33. On a proper scrutiny with care and caution of the evidence adduced by the prosecution in the instant case, it seems to us that the sole evidence of complainant Subhash Chandra Pandey (PW-3) is not trustworthy in respect of alleged demand of bribe by the accused. His conduct appears dubious. We have already found that the evidence of Amita Pandey (PW-6) that accused demanded money from her when she met her for the first time in the hospital is not trustworthy. It is suspicious that for the first time when accused allegedly demanded money from complainant, he without making any complaint to local police, any other doctor or officer of the NTPC directly went to CBI Office at Jabalpur. He though stated that somebody told to him about the CBI, but he refused to disclose the name of the said person in the court. As appeared from the evidence, he was doing nothing and was living with his wife in her parent's house in village Telgaon. It appears suspicious as to what made him to suddenly come to Singrauli for getting the TT operation of his wife done at the hands of accused though number of hospitals and doctors were available for the same. He knew that TT operation could have been done at any hospital free of charge. It is suspicious that though Amita Pandey (PW-6) did not go at the guest house at the time of pre-trap rehearsal, still she, complainant (PW-3) and even the CBI Inspector V.Dixit (PW-10) stated that she was present in the said proceedings and she signed the pre-trap memorandum (Ex.P/2) at guest house. Inspector V.Dixit (PW-10) though

stated that all the members of the trap party including complainant and Amita Pandey had gone in two vehicles, but, contrary to it, complainant and Amita Pandey stated that they went to the house of accused on scooter and not in a car or jeep. It has also been established by the evidence of Dr. M.K. Kulshreshta (PW-7) and Dr. Lata Sharma (PW-8) that from 25.6.1998 to 4.7.1998 accused and her husband had to go to attend an All India Conference in Andhra Pradesh. Their tour programme was sanctioned and reservation in aeroplane was done. In these circumstances, it seems doubtful that accused would have asked Amita Pandey on 23.6.1998 to get admitted in the hospital in the evening for her operation a day after tomorrow. It is also significant to note that no date for the operation was given by the accused in the prescription slip (Ex.P/5). Though complainant and his wife Amita were asked to consult Dr. Kulshrestha, the anesthetist, in Room No.15, but Amita Pandey did not go there. These circumstances seem to give a clear indication that complainant and his wife were not interested in the operation, rather they were interested in laying a trap against the accused. Though complainant denied that he was concerned with or related to Dr. Anil Pandey, but it appeared from the evidence of ASI L.D. Singh (DW-4) that he worked in Shivam Hospital of Dr. Anil Pandey who bore animus against accused. On appraisal of above circumstances, the explanation/defence tendered by the accused that the tainted money was forcibly given by the complainant for entrapping her seems to us reasonable and probable. The Apex Court in case of ***Punjab Rao vs. State of Maharashtra-AIR 2002 SC 486*** observed that it is too well settled that a case where the accused offers an explanation for receipt of alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond

reasonable doubt as the prosecution. But can establish the same by preponderance of probability.

34. It is thus well settled that the burden, which rests on an accused to displace presumption under Section 20 of the Act is not as onerous as that cast on the prosecution to prove its case. Nevertheless, this burden on the accused can be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward. (*Please see: **Chaturdas Bhagwandas Patel vs. State of Gujrat-AIR 1976 SC 1497***). In our opinion, in view of the aforesaid infirmities found in the prosecution case, it cannot be held beyond doubt that the accused demanded and accepted bribe/illegal gratification or obtained any pecuniary advantage from the complainant for doing the TT operation of his wife. Learned Special Judge seems to have not appreciated the prosecution evidence in its correct perspective.

35. Accordingly, the impugned judgment passed by the court below convicting the appellant under Section 7 and 13(1(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and awarding sentence to her is set aside. Appellant is acquitted.

36. Appeal allowed.

(RAKESH SAKSENA)
JUDGE

(M.A. SIDDIQUI)
JUDGE

HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

DIVISION BENCH

Criminal Appeal No.360/2002

Smt. (Dr.) Shailbala Mishra

versus

The State of Madhya Pradesh.

J U D G M E N T

For consideration

(Rakesh Saxena)
JUDGE
/09/2011

Hon'ble Shri Justice M.A. Siddiqui

JUDGE
___/09/2011

POST FOR /09/2011

(Rakesh Saxena)
Judge
___/09/2011