

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: September 24, 2010

Date of Order: 19th November, 2010

+ Crl.Appeal No. 986/2010

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19.11.2010

O.P.Chhabra

... Appellant

Through: Mr. Ravi Bassi, Advocate

Versus

State Thru CBI

... Respondent

Through: Mr. Harish Gulati, Advocate &
Mr. Anindya Malhotra, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not? | Yes. |
| 3. Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

This appeal has been preferred by the appellant who has been convicted by the trial Court under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (**in short the Act**) vide order dated 31st July, 2010 and sentenced to undergo imprisonment for a period of two years under each of the provisions with fine of Rs.2500/-.

2. Brief facts relevant for the purpose of deciding this appeal are that PW-2 Shri Praveen Gupta was running an STD booth, he had deposited Rs.5000/- with MTNL at the time of filing application. He received further demand asking him to deposit Rs.15000/- however this demand notice was received by him after the due date mentioned in the notice for deposit of the amount. He went to the O.P.Chhabra (accused/appellant) Sr. Accounts Officer

on 13.10.1998 and asked him to extend the time to deposit this additional demand till after Diwali. As per the complainant PW-2, Mr. Chabra did not agree to extend the time but when he persisted Mr. Chabra told him that it would cost him Rs.500/-. When he (complainant) stated that he could not pay the money Mr. Chabra behaved rudely with him. Complainant then talked to his (complainant's) father. His father was also against payment of bribe so he went to CBI Office. CBI official called him on 14.10.1998 along with five currency notes of Rs.100/- denomination and he went there on 14.10.1998 along with currency notes and lodged complaint Exh. PW-2/B. A trap was laid by CBI to catch the appellant red-handed while accepting bribe. The numbers of those five currency notes were noted and pre-raid proceedings were carried by CBI. Independent witnesses were called to accompany the complainant. The currency notes were treated with phenolphthalein powder. The independent witnesses were demonstrated how phenolphthalein is tested on hands as hand-wash turns sodium carbonate solution pink in colour. Thereafter a micro cassette recorder along with blank micro cassette was arranged. After preparing for the trap, the complainant was asked to proceed to the office of appellant. Before proceedings to the office of appellant the complainant talked to the appellant on telephone. This telephonic conversation between the appellant and the complainant was recorded and then played before the witnesses. In the telephonic conversation the complainant told the appellant that he could not come before lunch because of traffic jam and he would be a little late. However, he was bringing Rs.500/- with him. CBI team along with complainant and witnesses reached ISBT Kashmere Gate i.e. near the office of appellant. The complainant along with one witness was sent to the appellant's office. The witness was given a

walkie talkie which he kept in his pocket and he was to give a signal to CBI team by tapping on the walkie talkie, on appellant's accepting the bribe. The complainant went to the office of accused/appellant along with witness and told that he had come for the STD. The accused asked him if he had brought the application he told that he had not brought the application. The accused told that order could be passed only on a formal application. The complainant said that work should be done even without application. Thereafter it is alleged that accused indicated him to put money on his table and he put money on his table. The complainant also talked with him about his STD and gave this STD number to him, which appellant noted on a slip of paper. Thereafter, the complainant turned back and the accused asked if he had brought the full money, to which complainant asked "yes". A signal was given to the CBI team by the witness on complainant's giving money which was kept by the appellant in the table drawer. CBI team raided and confronted him with the complaint and told him about bribe accepted by him. On seeing CBI, the appellant was taken aback and thereafter CBI took his right hand wash which turned pink. The complainant told CBI that the appellant had kept money in his drawer. The bribe money was recovered from the drawer of the table of appellant. Number of currency notes were compared and found to be the same as recorded in pre-raid proceedings. It was found that money was kept by accused in the drawer, wrapped in a paper and on testing the paper-wash with solution, the solution turned pink. Pink solution of paper wash and hand wash were separately sealed and sent to CFSL. The conversation that had taken place between the complainant and appellant/accused in his office was also taped and the micro tape on which it was taped was sealed by CBI. The earlier conversation which took place between complainant and appellant

on telephone was also sealed. After completing investigation accused was sent for trial to the Court and he was convicted by the learned Special Judge on the basis of evidence of complainant and police officials. The two independent witnesses associated with the raid had turned hostile.

