IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 30.07.2026
Pronounced on: 21.08.2026
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Whether the operative part or full judgment is pronounced: ***Full***

CrlA(S) No.11/2025

HABIBULLAH KUMAR **... APPELLANT(S)**

Through: - Mr. Gowhar Majeed Dalal, Advocate.

Vs.

UT OF J&K **...RESPONDENT(S)**

Through: - Mr. Mohsin S. Qadiri, Sr. AAG, with Mr. Faheem Nisar, GA.

CORAM: **HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

JUDGMENT

1) The present appeal is directed against judgment dated 21.08.2025 passed by the learned Special Judge Anticorruption, Kashmir, Anantnag (hereinafter referred to as the trial court) whereby the appellant has been convicted of offences under Section 5(1)(d) read Section 5(2) of J&K Prevention of Corruption Act [for short "the PC Act"]. Vide the impugned judgment, the appellant has been sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.21,000/ in proof of offence under Section 5(1)(d) read with Section 5(2) of the PC Act. In default of payment of fine, the appellant has been sentenced to undergo simple imprisonment for a further period of six months.

2) As per the prosecution case, on 10.09.2009, complainant-PW Bashir Ahmad Dar, lodged a written complaint before the Vigilance Organization, Kashmir, alleging therein that he along with five other Helpers posted in Block Development Office, Larkipora Shahabad, Anantnag, were accorded in-situ promotion with effect from 01.11.2008. It was further alleged that the complainant approached the appellant/accused, who was working as Incharge Establishment in the office of BDO, in connection with preparation of arrears bill. It was also alleged that the appellant demanded a sum of Rs.300 per head for preparation of arrears bill. The complainant is stated to have collected Rs.300 from each of the Helpers and collected an amount of Rs.1800/ from the Helpers that was demanded as bribe money by the appellant/accused. According to the complainant he was against the corruption, as such, he approached the Vigilance Organization, Kashmir, for the purpose of taking strict action against the appellant.

3) On the basis of aforesaid complaint (EXTP-1), FIR No.25/2009 for offences under Section 5(1)(d) read with

Section 5(2) of the PC Act and Section 161 of RPC came to be registered with Police Station Vigilance Organization, Kashmir (VOK) and investigation was commenced. A trap team comprising officers/officials of the VOK, which was headed by PW-14, Inspector Farooq Hussain Mir, was constituted for laying trap against the appellant/accused. Services of one independent witness, namely, PW-2, Nazir Ahmad Lone, Senior Assistant, Commercial Tax Department, Srinagar, were also requisitioned and he was associated with the trap proceedings. The complainant is stated to have produced 18 currency notes each of Rs.100/ denomination, total in the amount of Rs.1800/ before the members of the trap team.

4) After conducting pre-trap demonstration, the complainant along with other members of the trap team proceeded to Block Development Office, Larkipora Shahabad, Anantnag. On reaching there, the complainant went inside the office room of the appellant/accused and after a brief conversation, the appellant/accused is stated to have demanded and accepted a sum of Rs.1800/ as illegal gratification from the complainant, whereafter he kept the same in the pocket of his trouser. This transaction of exchange of bribe money between the complainant and the appellant/accused was watched by independent witness, PW Nazir Ahmad Lone from the window of the room. After completion of the transaction, the complainant is stated to have flashed a pre-fixed signal to the members of the trap team who rushed to the spot and caught hold of the appellant/accused. Upon search of back pocket of the trouser of the appellant/accused, the tainted money was recovered from his possession which was seized on spot. Thereafter the appellant/accused was made to wash his hands in the solution of Sodium Carbonate which turned pink. Similarly, the pocket of trouser of the appellant/ accused was also washed in Sodium Carbonate solution and the same also turned pink. These solutions were put in bottles and the same were sealed on spot. Post trap memo was prepared and the appellant/ accused was arrested on spot. The coloured solutions sealed and seized on spot were sent to FSL Srinagar after getting them resealed by the Executive Magistrate First Class. The statement of complainant PW Bashir Ahamd Dar under Section 164A of Cr. P. C was recorded before the Judicial Magistrate, 1st Class and the statements of other witnesses conversant with the facts of the case were recorded under Section 161 of the Cr. P. C. After investigation of the case, offences under

Section 5(1)(d) read with Section 5(2) of the PC Act and Section 161 RPC were found established against the appellant/accused. After obtaining sanction for prosecution against the appellant/accused from the competent authority in terms of Government Order No.19-GAD(Vig.) of 2010 dated 29.03.2010, the challan was laid before the learned trial court.

