

IN THE HIGH COURT OF DELHI: NEW DELHI

+ Crl. A. No. 50/2008

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SHRI BRAHM PARKASH APPELLANT

Through: Mr. Atul Jain, Adv.

Versus

STATE RESPONDENT

Through: Mr. Manoj Ohri, APP

Judgment reserved on: 28th September, 2010

Judgment delivered on: 8th October, 2010

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Not Necessary |
| 3. Whether the judgment should be reported in the Digest? | Not Necessary |

A.K. PATHAK, J.

1. Appellant has been convicted by the Trial Court under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short hereinafter referred to as "the Act"); sentenced to face rigorous imprisonment for a period of two years and fine of ₹ 10,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of six months under Section 7 of the Act; sentenced to face rigorous imprisonment for a period of

three years and fine of ₹ 15,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of nine months under Section 13(2) read with Section 13(1)(d) of the Act. Both the sentences have been directed to run concurrently. Benefit of Section 428 Cr.P.C. has also been given to the Appellant.

2. Briefly stated, case of the prosecution is that the complainant had been running a cycle repairing shop in the name and style M/s. Pinky Cycle Works from Shop No. 6, Yadav Park, Najafgarh Road, Nangloi, Delhi. Appellant was the Area Licensing Inspector, posted in MCD office situated at Najafgarh Road. He had challaned the complainant on 31st March, 1999 for running the shop without a license, consequently, fine of ₹ 500/- was imposed on him by the Court. Thereafter, complainant applied for a license in the MCD office on 20th January, 2000. In this connection, complainant met the Appellant in his office and requested him for early issuance of his license. Appellant told the complainant that his work would not be done till he pays some '*kharcha pani*'. On one Wednesday in the month of September, 2000, Appellant visited shop of the complainant and threatened him that in case a sum of ₹ 1500/- was not paid to him in his office by the following Monday, then his license would not be prepared and articles lying outside his shop would also be seized. Appellant told him to come to MCD office at 10:15 am on the following Monday with the money. Complainant went to Anti-Corruption Branch on 20th September, 2000 for lodging the complaint but he was asked to bring ₹ 1500/-. Accordingly,

complainant arranged ₹ 1500/- by taking loan from his friend and went to Anti-Corruption Branch on 24th September, 2000. He was directed to come on 25th September, 2000 in the morning. Complainant reached Anti-Corruption Branch in the morning on 25th September, 2000 and met Inspector Niranjana Singh who recorded his statement and constituted a raiding party, wherein a public servant Partha Chakraborty (panch witness) was also joined. The numbers of fifteen currency notes of ₹ 100/- denomination were recorded in the pre-raid report. Currency notes were smeared with phenolphthalein powder and panch witness was asked to touch these notes, thereafter, his fingers were dipped in the sodium carbonate solution which turned pink. This demonstration was given to the panch witness and the complainant to show the significance of phenolphthalein powder treated currency notes. Thereafter, phenolphthalein powder treated currency notes were handed over to the complainant with the instructions to pass it on to the Appellant on his demand, in the presence of panch witness who was asked to accompany the complainant and watch the transaction and give signal to the raiding party by waving his right hand over his head after the transaction was over. Pre-raid report was prepared and duly signed by the Investigating Officer.

3. After completing pre-raid proceedings in the office of Anti-Corruption Branch, raiding party reached MCD office, Najafgarh Zone at about 10:00 AM. Complainant and panch witness went to room No. 12 at the second floor of the building to meet the Appellant