3. The counsel for the appellant argued that the case against the appellant has not been proved beyond reasonable doubt and the conviction of the appellant was bad in law. The prosecution had miserably failed in proving demand of bribe or acceptance of bribe by the appellant. The fact that the complainant had approached appellant for extension of time for deposit of remaining amount is not denied and that fact that on the day of incidence, the complainant had reached the office of the appellant along with a witness around lunch time is also not denied. What is stated by the appellant is that he had not demanded bribe rather he insisted that the extension of time could not be done without application as the complainant had not brought the application. The amount of Rs.500/- was kept in the drawer of the appellant by the complainant when appellant, after taking lunch, had gone to wash his hands. It was submitted that the investigating officer in this case had recently been posted with CBI, it was first case of trap of the Investigating Officer and he wanted to make this case a successful case by hook or by crook. He therefore, did faulty investigation and the amount, though was not accepted by the appellant and was found lying in his drawer and it was shown as if he had accepted the bribe.

4. Extensive argument has been made by the learned Counsel for the appellant on the transcription of conversation between complainant and the appellant. It is stated that the transcription was not correct and at the end

of the conversation he had not asked the complaint “paise pure hai” but he had asked his peon Prem “paise pure hai” since he had purchased desi ghee from his peon and had paid him the price of desi ghee and in this context he had asked his peon “paise pure hai”. He submitted word “Prem” could be very clearly heard in the conversation. The entire story of the complainant was false. The complainant had received a notice regarding payment of balance money and he had no intention to pay the money and therefore he falsely implicated the accused.

5. It is further submitted that in order to convict a person under Section 7 and 13(1)(d) of the Prevention of Corruption Act, a demand of bribe must be proved to have been made at the time of raid by the accused and in this case the telephonic conversation and conversation in office did not show that the appellant had made a demand of bribe. It is also argued that the learned Special Judge had given its own story which was not the version of the complainant. The learned Special Judge did not consider the true transcripts of conversation despite hearing the conversation and wrongly came to the conclusion that the word ‘Prem’ spoken by the complainant was by mistake and the appellant called “Prem” instead of “Praveen” which was the name of the complainant. It is further submitted that in view of the improvements and contradictions in the statement of complainant and the fact that complainant had agreed to give bribe, put the complainant on pedestal of an accomplice and an unreliable witness and therefore a corroboration of his testimony was necessary by independent witness. However, there was no corroboration in this case since both the public witnesses had turned hostile and therefore the appellant was entitled to benefit of doubt. It is further

submitted that even if two views were possible, the appellant was entitled to benefit of doubt and entitled to acquittal.

6. Section 7 and Section 13(1)(d) of Prevention of Corruption Act reads as under:

7. Public servant taking gratification other than legal remuneration in respect of an official act.

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 disfavor 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.

13. Criminal misconduct by a public servant.

(1) A public servant is said to commit the offence of criminal misconduct,

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(d) If he, -

(i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or Pecuniary advantage; or

(ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

7. A perusal of Sections 7 & 13 makes it clear that Sections do not talk of demand of bribe. They only talk of acceptance of bribe. There can be no acceptance unless there is demand that is why the Courts have always considered demand and acceptance together. There is no such requirement of law that this demand and acceptance of bribe has to be at the same time or demand must be made by spoken words at the time of trap laid by CBI or any investigating agency. It need not be emphasized that laying trap is in furtherance of investigation. Trap is laid only when demand is already there. If no demand for bribe has been made, no trap can be laid. When any person approaches CBI, he approaches CBI with a specific complaint about a public servant having demanded bribe and it is in that context a trap is laid so that at the time of accepting bribe the person can be caught red handed. In this case the complainant PW-2 had categorically testified that he received notice from MTNL Exh. PW-2/A asking deposit of additional amount. This notice was received by him after expiry of the due date and in that context he met accused Om Prakash Chabra. It is quite reasonable to expect that when a customer meets an official, the official guides him as to what is the course of action. If the extension of time for deposit could have been done on just filing an application, Mr. Chabra/appellant when was approached by the complainant on 13.10.1998, would have handed him over a piece of paper and asked him to write a few lines application seeking extension of time and he would have passed an order for extension of time right there. And if it was not a case of extension of time, he would have told that he need not be contacted for extension of time as he could not extend the time and the money had to be deposited right away. The complainant categorically testified that he met the appellant on 13.10.1998. It is not the case of the

appellant that the appellant had not met him on 13.10.1998. The plea taken that by the appellant is that complainant was not willing to deposit Rs.15,000/- the addition demand made by MTNL. If the complainant had not to deposit this amount, his telephone connection would have been disconnected because of non fulfillment of the demand notice. The complainant was running an STD booth and the amount demanded by demand notice was legitimate demand, payable by the complainant. Thus, there was no question of complainant saying that he would not deposit the money. In his written explanation under Section 313 Cr.P.C. the appellant had not taken this stand that the complainant was not willing to deposit the additional amount as demanded by MTNL. The complainant only wanted that he should be given some more time and it for this reason that the appellant asked complainant to pay Rs.500/- so that he may extend the time beyond due date. This has been proved by PW-2 in his testimony. There is no reason to disbelieve the testimony of PW-2. The complainant was not willing to pay this bribe money and approached CBI and lodged a complaint. Lodging of complaint does not make the complainant an untrustworthy witness or an accomplice so as to need corroboration of his testimony. No person, who approaches CBI making complaint against a corrupt official about demand of his bribe, can be branded as accomplice. This Court had considered as to whether a person making complaint regarding corruption can be considered as an accomplice or not in State v. P.K.Jain and Anr. 2007 Cri.L.J4137 and observed as under:

10. I consider that observations of learned A.S.J brandishing the complainant in a trap case as accomplice amounts to discrediting the criminal justice system itself and portrays that the criminal justice system cannot respect the witnesses. This country is facing unprecedented rise in corruption. Situation has come to a stage that MCD officials, due to the corrupt

practices, have turned the whole city into a slum by allowing all types of unauthorized construction, encroachment, squatting over public land. Engineers of local body who were supposed to check the unauthorized construction and encroachment of the public land, encroachment of roads, encroachment of pavements, turn a blind eye to all this, since their pockets are warmed and palms are greased. Similarly the observation of the trial Court that complainant and his son are interested witnesses and not trust worthy, is unfortunate. In case of a legitimate trap, the persons and police officials taking part in trap, in no sense can be said to be accomplice or un-credit worthy witnesses so that their evidence would require, under law to be corroborated by independent witness. The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt. Moreover, the corroboration need not be by direct oral evidence and can be gathered from circumstantial evidence. The sole evidence of a complainant is sufficient to convict a person, if it is reliable, acceptable and trust worthy. There was a stage under our criminal justice system when the victim of rape was also considered as an accomplice. However, the law rectified itself over the time and gradually it was realized that it was unjust to consider and brand, a victim as an accomplice and seek corroboration of her testimony. Ultimately, Supreme Court laid down that sole testimony of a victim of rape, if trustworthy, was sufficient to convict the accused. In case of bribe giving and taking, normally people do not report the instances of bribe because it suits them to give bribe as they get their illegal works done. Only few persons come forward who either do not believe in giving bribe or who are on the right track or who are fed up by giving bribe. It requires great courage to report a matter to the Anti Corruption Branch in order to get a bribe taker caught red handed. In our judicial system complainant sometime faces more harassment than accused by repeatedly calling to police stations and then to court and when he stands in the witness box all kinds of allegations are made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal should be punished and the crime of corruption must be curbed. If the witness is interested in seeing that there should be corruption free society, why Court should disbelieve and discourage him. The witness who reported the demand of bribe so as to trap the culprits cannot be considered as an accomplice or non-trust worthy or interested witness. There is no reason for the court insisting upon an independent corroboration of the complainant's evidence in regard to the demanding of bribe before the trap was laid. When a given complainant first visits a public servant for doing or not doing some task for him, he does not go to him as a trap witness. He goes there in a natural way for a given task. To require him to take a witness with him at that stage