5) Vide order dated 13.12.2010, the learned trial court framed charges for offences under Section 5(1)(d) read with Section 5(2) of the PC Act and Section 161 of RPC against the appellant/accused, who denied the charges and claimed to be tried. Accordingly, the prosecution was directed to lead evidence in support of the charges. In order to prove the charges, the prosecution, besides examining complainant PW Bashir Ahmad Dar and shadow witness PW Nazir Ahmad Lone, also examined members of the trap team, namely, PWs Inspector Farooq Hussain Mir, Inspector Irshad Ahmad Wani, Constable Showkat Mohammad, Constable Mohammad Sadiq Bhat, as witnesses in support of their case. Besides this, PWs Deedar Singh, Manzoor Ahmad Mir, Shameem Ahmad Naikoo, Mushtaq Ahamd Ganai and Abdul Samad Parray, were also examined as witnesses by the prosecution to prove that the complainant had collected money from these officials so as to offer bribe to the appellant/accused. The prosecution also examined BDO, PW Gul Mohammed Ashraf Jalali and another official of the office of BDO Larkipora, PW Mohammed Yaqoob Bhat, as witnesses in support of their case.

6) After completion of the prosecution evidence, the incriminating circumstances appearing in the prosecution evidence were put to the appellant/ accused for seeking his explanation and, accordingly, his statement under Section 342 of the J&K Cr. P. C was recorded on 24.02.2024. In his statement, the appellant, while denying that he had demanded any illegal gratification from the complainant or other officials on whose behalf he had made the complaint before the VOK, stated that the complainant is working as Helper in the office of BDO and his wife happens to be a Panch belonging to Congress Party in Panchayat Halqa Lar. He further stated that the complainant was taking benefit of different schemes in order to favour his relatives and in this connection. He was harassing the appellant/accused and other officials working in the office with a view to get his brother, Mohammad Abbas Dar, engaged as a daily wager on the basis of fake documents. He further stated that because of the non-availability of the budget, even though he had prepared the arrear bills, the amount could not be drawn from the treasury. He also claimed that the complainant was harassing him, as such, he had developed enmity with him. He further stated that during the trap proceedings, the complainant forcibly tried to thrust the tainted money into the pocket of his pant and while he was objecting to it, the officials of Vigilance organization apprehended him and took him along in a vehicle to Vigilance Office, Anantnag, where they seized his pant. In short, the appellant/accused claimed that he has been falsely implicated in the case.

7) No evidence was led by the appellant in defence, as such, the case was set down for final arguments.

8) The learned trial court, after analyzing the evidence on record, came to the conclusion that the appellant had demanded and accepted the illegal gratification from the complainant during the trap proceedings and the tainted money was recovered from the pocket of his pant. Thus, offences under Section 5(1)(d) read with Section 5(2) of the PC Act stand established against him. On the basis of these findings, the learned trial court recorded the impugned judgment of conviction and sentence against the appellant/accused, which is under challenge in the present appeal.

9) The appellant has challenged the impugned judgment on the grounds that his statement under Section 342 of the J&K Cr. P. C has not been properly recorded by the learned trial court, inasmuch as all the documents and the evidence relied upon by the trial court, has not been put to the appellant for his explanation, which has caused prejudice to him. It has been further contended that the prosecution has failed to establish acceptance of illegal gratification by the appellant beyond reasonable doubt. It has also been contended that the findings recorded by the learned trial court are perverse. It has further been contended that the learned trial court has recorded contradictory findings and observations in the impugned judgment, as such, the same suffers from illegality. It has further been contended that the shadow witness has not supported the case of the prosecution, inasmuch as he has not witnessed the actual transaction of bribe and, as such, on the sole uncorroborated testimony of the complainant, the conviction could not have been recorded.

10) I have heard learned counsel for the parties and perused the impugned judgment, the grounds of appeal, evidence on record and record of the trial court.