at about 11:30 AM, however, appellant was not found present in his office. On enquiry it was revealed that he would come at about 12:15 PM. Raid Officer was informed about this fact. Complainant and panch witness kept on waiting for arrival of the Appellant at the ground floor of the building. At about 12:30 pm Appellant came there and went upstairs. Complainant and panch witness followed him to the second floor. Appellant first attended his office work and at about 1:00 PM he asked the complainant as to whether he had brought the bribe money. Complainant replied in affirmative and handed over phenolphthalein powder treated fifteen currency notes of ₹ 100/- denomination to the Appellant, who accepted the same with his right hand and kept in the right side pocket of his pant. After the bribe money was passed, the panch witness gave signal to the raiding party which arrived there. The complainant and panch witness informed the Raiding Officer that Appellant had demanded and accepted the bribe money. Appellant was challenged by the Raiding Officer by saying that he had demanded and obtained bribe from the complainant. On the direction of the Raid Officer, panch witness took search of the Appellant and fifteen currency notes of ₹ 100/- denomination were recovered from the right side pocket of his pant. Numbers of currency notes were tallied with the numbers of currency notes as mentioned in the pre-raid report. Right hand of the Appellant was dipped in the freshly prepared sodium carbonate solution, which turned pink. This solution was then transferred in two clean glass bottles which were marked as "RHPPW-I" and "RHPPW-II" and labels of the bottles were signed by the

complainant, panch witness and the Raiding Officer. Thereafter, bottles were sealed with the seal of "NS". Thereafter, wash of right side pocket of pant of the Appellant was taken in colourless sodium carbonate solution, which also turned pink. This solution was also transferred in two glass bottles which were marked as "RHPPW-I" and "RHPPW-II". These bottles were also sealed with the seal of NS. Sample seal impressions were obtained and thereafter all the four sealed bottles, sample seal impressions and pant of the appellant as also the currency notes were sealed and taken in possession. Post raid proceedings were recorded which were signed by the witnesses. Appellant was arrested. Case property was deposited in the Malkhana of police station Civil Lines. Later, case property was sent to FSL, Malviya Nagar. As per the report of FSL, presence of phenolphthalein and sodium carbonate was detected in the hand washes and pant wash solutions. Sanction for prosecution of the Appellant was obtained from Shri K.C. Aggarwal, Deputy Commissioner, S.P. Zone. Thereafter, appellant was sent to face trial for having committed offences under Sections 7 and 13 of the Act, by filing a charge sheet in the Trial Court.

4. Charges under Sections 7 and 13(2) read with 13(1)(d) of the Act were framed by the Trial Court against the Appellant on 22nd February, 2002, to which he pleaded not guilty and claimed trial.

5. Prosecution has examined 12 witnesses to prove its story. Complainant Satish Kumar was examined as PW3. Panch witness was examined as PW10. Raiding Officer Inspector Niranjana Singh

was examined as PW11. Sh. K.C. Aggarwal, who had accorded sanction for the prosecution of the Appellant, was examined as PW1 and he has proved the sanction as Ex. PW1/A. PW2 HC Phool Chand, who was working as Malkhana Moharar at the relevant time in the police station Civil Lines, had deposed regarding the depositing of the case property, i.e. currency notes, sealed bottles containing washes, sample seal impressions and pullanda containing pant. He has further deposed that on 3rd October, 2000 case property was sent to FSL, Malviya Nagar by Head Constable Om Parkash; case property was received back from the FSL, Malviya Nagar in the Malkhana on 9th January, 2001 by PW4 HC Birju Singh, who has corroborated this version. Other witnesses are formal in nature. PW5 Rajbir Singh, an official of MCD, has deposed that he had handed over the file of M/s. Pinky Cycle Works to the Investigating Officer. PW6 is another MCD official, namely, Davinder Singh, deposed regarding the procedure for issuance of ad hoc license and that M/s. Pinky Cycle Works had made an application for grant of license which was sanctioned; complainant was to deposit a sum of ₹ 1700/- towards the registration fee. PW7 Satvir Sharma is also a MCD official and is a formal witness. PW8 Shri Sanjay Kumar, an official of MCD, has proved the photocopy of dispatch register, which he had handed over to Investigating Officer. PW9 Charan Dass Gupta an official of MCD is also a formal witness. PW12 Inspector M.A. Salam was the Investigating Officer of the case and has deposed about the investigation conducted by him.