would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe. (Rajinder Kumar Sood Vs. State of Punjab, 1982 Cr. LJ 1338 (PandH). The necessity for court to search for independent witness in case of charges for corruption cannot be insisted upon. Such crimes are committed in secrecy and normally bribe are not taken openly (although there are bold public servants who do even that). In case of trap where accused has not been lured and goaded in some form to accept bribe but the accused himself has created a situation so that he gets bribe money or the accused indulges in the harassment of the complainant to compel the complainant to give bribe and the complainant reports the matter, the absence of independent witnesses to support the version of the complainant cannot be a ground to acquit the accused”.

8. However, it is to be seen otherwise whether the complainant was a trustworthy witness or not. The complainant had no axe to grind to implicate the accused/appellant. No suggestion has been given to the complainant that he had an enmity with the appellant or there had been any quarrel with the appellant or any altercation with the appellant due to which the complainant got annoyed and he decided to falsely implicate the appellant. Rather making a complaint against an official of MTNL, would have jeopardized the business of the complainant as other officers of MTNL would have started nourishing grudge against him because he had implicated one of their colleagues. Thus, making complaint against the appellant was at the risk of his own business. He needed courage and conviction to keep on the path chosen by him, of not giving bribe. Unless it is shown that the complaint had an axe to grind or there was some previous enmity or there was some reason due to which complainant wanted to falsely implicate the appellant, a complainant who stands harassed at the hands of officers, demanding bribe cannot be told that he was speaking lies or he had falsely implicated the appellant. No doubt every complainant who approaches CBI against a corrupt official for laying trap has a motive and that motive is that he would not

pay the bribe and would bring corrupt to book. It would have been easy for the appellant to pay Rs.500/- and get the time extended on the very first day instead of spending much more money, time and energy in prosecuting a corrupt official. But this is what is needed today. Such persons who take this courage cannot be branded by the Courts either as accomplice or as persons who are out to falsely implicate others.

9. The demand of money in this case is also proved from the telephonic conversation which took place between the appellant and the complainant, the transcript of which has not been assailed by the appellant. This transcript shows that the complainant clearly told the appellant that he had made arrangement of Rs.500/-. The appellant in response stated "it is alright". If there had been no demand already made by the appellant on previous day, the appellant would have retorted "what for Rs.500/- you have arranged?" and would not have said "it is alright". The appellant was a Sr. Accounts Officers and he knew what for the complainant was coming to him and that is the reason that he said "Acha thik hai" i.e. "it is alright". This conversation Exh. PW-2/D was recorded when complainant proceeded to the appellant's office. The next conversation which is recorded between the appellant and the complainant is when complainant reaches office of the appellant during lunch time. The conversation itself shows that at that time the appellant was taking his lunch and he told the complainant to wait for five minutes. The complainant inquired if he should sit in the room itself or outside and he was told to sit outside. When lunch was over it is at that time that the complainant re-entered the room of the appellant. The tape shows time gap of the period when the appellant was taking lunch. When the complainant re-