11) The charge against the appellant/accused is that he, in his capacity as Incharge Establishment Clerk in the office of BDO, Larkipora, had demanded illegal gratification from complainant PW Bashir Ahmad for releasing the arrears of in-situ promotion accorded in favour of the complainant and his five associates who were working as Helpers in the said office. It is the further case of the prosecution that when the trap was laid by the sleuths of VOK on 10.09.2009, the appellant/accused had demanded and accepted tainted currency notes amounting to Rs.1800, which were later on recovered from the back pocket of his trouser.

12) It is a settled position of law that in order to bring home guilt of the accused in a case where it is alleged that the accused has demanded and accepted illegal gratification so as to constitute an offence under Section 5(1)(d) read with Section 5(2) of the PC Act, the prosecution has to establish the following ingredients:

(I) Initial demand of illegal gratification by accused from the complainant.

(II) Demand and voluntary acceptance of tainted money/bribe by the accused from the complainant at the time of trap proceedings.

(III) Recovery of tainted money from the accused.

13) So far as the first ingredient with regard to initial demand is concerned, complainant, PW Bashir Ahmad, has narrated in his examination-in-chief that he and his other associates had approached the appellant for release of arrears relating to time-bound promotion but he demanded illegal gratification to release the arrears. He further stated that 10th September 2009, was fixed as the date for payment of illegal gratification to the appellant/accused. He also stated that each of the six employees had to contribute Rs.300, and all of them, after consultation, decided to approach the Vigilance Organization and make a complaint against the appellant/accused, whereafter he lodged the report, EXTP-1, with the Vigilance Organization. In the report it is recorded that the complainant collected Rs.300 from each of his five associates and thereby a total sum of Rs.1800 was collected, which had to be paid to appellant for preparation of the bills. In his cross-examination, the complainant stated that it has been wrongly recorded in his complaint, EXTP-1, that he had collected Rs.300 each from his other five associates, thereby contradicting the version deposed to by him in his examination-in-chief.

14) The other five associates of the complainant, namely, PWs Deedar Singh, Manzoor Ahmad Mir, Mushtaq Ahmad

Ganai, Shameem Ahmad Naiko and Abdul Samad Parray, have categorically stated that they did not contribute towards the bribe money. They further stated that the appellant/accused never demanded any money from them. They also stated that in their initial statement made before the Vigilance Organization, they had categorically stated that when the complainant asked them to contribute Rs.300, they told him that they would not be contributing anything. They also stated that they told the Vigilance Organization in their initial statement that the appellant/accused had never demanded any money from them. The photocopies of their initial statements made to the Vigilance Organization were produced by these witnesses while making their statements. One of these witnesses, PW Manzoor Ahmad Mir, has stated that there is a land dispute going on between the complainant and the appellant/accused.

15) Thus, all the above named five officials, on whose behalf the complainant is stated to have settled the bribe money with the appellant/accused, have not supported the version of the complainant, inasmuch as they have categorically stated that neither any demand was made by the appellant/accused from them nor they had contributed their share of the alleged illegal gratification.

16) PW Gul Mohammad Ashraf Jalali, the BDO, has stated that In-situ promotion was sanctioned in favour of the complainant and other officials and that the areas of salary were required to be released in their favour but there was no budgetary allocation until 9th of September. He further stated that on the next day, i.e. on 10th September, when he was traveling from Srinagar towards Anantnag, he was informed about arrest of the appellant/accused. In his cross-examination he deposed that the appellant is an honest person and he discharges his duties properly. He further stated that the complainant is a short-tempered person and he takes steps without thinking about his actions. He also stated that he tried to get rid of the complainant and that there are some cases relating to rioting registered against him. He further stated that the complainant wanted to get his brother and wife adjusted as daily wagers.

17) Another official of the BDO office, Mohammad Yaqoob Bhat, who has been declared hostile, has, in his cross-examination, deposed that the character of the appellant/accused is good.

18) From the foregoing evidence on record, it appears that the initial demand of bribe by the appellant from the complainant is highly doubtful, inasmuch as the officials on whose behalf the complainant proposed to offer bribe to the appellant, have not supported his version of case. Even the complainant himself has contradicted his own narration made in his complaint, EXTP-1, to the extent it relates to collection of Rs.300 each from his other associates. This constitutes a major contradiction in the evidence on record so far it relates to initial demand of bribe by the appellant/accused.