6. After the prosecution closed its evidence, statement under Section 313 Cr.P.C. of the Appellant was recorded wherein entire incriminating material, which had come on record, was put to him. Appellant denied that he had demanded or accepted the bribe money. However, he admitted that he was working as Licensing Inspector in the MCD and the area of Nafafgarh Road, Nangloi was under him; complainant was running a cycle repairing shop and had applied for grant of a license; on 11th August, 2000 he had collected letter of sanction from his office vide entry No. 1858 made in the dispatch register. He denied that he had visited the shop of the complainant on a Wednesday in the month of September, 2000 and threatened to seize the articles lying in front of the shop in case ₹1500/- was not paid in his office by the following Monday. He denied that he had asked the complainant to visit his office at 10:15 am on the following Monday in this connection or else license would not be issued. He took a plea that there was no occasion for him to demand bribe since he had already recommended for grant of license on the basis whereof competent authority had already sanctioned the license. He denied that complainant met him in his office on 25th September, 2000 and handed over him the bribe money on demand, or that same was accepted by him. According to him, complainant met him in his office and requested him to accept ₹ 1500/- towards license fee but he refused to accept the same by saying that he should deposit the same at the counter. On his refusal, complainant tried to shove the currency notes in his pocket, which was resisted by him but in the meanwhile raiding party

arrived there and apprehended him and took him to the office of Anti-Corruption Branch where currency notes were taken in possession, his hand wash and wash of the right pocket of his pant was taken. He claimed that the complainant had implicated him falsely as he had earlier challaned the complainant resulting in imposition of fine of ₹ 500/- by the Court for running a cycle repairing shop without a license.

7. Appellant examined Shri Vinod Kumar, LDC (Licensing Branch) as DW1, who has deposed that on 25th September, 2000 he was present in the room No. 12 at the second floor when at about 10:30 AM one person came there and enquired about the Appellant. He informed the said person that the Appellant was on field duty and would return at about 12' O clock. At about 1:00 PM same person again came there and offered some money to Appellant as license fee, but the Appellant refused to accept the same at which said person tried to shove the money in the Appellant's pant pocket. However, in his cross-examination he has admitted that he did not make any complaint to any one regarding this incident.

8. Trial Court found the testimony of complainant (PW3), panch witness (PW10) and Raid Officer (PW11) to be trustworthy and reliable and sufficient enough to conclude that it is the Appellant who had demanded and accepted the bribe money of ₹ 1500 from the complainant on the fateful day. That apart, Appellant had himself admitted that he was caught by the raiding party and the money was recovered from his pant's pockets, inasmuch as his

hand wash had been taken which turned pink. Defence taken by the Appellant of having been falsely implicated by the complainant in this case since he had earlier challaned the shop of the complainant had been disbelieved. Trial court also did not find any force in the defence of the Appellant that it is the complainant who had forcibly pushed through the currency notes worth ₹ 1500/- in his pant's pocket, in view of the overwhelming evidence on record indicating that the bribe money was paid to the Appellant by the complainant, on his demand.

9. On perusal of the Trial Court record, I do not find any perversity in the view taken by the Trial Court which appears to be in conformity with the evidence adduced by the parties during the trial. PW3, Satish Kumar has fully supported the prosecution version. In nutshell, he has deposed that he had been running a cycle repairing shop in the name and style of M/s. Pinki Cycle Works from a shop at Najafgarh. Appellant was Area Inspector at the relevant time. He had challaned him for running the shop without a license. Accordingly, he made an application for grant of license, in the office of MCD. In this connection he met Appellant number of times but no satisfactory reply was given, inasmuch as he told him that without some 'kharcha pani' his work will not be done. On a Wednesday, in the month of September, 2000 appellant came to his shop and told him that in case ₹ 1500/- was not paid he would seize the articles lying outside the shop. Appellant asked him to visit his office on the following Monday at about 10.15 am

with ₹ 1500/- if he wanted that the license is issued. Accordingly, he went to Anti-Corruption Branch to make a complaint but he was asked to come with ₹ 1500/-. Thereafter, he went to Anti-Corruption Branch on 25th September, 2000 after arranging ₹ 1500/- and met Inspector Niranjana Singh. Panch witness Partha Chakraborty was already present there. Inspector Niranjana Singh (PW11) recorded his statement in the presence of Panch witness. He has proved his this statement as Ex. PW3-A. He further deposed that the numbers of currency notes were noted on a paper. Thereafter, currency notes were smeared with phenolphthalein powder. Panch witness was asked to touch the currency notes and thereafter his hand was dipped in colourless sodium carbonate solution, which turned pink. This solution was thrown away. He and panch witness were informed that if hands of the person, who had touched the currency notes, are dipped in sodium carbonate solution, the solution would turn pink. Powder smeared currency notes were handed over to him with the instructions that he should pass it on to the appellant, on demand. Panch witness Partha Chakraborty was asked to remain with him and give signal to the raiding party after transaction is complete. Inspector Niranjana Singh prepared pre-raid report which was signed by him and the Panch witness. He has proved this report as Ex. PW3/B. He further deposed that after pre-raid proceedings were completed he along with Inspector Niranjana Singh, panch witness and other police officials reached MCD office at about 10.00-10.15 am in an official vehicle. Thereafter, he along with panch witness went to Room No.12 at the second floor where

office of appellant was situated. Appellant was not present in his office. On enquiry from a person sitting there, it was revealed that he would come to office at about 11.30 am or 12' O clock. This fact was informed to Inspector Niranjan Singh. Thereafter, he along with panch witness started waiting for the arrival of appellant at the ground floor of the building; at about 12.15-12.30 p.m. appellant entered in the office building and went to his office at second floor. He along with panch witness followed the appellant. Appellant first attended his work and around 01.00 pm he could talk to him. Panch witness was with him at that time. Appellant asked him as to whether he had brought the money. He replied in affirmative. Thereafter, appellant asked him to hand over the money to him. Accordingly, powder smeared currency notes worth ₹ 1500/- were handed over by him to the appellant which he accepted from his right hand and kept in right side pocket of his pant. Panch witness went out and gave signal to the police party at which Inspector Niranjan Singh and other officials came there and caught hold of both the hands of the appellant. Panch witness told Inspector Niranjan Singh that appellant had kept the bribe money in the right pocket of his pant. Bribe money was recovered from the right side pocket of the appellant. The number of currency notes were tallied from the pre-raid report. Thereafter, sodium carbonate solution was prepared and right hand of the appellant was dipped therein, as a result whereof, the solution turned pink. Solution was sealed in two small bottles. Another solution was prepared wherein right side pant pocket was dipped which also turned pink. This solution was

also transferred in two bottles and sealed. Currency notes recovered from the appellant were also sealed. Post-raid report was prepared which was signed by him and other witness. The report has been proved as Ex. PW3/C.

10. PW10, Sh. Partha Chakraborty is the Panch witness. He has fully corroborated the complainant on material points. He has deposed that he was working as Lower Division Clerk with District Employment Exchange (Central), K.G. Marg, New Delhi. On 25th September, 2000 he was asked to report Anti Corruption Branch. Accordingly, he reached there at 9:30 AM where PW3 Satish Kumar was present whose statement was recorded by the Inspector Niranjana Singh, wherein he stated that he had applied for a license with the MCD; Appellant, who was working as Area Inspector, had demanded bribe of ₹ 1500/- from him for issuing the license. He identified his signatures on Ex. PW3/A, which is a statement of PW3 recorded by Inspector Niranjana Singh. He further deposed that 15 currency notes of ₹ 100 denominations were produced by PW3 which were then smeared with the phenolphthalein powder. He touched these currency notes with his right hand which was later on dipped in the solution of sodium carbonate which turned pink. The number of currency notes were noted down in the pre-raid report. PW3 was asked to hand over the bribe money to the appellant on his demand. He was asked to accompany the complainant PW2 and watch the transaction. He has identified his signatures on the pre-raid report Ex. PW3/B. Thereafter, raiding

party reached MCD office at about 11 AM. Complainant along with him went to the office of the accused at second floor of the building at about 12' O clock but he was not found there. At about 12:30 PM or 1 PM appellant arrived there. Around 12.45 PM complainant contacted the appellant at which appellant asked him "kya Laye Ho". On this complainant handed over the bribe money to the appellant which he accepted from his right hand. He gave signal to the members of the raiding party who arrived there and apprehended the appellant. Raiding officer recovered the money. The number of recovered notes were compared with the pre-raid report which tallied. Thereafter, right hand wash of the appellant was taken, which turned pink. Solution was transferred in two bottles and sealed. Since full account was not given regarding the proceedings conducted at the spot, APP for the State declared this witness hostile on this point and cross-examined him wherein PW10 admitted that right pant pocket wash was also taken in his presence which turned pink and the solution was thereafter transferred in two glass bottles which were sealed with the seal of NS. He has identified his signatures on the relevant memos. Statements of PW3 and PW10 have been duly supported by Inspector Niranjan Singh who was examined as PW11. On material points, all the above witnesses have corroborated each other and in my view, their testimony has rightly been accepted by the Trial Court. From their statements, in my view, prosecution has succeeded in proving that it is the appellant who had demanded bribe of ₹ 1500/- from the complainant for issuance of a license to him and later accepted it in

his office on 25th September, 2000. The statements of PW3, PW10 and PW11 coupled with the post-raid report clearly show that the bribe money was recovered from the appellant. That apart, recovery of bribe money has been admitted by the appellant in his statement recorded under Section 313 Cr.P.C. He has admitted that the complainant had met him in his office on 25th September, 2000 and offered him ₹ 1500/-. However, he has stated that this money was towards the license fee. He further stated that he refused to accept the money by saying that the fee should be deposited at the counter. According to him, when he refused to accept the money, complainant tried to shove the currency notes in his pocket and while he was resisting this act of the complainant, raiding party came there and apprehended him. He has not disputed that his hand wash was taken in the sodium carbonate solution which turned pink. He did not dispute that wash of his pant's pocket was also taken in the sodium carbonate solution which turned pink. He did not dispute that the same was transferred in glass bottles and sealed with the seal of NS. His plea is that all these proceedings were conducted at the Anti-Corruption Branch and not at the spot. In my view, plea taken by him fully supports the testimony of the complainant, panch witness and also that of the members of the Raiding Party with regard to the recovery of tainted money from his possession. This shows that PW3, PW10 and PW11 are trustworthy and reliable witnesses.

11. PW3 is the complainant. He has categorically deposed that the appellant had demanded ₹1500 from him for issuance of a license in his favour. There is no reason to disbelieve his this statement more so, when the bribe money was duly accepted by the appellant in his office in presence of PW10 and had been later recovered from his pant's pocket. Thus, demand and acceptance of bribe money stands proved.

12. Even otherwise, the recovery of the tainted money from the possession of the appellant by itself shows that he was guilty of accepting the bribe from the complainant. This presumption of his guilt has to be drawn in view of Section 20 of the Act. Relevant it would be to refer to Section 20 of the Act which reads as under :-

- 1) Where, in any trial of an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain from himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate.
- 2)
- 3)

(emphasis supplied)

13. It would also be appropriate to refer to Section 7 of the Act which reads as under :-

“Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or

attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations-

14. A conjoint reading of the aforesaid provisions clearly show that if the acceptance of the amount by accused is proved a presumption has to be drawn against him that he had accepted the money by way of gratification, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person. In such an eventuality burden shifts on the accused to explain the circumstances to prove his innocence. The recovery of currency notes from the appellant proves the guilt of the appellant in view of the presumption arising under Section 20 of the Act which, of course, is a rebuttable assumption. The language employed in Section 20 is “shall be presumed” which by itself indicates that the Court is bound to take the fact as proved until evidence is adduced to disprove it. In this case, recovery of tainted

money from the appellant has not only been proved but has been duly admitted, thus, presumption about the guilt of the appellant has to be presumed unless the explanation offered by him is accepted as proved.

15. In **M.Narsinga Rao vs. State of Andhara Pradesh, 2001 CrI.L.J.515**, Supreme Court held that it is obligatory for the court to draw the statutory presumption under Section 20 of the Act and, therefore, if it is proved that the accused had accepted or agreed to accept any gratification, the court must presume that the money was accepted as a motive or reward for doing any official act. This presumption, however, is rebuttable. Similar view has been taken by the Supreme Court in **B.Noha Vs. State of Kerala and Anr. (2006) 12 SCC 277**. In **Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, 2001 CrI.L.J.175** the arguments advanced by the accused that the presumption could be drawn only on the prosecution, establishing that gratification was paid or accepted by the public servant and not merely from its proving that he was found in possession of the currency notes, smeared with phenolphthalein powder were rejected. The Supreme Court held that "the premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward

is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

16. In the present case, from the evidence adduced on record, it can safely be inferred that the explanation offered by the appellant has remained unproved, inasmuch as it does not inspire any confidence even by applying principles of preponderance of probability. No evidence has been led by the appellant to show that the complainant was to deposit a sum of ₹ 1500/- towards the license fee with the MCD office. No demand letter issued by the MCD to the appellant calling upon him to deposit ₹ 1500/- towards the license fee in the office had been produced or proved. In absence of any such evidence having been led by the appellant in his defence, it cannot be said that the complainant had approached the appellant on the fateful day to deposit the license fee and instead of depositing the same at the counter; he had requested the appellant to accept it. On the contrary, PW9 Charan Das Gupta, Zonal Superintendent of MCD, has deposed that license fee of ₹ 500/- was required to be deposited for issuance of the ad hoc license to Satish Kumar, Proprietor of M/s Pinky Cycle Works. In

view of this statement of PW9, the defence of the appellant falls on the ground like pack of cards that the complainant had asked the appellant to accept ₹1500/- towards the license fee and when he refused to accept the same complainant tried to shove the money in his pocket. Statement of DW1 Vinod Kumar also cannot be accepted in this regard. In his cross-examination DW1 has categorically deposed that he had not given anything in writing to anyone that appellant had been falsely implicated or that it is the complainant who had tried to forcibly shove the money in the appellant's pocket. It appears that this witness has deposed in favour of the appellant being colleague. Be that as it may, on the face of statement of PW10 Partha Chakrovarty no weight can be attached to the version of DW1. PW10 is an independent witness. He had no enmity with the appellant. He is also a Government servant. There is no reason as to why he would depose falsely in order to implicate the appellant, who was totally stranger to him. In my view, the appellant has failed to explain the circumstances under which the tainted money was recovered from his pocket. Thus, a presumption arises under Section 20 of the Act that he is guilty of committing offence under Section 7 read with Section 13(1)(d) of the Act.

17. I do not find any force in the contention of learned counsel for the appellant that there was no occasion for the appellant to demand and accept the bribe money from the complainant since he had already recommended sanction of the license in favour of M/s

Pinki Cycle Works and pursuant thereof, competent authority had even accorded sanction for issuance of a license. License having been sanctioned, its issuance was a mere procedural formality. On complainant depositing the license fee, license was bound to be issued to him, therefore, there was no occasion for the appellant to demand bribe and for the complainant to pay the same to the appellant. I find that sufficient evidence had come on record to indicate that the sanction letter was not received by the complainant. PW3 has categorically deposed that no sanction letter was received by him nor he was aware about the sanction of the license. As per the evidence adduced by the prosecution it has been proved that it is the appellant who had collected the sanction letter from the Despatch Clerk on the pretext of delivering the same to the complainant. It is not the case of appellant that he had served this sanction letter on the complainant nor any evidence in this regard had been led. Service of this letter on the complainant has remained unproved. It appears that this sanction letter was very much available with the appellant. In such an eventuality there was every possibility of the appellant demanding bribe from the complainant to hand over the sanction letter to him.

18. I also do not find any force in the contention of learned counsel for the appellant that testimony of PW3, PW10 and PW11 is to be discarded in view of the inherent discrepancies in their statements with regard to time when the complainant and panch witness had arrived at the Anti Corruption Branch on 25th

September, 2000, reached the MCD office, and met the appellant. It is contended that PW3 has deposed that he reached Anti Corruption Branch at 7 AM on 25th September, 2000. As against this PW11 has deposed that complainant came there at 8 AM and at that time panch witness was already present; whereas PW10 has deposed that he had reached Anti Corruption Branch at about 9:30 AM. There is material discrepancy with regard to the time when panch witness and complainant arrived at the Anti Corruption Branch. These witnesses have also given different timing about their departure from the Anti Corruption Branch to the MCD office as also their arrival there. As per PW10, raiding party started from Anti Corruption Branch at about 11 am and reached the MCD office around 12' O clock. As per PW3, raiding party started for MCD office at about 8/8:30 AM and reached there at about 10/10:15 AM. In my view, the discrepancies as pointed out above are minor in nature and are not sufficient to discard the version of PW3, PW10 and PW11. Incident took place in the year 2000 while statements of these witnesses were recorded in the court sometime in 2006 and 2007. Due to lapse of time, memory of a witness is bound to fail and in such scenario possibility of such minor discrepancies arising in their statements with regard to timing is probable and is not sufficient enough to discard their testimony regarding demand and acceptance of bribe. Accordingly, this contention of learned counsel for the appellant is also rejected.

19. Learned counsel has next contended that testimony of PW10 with regard to demand of bribe at the spot cannot be accepted as he had made material improvement on this point. While deposing in the court PW10 has stated that appellant had asked the complainant “kya laye ho”, however, in his statement under Section 161 Cr.P.C. he had not used these words. The term “kya laye ho” has been introduced by PW10 for the first time in the court and is nothing but improvement and this portion cannot be read in evidence against the appellant. In absence of the demand it cannot be said that appellant had accepted phenolphthalein smeared currency notes, as illegal gratification. I do not find any force in this contention of the counsel for the appellant either. In his statement under Section 161 Cr.P.C., PW10 has used term “kya wo paise laye ho” while deposing in the court he has used the term “kya laye ho”. Both these terminology denotes demand of illegal gratification. From the above it is clear that even in his statement under Section 161 Cr.P.C., PW10 has said about the demand of bribe by the appellant from the complainant. Use of different terminology to explain the same fact will not be sufficient to cast doubt on the credibility of such witness. It is not expected from a normal human being to have a photographic memory so as to narrate an incident in the same manner by using the same words at different intervals. As already stated in the preceding paras, incident relates back to the year 2000; whereas statement of PW10 was recorded in the court sometime in the year 2007, that is, after about seven years and in such an eventuality some variation in his statement regarding use

of exact words at the time of incident is quite natural. Rather, such minor variation in the deposition of a witness strengthens his creditworthiness and makes him a natural witness. Thus, this contention of learned counsel for the appellant is also rejected.

20. For the foregoing reasons I do not find any illegality or impropriety in the findings of Trial Court. Accordingly, conviction of the appellant is upheld.

21. Learned counsel for the appellant next contended that the incident is about a decade old; appellant is now aged about fifty two years; he has faced agony of trial for the last ten years, therefore, lenient view may be taken while awarding the sentence. Keeping in mind the contentions of the counsel, sentence of the Appellant is reduced to one and a half years under Section 7 as well as under Section 13(2) read with Section 13 (1) (d) of the Act. Both the sentences shall run concurrently. Sentences of fine as awarded by the Trial Court are maintained as it is.

22. Appeal is disposed of in the above terms. The appellant shall surrender forthwith, before the Trial Court to undergo the remaining part of the sentence as awarded to him. If he fails to surrender forthwith, Trial Court shall take appropriate steps to procure his presence and commit him to prison to undergo the remaining sentence.

A.K. PATHAK, J.

October 08 , 2010

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