entered, he was asked by the appellant to hand over the application. The complainant told him that he had not brought the application. On this, the appellant told him that his work would be done but without application on what he would pass order. The complainant uttered word "Diwali ka chakkar" and then requested for extending time upto Diwali. On this the appellant told him that he had not told him upto diwali. He had told him for 2-4 days; however he would extend it upto Diwali. Then he asked the complainant the telephone number, the complainant gave the telephone number which was noted down by the appellant. The complainant again confirmed that no action would be taken till Diwali. The appellant again told the complainant that there was no talk of Diwali however for a week/10 days. If there was any difficulty he should tell. When complainant again requested for extension, he was told by appellant that for the current month only it could be done. The complainant again asked if the action would not be taken for that month and the appellant told that the application should be given. The complainant told there was no necessity of an application. The appellant then told him he should come next day and give application. In between the conversation there is some gap and it is that time it seems that the complainant put the bribe amount on the table of the appellant. The complainant then asked there was one more work about PCO connection. The appellant asked whether it was working or not. The appellant told that in PCO connection there was no current though it was fitted there. The complainant asked as to what was the reason that for two months the telephone was installed but no current was given although all wires and connections were alright. On this the appellant told that he should come on some other day, it was lunch time he should come next day or day after. He (appellant) would have to tell someone else. It is at this stage that there is a

little loud sound “prem paise pure hai” there is sound “sir yes”. Again there is sound of appellant which shows the appellant is telling complainant to come when he has plenty of time, status would have to be seen and he would have to tell someone else.

10. The only argument about this transcript is that the appellant had not stated “Praveen” but had stated “Prem” wherein the transcript shows it as “Praveen”. The trial Court had heard the cassette and found it was “Prem”. The trial court observed that the word “Prem” seemed to be spoken by mistake. The name of the complainant was “Praveen” and the appellant must have meant “Praveen”. Whereas the counsel for the appellant argued that “Prem” was one of the peons in the office of the appellant and he had asked “Prem”, his peon, “paise pre hai” and it was not in the context of the complainant.

11. This argument in fact admits the conversation that had taken place between the appellant and the complainant. This conversation makes two things clear; one - when the complainant reached at the office of the appellant, the appellant was already taking lunch and the complainant was told to wait outside. The tape shows waiting period and the complainant did wait outside. He entered again into the room of appellant when the appellant had already completed the lunch. Thus at the time when complainant had entered the room and the appellant was taking lunch there was no occasion for complainant to sit opposite the appellant or to reach near the appellant. From the tape it is clear that complainant was sent out immediately and the appellant finished his lunch and then the complainant re-entered. Rest of the conversation is continuous and there is no such gap which shows that the

appellant had been absent from his table for any period to go to wash room, washed his hands and then come back. If the appellant had gone for washing his hands in presence of the complainant, who was sitting opposite him then he would have uttered the word "I will just come after washing hands". The conversation only shows that the appellant was again on his table after finishing lunch and washing his hands and thereafter the conversation started between complainant and the appellant. The plea taken by the appellant is that after taking lunch when he went to wash his hands etc. in his absence, the complainant put money in his drawer. This plea is belied by the telephonic conversation which stands admitted except last word where dispute is raised about "Prem" and "Praveen". The whole conversation shows one-to-one conversation when complainant is opposite appellant. The money could not have been put by the complainant into the drawer of appellant under any circumstances, in view of this conversation. The appellant has testified that he had put money on the table and thereafter independent witness went out and gave signal and CBI team came and in the meantime only the appellant had put bribe money in the drawer. It is for this reason that hand-wash of appellant turned pink. Had the complainant put money in his drawer, there would have been no occasion for appellant to touch the tainted money. It has not been the stand during cross examination of the complainant and other witnesses, including IO that the appellant took out money from his table drawer to hand over the same to CBI after CBI had entered the room and asked the appellant about bribe taken by him. This stand for the first time, was taken by the appellant in his written explanation only to meet the evidence of hand-wash because the hand wash of the appellant had turned pink and appellant in his written explanation wanted to show that he had