19) The Supreme Court has, in the case of **Mir Mustafa Ali Hashmi** v. **State of Andhra Pradesh**, (2024) 10 SCC 489, held that it is incumbent upon the Trap Laying Officer to get an independent verification done of the alleged demand and the said fact assumes prominence for ascertaining whether the complainant bore a grudge against the accused. The Supreme Court in the said case observed that it is the settled convention that the Trap Laying Officer has to make efforts to verify the factum of demand of bribe by the public servant before initiating the trap proceedings which can also be done by recording the telephonic conversation between the decoy and the suspect public servant.

20) In the present case, it seems that the Trap Laying Officer has not made any effort to verify the factum of initial demand of bribe by the appellant/accused from the complainant. None of the prosecution witnesses, who were part of the trap proceedings, have stated that any verification or questioning was conducted by the Trap Laying Officer or any other member of the trap team to elicit any information with regard to genuineness of the complaint from the complainant. When the Trap Laying Officer, PW-14, Inspector Farooq Hussain Mir, was cross-examined on this aspect of the case and was asked as to whether he had conducted any investigation with regard to previous enmity between the complainant and the accused, he stated that he had conducted verification in this regard but he could not find that there was any discord between the two. However, he failed to mention specific details about the verification. He could not even remember whether the complainant and the accused belong to the same village.

21) Even if it is assumed that the Trap Laying Officer had conducted investigation with regard to relations between the accused and the complainant, yet he has nowhere deposed in his statement about any verification having been conducted by him before the FIR was registered on the basis of the complaint lodged by the complainant. It seems that the Investigating Agency has straightway, on the basis of the complaint lodged by PW Bashir Ahmad Dar, proceeded to register FIR and lay trap against the appellant/accused.

22) It has come in evidence on record that there was some discord between the complainant and the appellant/accused relating to engagement of his brother as a daily wager and, in fact, one of the witnesses, PW Manzoor Ahmad Mir, has gone to the extent of stating that there was a land dispute between the complainant and the accused. In the backdrop of nature of evidence which has come on record, the omission on the part of the Trap Laying Officer to conduct verification of the complaint before proceeding to lay trap against the appellant/accused, assumes great significance and it has an adverse impact upon the case of prosecution. Thus, it can safely be stated that the prosecution has not been able to prove the initial demand of bribe by the appellant/accused beyond reasonable doubt.

23) The second ground that has been urged by learned counsel for the appellant for assailing the impugned judgment is that in the facts and circumstances of the case, it will be highly hazardous to record conviction against the appellant/accused on the basis of uncorroborated testimony of complainant PW Bashir Ahmad.

24) In the above context, it is to be noted that shadow witness, PW Nazir Ahmad Lone, has stated that he did not go inside the office room of the appellant/accused during the trap proceedings. He has stated that while the complainant went inside the room, he stood outside it near the window, from where he could see inside the room and he could also hear the conversation. He went on to state that when the complainant went inside the room to meet the accused/appellant, there was some exchange of words between the two and after five minutes, the complainant came out and gave a signal to him. In his cross-examination, he stated that if he had gone inside the room along with the complainant, he could have witnessed the happenings with his own eyes. He stated that nobody prevented him from going inside the room. He clarified that he did not see the acceptance or demand of bribe money by the appellant/accused. He only heard the exchange of conversation between the appellant and the complainant but he has no knowledge as to what conversation was going on between the two. He further stated that when the other members of the trap team went inside the office room, the appellant was crying that he has been falsely implicated.

25) From the aforesaid statement of the shadow witness, it is clear that he has not watched what had actually transpired between the appellant/accused and the complainant. He has not even heard the conversation exchanged by the two while the complainant was inside the office room of the appellant/accused. The shadow witness has not stated anything about the exchange of bribe money or the demand allegedly made by the appellant from the complainant. The other members of the trap team have all in their cross-examination stated that they did not watch the exchange of bribe money between the complainant and the appellant/accused as they were sitting outside the room.

26) In the face of aforesaid analysis of the prosecution evidence, it is clear that it is only PW Bashir Ahmad Dar who has actually witnessed the proceedings relating to exchange of bribe money during the trap proceedings. He has stated that the appellant/accused had demanded bribe money from him during the trap proceedings, after telling him that the file is ready, pursuant whereto he paid an amount of Rs.1800 to the appellant, who, after counting the same, put it in the back pocket of his pant, from where it was later on recovered. The question that arises for consideration is as to whether uncorroborated testimony of complainant, PW Bashir Ahamd Dar, can be relied upon for holding that during the trap proceedings the appellant had demanded and accepted the bribe money.

27) The Supreme Court has, in the case of **Prakash Chand** v. **State (Delhi Administration)**, (1979) 3 SCC 90, while dealing with the issue as to whether conviction can be based on uncorroborated testimony of a trap witness, held that a trap witness may perhaps be considered as a person interested in the success of the trap and that may entitle a court to view his evidence as that of an interested witness. The Court further held that where the circumstances justify it, a Court may refuse to act upon the uncorroborated testimony of a trap witness but on the other hand, a Court may well be justified in acting upon the uncorroborated testimony of a trap witness if the Court is satisfied from the facts and circumstances of the case that the witness is a witness of truth.

28) This Court has, in the case of **Falil ur Rehman** vs. **UT of J&K** (CrlA(S) No.01/2020 decided on 30.06.2026), after taking note of the ratio laid down by the Supreme Court in the cases of **M. O. Shamsudhin vs. State of Kerala,** (1995) 3 SCC 351, **Ramesh Kumar Gupta vs. State of MP,** (1995) 5 SCC 320, and a Constitution Bench judgement of the

Supreme Court in the case of **Neeraj Dutta vs. State (Govt. of N.C.T of Delhi),** (2023) 4 SCC 731, analyzed the legal position in the following words:

> *"From the foregoing analysis of the legal position on the subject, it emerges that there is no abstract rule that uncorroborated testimony of a bribe giver should not be accepted. It is also clear that a bribe giver can be termed as a partisan witness who is interested in the success of trap and his statement has to be analysed and scrutinized in the same manner in which the statement of any other partisan witness is to be analysed and scrutinized before placing reliance upon it. It is further beyond any cavil that corroboration to the statement of a complainant can be by way of direct evidence or by way of circumstantial evidence and it is not necessary that corroboration to his statement has to be by direct evidence only. The quantum of evidence corroborating the testimony of a trap witness would depend upon its own facts and circumstances which would include nature of the crime and the character of the trap witness. The Court, on the basis of the facts and circumstances of each case, will have to weigh the evidence and see whether corroboration is necessary."*

29) In the face of aforesaid legal position, let us now advert to the facts of the present case. It has come in the evidence on record that relations between the complainant and the appellant/accused were far from being cordial even before the alleged occurrence. As already stated, there is evidence on record to show that the complainant was pressing for engagement of his brother, Mohammad Abas Dar, as a daily wager, which fact has been confirmed by the BDO, PW Gul Mohammad Ashraf Jalali, while making his statement before the Court. It has also come in the evidence on record that the complainant is a hot-headed person and the BDO even tried to get rid of him. PW Manzoor Ahmad Mir has stated that there is a land dispute going on between the complainant and the appellant/accused and as per material on record, both of them belong to the same village. Thus, the appellant/accused has probablized his defence that the relationship between him and the complainant were inimical.

30) Besides this, the complainant has contradicted the contents of his own complaint, EXTP-1, by stating that he had not collected the bribe money from his associates, where as in his complaint, EXTP-1, it is clearly written that he had collected bribe money from his associates. Even the associates of the complainant have stated that they did not contribute towards the bribe money. Thus, the evidence on record shows that there was previous discord between the complainant and the appellant/accused and the complainant has proceeded to file the complaint against the appellant even on behalf of his associates, who have clearly stated that the appellant/accused never demanded any bribe money from them. This clearly goes on to show that the complainant is a highly motivated and biased person, who wanted to implicate the appellant/accused by hook or by crook. In these circumstances, the uncorroborated testimony of the complainant with regard to demand and acceptance of bribe by the appellant/accused during the trap proceedings cannot be relied upon.