touched the currency notes after CBI had entered into his room and complainant told CBI that the money was in the drawer. This story was invented by the appellant only in written explanation. This story was not put by the complainant either to the complainant or to the IO. Rather the stand of the appellant in the cross examination of the witness had been that he was not even aware if money was lying in the drawer and the money was kept in the drawer by the complainant in his absence. It has come in evidence that this money from drawer was taken out by other independent witness viz. Shri Satvir Singh and the paper in which this tainted money was wrapped was also taken out by the same witness and the wash of the hands of the accused was also taken and that turned pink. It is therefore clear that the demand was made by the appellant from the complainant for extending the time for deposit of dues. It is clear that the complainant had telephoned him that he had arranged Rs.500/- and the appellant said him, it was OK. It is clear that the complainant went to this office, had conversation with him, placed this money on his table and asked him to do the work and the appellant asked him that the extension of time would be done for that month and he should come a day after or next day and make an application but this favour was shown to the complainant only after complainant had paid the demanded money of Rs.500/- and had put on his table which he picked up and put into the drawer of his table and was recovered from there.

12. The plea taken by the appellant that demand must have been made by the appellant at the time of raid is baseless plea. Demand can be made in various ways and at any other time it is not necessary for conviction under Section 7 or 13 of **the Act** that the demand has to be made only at the

time of raid. If acceptance of bribe money is done at the time of raid for which demand had been made earlier, even then the person can be convicted under Section 7 & 13(1)(d) of the Act.

13. The appellant had been taking contradictory stands at various stages which has been discussed by the trial Court. In his statement under Section 313 Cr.P.C. when it was put to him that his hand wash was taken and it turned pink, he denied this suggestion. When it was put to him that chemical analysis of wash gave positive test of phenolphthalein and sodium, his stand was that his hand wash had been tampered with. This signifies that the appellant had no particular defence and he had been developing his defence according to situation. The plea taken by the appellant Counsel is that the accused was not supposed to take defence at initial stages or at the time of bail application and accused was at liberty to take no defence at all and only say that he was innocent and may argue the case on the basis of evidence produced in the Court since the criminal juris-prudence puts onus on the prosecution to prove the case. No doubt the accused has liberty to keep silent however, Section 20 of Prevention of Corruption Act provides that if it is proved that any gratification was obtained or accepted then a presumption rises against the accused and it is for the accused to prove that the valuable recovered from him was not gratification. In this case the prosecution has successfully proved recovery of Rs.500/- from the drawer of the table of the accused. The plea of the accused that his money was kept by the complainant in his table without his notice cannot be believed in view of the telephonic conversation showing that the accused and the complainant were face to face and if the complainant had made any attempt to put this money in

his drawer, the appellant would have immediately raised objections to it and those objections would have been recorded in the conversation. The lunch had already been taken by the appellant and the complainant in fact was called in only after lunch was over as already observed. There was no occasion for complainant to keep money in his drawer without his notice.

14. Coming to the transcript, I consider that the controversy regarding “Prem” and “Praveen” is baseless. Let us presume that the appellant’s version that he had asked his peon about price of ghee and he had not asked the complainant about the money being right amount (*Paise pure hai*) even then it does not show that he had not accepted the bribe. This asking about “Prem” is at the fag end of the conversation and thereafter complainant had moved out. This does not show that the complainant had kept money in the drawer of the accused. The appellant/accused’s plea that money was kept in his drawer in his absence is totally unbelievable. I therefore consider this controversy raised by the appellant is useless and leads nowhere.

15. I find no force in the appeal. The prosecution has proved beyond reasonable doubt that the appellant not only demanded bribe but accepted bribe in order to extend time for payment of due amount by the complainant and made it clear that it would be extended only after receiving money. The appeal is hereby dismissed. Conviction and sentence of the appellant is maintained.