31) When the statement of the complainant with regard to demand and acceptance of bribe money during the trap proceedings is taken out of consideration, being unreliable in nature, there remains no evidence on record, either direct or circumstantial, to prove that the appellant/accused had demanded and accepted the bribe money from the complainant during the trap proceedings. Mere recovery of trap money from the pocket of the appellant does not go on to prove the offence of criminal misconduct against him, particularly when he has given an explanation that the trap money was thrusted in his pocket by the complainant. Further the shadow witness has stated that when the appellant was apprehended by the members of the trap team, he was shouting that he has been falsely implicated. This conduct of the appellant immediately after the occurrence, is admissible in evidence. Therefore, the appellant has succeeded in tendering a plausible explanation for the recovery of tainted money from his pocket.

32) That takes us to the issue as to whether the findings recorded by the learned trial court in its impugned judgment are sustainable in law. If we have a look at the impugned judgment, there are several inconsistencies and perversities writ large in the said judgment. In para (29) of the impugned judgment, it has been observed by the trial court that there is no evidence, documentary or oral, to establish that the accused had ever made a demand of bribe before the complaint was filed. It has been further observed that no doubt there is no evidence on record that any demand of bribe came from the accused, but that, by itself, does not weaken the prosecution case, if it is otherwise able to make out from the facts and circumstances of the case that demand during the trap proceedings was made by the accused. The observations made by the learned trial court are contrary to the legal position. Once the prosecution fails to prove that there was initial demand of bribe by the accused from the complainant, the whole trap proceedings become illegal. Therefore, proof of demand and acceptance of bribe during trap proceedings loses its significance.

33) Another perversity which is writ large on the judgment of the trial court is that at several places in the impugned judgment, it has been recorded that shadow witness, PW-2, confirmed having seen the physical transaction of currency notes between the complainant and the accused. This observation reflects patent misreading of statement of the shadow witness, who has clearly explained in his cross-examination that he did not see the exchange of money between the complainant and the accused and he could not even understand as to what conversation was going on between the complainant and the accused.

34) In para (39) of the impugned judgment, the learned trial court, after noticing the ratio laid down by the Supreme Court in the case of **P. Satyanarayana Murthy** v. **The District Inspector of Police and anr.**, (2015) 10 SCC 152, has observed that in the present case lack of synchronization between PW1 and PW2 on the central issue undermines the reliability of the prosecution version. It has been further observed by the learned trial court in para (43) of the impugned judgment that the shadow witness was not asked to accompany the complainant inside the room and this admission of the shadow witness clearly undermines the prosecution narrative of transparency and direct observation which is expected in trap operations. The learned trial court has also noted the statement of the shadow witness that the accused was shouting and saying that he has been falsely implicated, but proceeded to observe that the fact of the matter remains that the money had been kept in his back pocket. It has also been observed by the learned trial court in para (44) of the judgment that the statements of PWs Deedar Singh, Muzaffar Ahmad Mir, Shameem Ahmad Naikoo and Mushtaq Ahmad Ganai significantly dilute the prosecution claim that bribe amount was collected jointly by the group. In para (48) of the impugned judgment, it has been recorded by the learned trial court that the discussion brings to the fore that on factual aspects the demand of bribe by the accused and acceptance of bribe by the accused from the complainant are not proved. Again, in para (52) of the impugned judgment, the learned trial court has noted the absence of unimpeachable evidence on account of tacit demand and voluntary acceptance of tainted money.

35) Despite noticing the aforesaid infirmities in the prosecution case, the learned trial court has proceeded to record the judgment of conviction against the appellant. The findings recorded by the learned trial court being not only inconsistent and contrary to each other but the same suffer from perversity. The impugned judgment passed by the learned trial court is, therefore, not sustainable in law, inasmuch as despite noticing the infirmities in the case of the prosecution, it has proceeded to record the judgment of conviction.

36) For what has been discussed hereinbefore, the impugned judgment passed by the learned trial court is set aside and the charge sheet against the appellant/accused is dismissed. The appellant is acquitted of the charges. His bail and surety bonds shall stand discharged.

37) The trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

Srinagar,
21.08.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES**