

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

+ **CRL. APPEAL NO. 206/2002**

Judgment reserved on: 14th March, 2011

% Judgment delivered on : 25th March, 2011

PREM SINGH YADAV

...APPELLANT

Through: Mr. Arjun Bhandari and
Mr. Varun Bhandari, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION

...RESPONDENT

Through: Mr. Narinder Mann, Advocate

CORAM:

HON'BLE MR. JUSTICE M.L.MEHTA

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

M.L. MEHTA, J.

1. This appeal is directed against the Judgment dated 27th February, 2002 and Order dated 28th February, 2002, whereby, the appellant/accused was convicted by learned

Special Judge under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter, referred to as 'the Act') and was sentenced to undergo rigorous imprisonment of one year for each offence. He was also ordered to pay fine of ₹300/- on each count. In case of default of payment of fines, he was to undergo further simple imprisonment of one month each. Both the sentences were ordered to run concurrently.

2. The prosecution's case, as unfolded at the trial, is that PW2/complainant Ajaib Singh lodged a complaint Ex. PW2/A with CBI, Anti Corruption Branch on 25th April, 1989 alleging that he was keeping three cows at his residence and was making his livelihood by selling the milk. Appellant/accused Prem Singh Yadav, posted as a Milk Tax Inspector, MCD, Green Park used to harass him on one pretext or the other and had also challaned him twice before. On 24th April, 1989, the accused came to the complainant with a demand of ₹1,000/- as bribe, failing which, he threatened to challan him and detain his cows. The complainant agreed to pay ₹500/- on 26th April, 1989 at 10:00 am near his house at Green Park and the balance was agreed to be paid after the marriage of his brother.

3. On the basis of his complaint, FIR Ex. PW6/A was registered. The said case was entrusted to Sh. Mehar Singh Inspector, CBI (PW6). On the same day, he constituted a raiding party consisting of complainant and two independent witnesses, namely, PW3/Sh.P.K. Jain and PW5/Sh.T.M. Kumar. The complainant produced four Government Currency notes in the denomination of ₹100/- each and two Government Currency notes of ₹50/- each to the raiding officer. The numbers of the notes were noted down in the handing over memo Ex.PW2/B. Pre-raid proceedings involving spraying of phenolphthalein powder on the currency notes and explaining the witnesses about the characteristics of the powder by giving practical demonstration about the procedure were conducted. The tainted money was handed over to the complainant with the directions to hand it over to the accused on specific demand. PW3/P.K.Jain was to remain as shadow witness and was directed to remain close to the complainant. Both, complainant and PW3 together reached near the house of the accused. The other members of the raiding party also arrived there. Complainant/PW2 contacted the accused at his residence at the second floor and told the accused that P.K.Jain/PW3 was his close relative. Thereafter, Mr. Jain/PW3

also came upstairs. The accused allegedly asked the complainant to give the money which he had asked for. The complainant told him about having brought ₹500/-. At this the accused asked him to give ₹500/- and the balance of ₹500/-, after the marriage of his brother. The money was given to the accused, who accepted the same with his right hand and counted the same with his left hand. Then, the complainant requested him to return some money as he was in need of the same for the marriage of his brother. At his request, the accused returned him ₹200/- and kept ₹300/- with him and asked PW2 to give him ₹700/- after the marriage of his brother. The tainted money was kept by the accused under the sofa cushion. PW3/Mr. Jain gave a signal to the raiding party, which arrived at the spot. The accused became mum and perplexed. After some time, the accused told the raiding party about the money kept under the sofa cushion. The tainted Government Currency notes were recovered by PW3, from under the sofa cushion, at the instance of Investigation Officer (PW6). The numbers tallied with the handing over memo. The washes of both hands of the accused and that of the sofa cushion were taken separately which turned the solutions pink. After the completion of the formalities, the

accused was arrested. On the completion of investigation he was challaned under Section 7 read with Section 13(1)(d) of the Act. The accused denied the charges and pleaded not guilty. At the trial, the prosecution examined as many as six witnesses. The accused was also examined under Section 313 Cr.P.C, wherein he denied all incriminating evidence. He alleged false implication and claimed innocence. He did not lead any evidence in defence.

4. The learned defence counsel Mr. Arjun Bhandari has assailed the impugned judgment and order. He submitted that the accused was falsely implicated since he had challaned the complainant many times for unauthorisedly keeping cows. He also submitted that the version as presented by the complainant regarding alleged demand of ₹1000/- by the accused, but his giving of ₹500/- to the accused and then taking back ₹200/- from him, was concocted and unbelievable. He also submitted that it was unbelievable that the accused would keep the money under the sofa cushion. He contended that the complainant under the pretext of giving invitation card of marriage of his brother came and cleverly kept the tainted money along with the card. He pointed to a few

discrepancies in the statements of witnesses and submitted that there were also contradictions about the preparation of recovery memo Ex.PW2/C as the complainant Ajaib Singh was seen to have signed it on 24th April, 1989 whereas all others on 26th April, 1989. He submitted that in view of various material discrepancies the burden of proof laid on the accused was satisfactorily discharged. He also submitted that when there are two possible views coming out of the evidence of the witnesses, the one favouring the accused was to be accepted. He relied upon the judgments titled as ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*** (2009) 15 SCC 200 and ***C.M. Girish Babu v. CBI, Cochin, High Court of Kerala*** (2009) 3 SCC 779.

5. Mr. Narender Mann, learned counsel appearing for the CBI submitted that the discrepancies in the statements of witnesses are insignificant and otherwise natural due to long time gap. He submitted that the accused demanded ₹1000/- from the complainant and on his informing him about the marriage of his brother, he agreed to take ₹500/- from the complainant after his brother's marriage. Further, on the complainant expressing need, the accused returned ₹200/- on

the understanding that he will be given ₹700/- after the marriage. He further submitted that there could not be any reason for the accused keeping the money under the cushion instead of keeping it in his pocket.

6. Though, the learned Special Judge has analyzed the evidence of the witnesses PW2, PW3 and PW5, I have also chosen myself to re-appreciate the testimony of these witnesses. The testimony of PW2 is to be seen in the background of the fact that accused had admittedly challaned him twice and may be, as alleged by the accused, the complainant was carrying some grudge against him. However, that alone cannot be the reason to discard the testimony of the complainant, though, it will make one cautious to scrutinize his testimony. He stated that the accused had demanded ₹1000/- otherwise he would be challaned again. The accused told him to make payment on 26th April, 1989 near Jain School, Green Park at 10 am, which was at a distance of about five minutes from the accused's house. When the complainant told the accused that he was not in a position to make payment since the marriage of his brother is to take place, the accused directed him to make payment of ₹500/- and the balance to be paid

afterwards. The complainant stated that he along with PW3/Mr. Jain went to the house of the accused. He went on the second floor while PW3 kept standing downstairs at the ground floor. He told the accused that PW3 was his relative. The accused asked him whether he had brought the agreed amount of ₹500/-? When he said that he has brought the money, accused asked him to hurry up. The complainant gave the money to the accused and while accepting the same with the right hand, he told him that after the marriage of his brother, he should pay the balance of ₹500/-. PW2 requested the accused to return him some money, since the marriage of his brother was to be solemnized. The accused at this request, returned ₹200/- and said that he should pay balance ₹700/- after the marriage. After counting the money, the accused kept the same under the cushion of sofa. Mr. Jain gave signal to the members of the raiding party, which arrived at the spot and after challenging him apprehended the accused and recovered the tainted money of ₹300/- from below the cushion of the sofa.

7. Before proceeding to see the veracity of the testimony of this witness, in the light of the testimonies of other witnesses,

namely PW3, PW5 and PW6 and to see as to whether the discrepancies as pointed out by learned counsel were material as alleged by him or insignificant as submitted by learned counsel for the prosecution, it may be appropriate to refer to the judgment in the case of **Zamir Ahmed v. The State**, 1996 Crl. Law Journal 2354. With regard to the discrepancies, it was observed by the Division Bench of this court that:-

“It would be a hard not to crack to find out a case which is bereft of embellishment, exaggeration, contradictions and inconsistencies. The said things are natural. Such contradictions and inconsistencies are bound to creep in with the passage of time. If the witnesses are not tutored they would come out with a natural and spontaneous version on their own. The two persons on being asked to reproduce a particular incident which they have witnessed with their own eyes would be unable to do so in like manner. Each one of them will narrate the same in his own words, according to his own perception and in proportion to his intelligence power of observation.”

8. In the present case, the testimony of the complainant and also that of the other material witnesses viz PW3, PW5 and PW6 have been analyzed in the background of the fact that the complainant was earlier challaned by the accused. The accused in his statement under Section 313 Cr.P.C. stated that the complainant and other *gawalas* used to supply milk to the CBI officials free of cost and they were in the habit of getting MCD officials trapped. In the cross-examination of the complainant also, various instances were put to him regarding

traps laid on number of other MCD Inspectors, who had challaned other gawalas.

9. Some of the discrepancies which have been noted seem to be material. It is noted that with regard to the payment of ₹1000/-, PW5 said that he had heard from CBI officials that accused was demanding ₹1000/- from the complainant, but the complainant was unable to bring the same. Even learned Special Judge has termed this discrepancy in the statement of complainant and PW3 as the material one by noting as under:-

“...The version of the conversation between the accused and the complainant given by PW2 and PW3 is discrepant to the extent that complainant PW2 did not state that accused demanded Rs.1000/- whereas PW3 shadow witness has not stated so but he stated that the accused demanded Rs.1000/-. Complainant has not stated that he demanded Rs.1000/- and the accused asked him whether he brought the settled amount but PW3 stated that the accused asked the complainant whether he had brought Rs.1000/-. He has himself not told that he had brought Rs.500/-. PW3 has not stated in his previous statement that the accused demanded Rs.1000/- at the time of talks...”

10. Another discrepancy which has been taken note of by learned Special Judge as material is with regard to the time of return of ₹200/- by the accused to the complainant in the following manner:-

“...Besides this, there is another discrepancy in this statement that as per complainant, the accused returned Rs.200/- when he was counting the money to the complainant PW2 prior to keeping the money beneath the cushion of sofa and not after he kept the same. But according to PW3, after receipt of the tainted money from PW2,

the accused kept the same under the cushion of the sofa and then PW2 asked the accused to return the money and thereafter he returned the money to the complainant after taking from sofa. The above discrepancies in their testimonies regarding demand of money and return of Rs.200/- to PW2 complainant go to show that the testimonies of these PWs have not received corroboration from each other on the point of demand of bribe..."

11. In addition to above, it may be noted that regarding post raid proceedings and recovery memo Ex.PW2/C, there arises suspicion, inasmuch as, this is signed by complainant on 24th April, 1989 whereas by all other witnesses on 26th April, 1989. No explanation has been put forward with regard to the discrepancy regarding this date. PW5 has stated that he does not remember as to who prepared the post raid proceedings i.e. recovery memo. It is also observed that in about 3/4th part of this document Ex.PW2/C the spacing is much more than the spacing in the last few lines. This gives an impression that the said document was already signed and due to shortage of space, the content was subsequently squeezed to fit the space available. It was also put to all witnesses in their cross-examinations that no post raid proceedings Ex. PW2/C was prepared at the spot but was prepared in the office of CBI.
12. With regard to the recovery of the tainted money from under the cushion, it was said by PW2, that the same was recovered

by PW3, whereas PW3 said that he did not remember as to who recovered the same. Then he said may be possibly he recovered. PW6 said that it was on his direction that PW3 recovered money from under the cushion. PW5 stated that he did not remember as to who recovered the same.

12.1 PW2 said that he along with PW3 went to the house of the accused and that PW3 remained sitting on the scooter at ground floor. PW2 said he went upstairs to the house of the accused on second floor and after 5-10 minutes he came down to bring PW3 to the room of the accused. As against this, PW3 said that after few minutes he also went to the second floor house of the accused, while PW2 remained standing upstairs.

12.2 There is also a doubt with regard to the position of the accused at the time of trap and apprehension. PW2 said that he and the accused were sitting on the sofa when the raiding party came and apprehended the accused. He stated that the accused was apprehended from inside the room and not from outside. PW6, on the other hand

said that the accused was apprehended when he was talking with the complainant/PW2 outside the room.

12.3 PW2 had also said that the accused was alone in the room when he went there. PW3 said that he did not remember if he had stated in his statement Ex.PW3/DA that when he went to the house of the accused he was sitting with his wife. He was confronted with his statement Ex.PW3/DA where it was so recorded.

12.4 With regard to the pre raid proceedings also there was some doubt inasmuch as PW2 said that the pre raid proceedings Ex.PW2/B were recorded in Hindi which he had read and signed. He, however, admitted that Ex. PW2/B was in English. On this, PW3 also said that he did not remember in whose hand writing it was. It was suggested to him in his cross-examination that no pre raid proceedings was held in his presence and that his signatures were obtained subsequently on plain papers.

12.5 With regard to hand wash also there were discrepancies inasmuch as PW2 did not know as to

who had taken hand washes of the accused or that of the cushion. PW5 also did not remember as to who had taken hand wash of the accused or of the cushion. PW6, who was the IO, also did not remember as to who had taken hand wash. Later on he said that he might have taken the hand wash of the accused, but he had not mentioned it either in his statement or in the recovery memo that he had taken hand wash of the accused or that of the cushion. It was suggested to him that no washes were taken by him at the spot.

12.6 Though, not very glaring it is also noticed that PW3 said that he along with PW2 had taken tea with the accused while they were talking. However, he did not remember if tea was taken before or after the talks, but he confirmed having taken tea when they were transacting. As against this, the complainant/PW2 did not remember having taken any tea or water at any point of time. It is also seen that the complainant has also nowhere said in his examination in chief about having given marriage invitation card to the

accused. However, in his cross-examination he said that he had given the invitation card along with envelope Mark 'A' and Mark 'B' to the accused. PW3 did not say anything with regard to the marriage/invitation card or the envelope having been given by the complainant to the accused. PW5 also does not recollect if any card was lying under the sofa cushion. PW6, on the other hand, said that there was no card or envelope in the room at that time.

13. In the light of the abovementioned discrepancies, the defence has created some doubt in the prosecution case. It is more so in view of specific suggestion to the complainant in cross-examination that he had placed the invitation card along with the tainted money cleverly under the cushion of the sofa where he was sitting and that the accused did not demand or accept any money from him.
14. In view of the above, it may not be safe to rely upon the testimonies of PW2, PW3, PW5 and PW6 regarding demand and acceptance of money by the accused. The recovery of

tainted money alone is not sufficient to record the conviction. In the case of ***Suraj Mal v. State (Delhi Administration)*** (1979) 4 SCC 725 it was held that mere recovery of money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Mere recovery of money cannot prove the case of the prosecution against the accused in the absence of any instance to prove the payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. In the case of ***C.M. Girish Babu*** (supra). The Supreme Court held that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance. In this case the reliance was placed on a three-Judge Bench judgment in ***M. Narsinga Rao v. State of A.P.*** wherein it was held as under:-

“20. A three-Judge Bench in *M. Narsinga Rao v. State of A.P.* while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p.700, para 24)

24. ...we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide *Madhukar Bhaskarrao Joshi v. State of Maharashtra*) The following statement made by us in the said decision would be the

answer to the aforesaid contention raised by the learned Counsel: (SCC p.577, para 12)

'12. 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.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

"4. ...It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (See V.D.Jhangan v. State of U.P. at AIR p. 1764, para 4). (Emphasis supplied)"

15. In the case of ***Dnyaneshwar Laxman*** (supra) also the Supreme Court held as under:-

“16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.”

16. Though, the accused has led no evidence in defence, but from the cross-examinations of prosecution witnesses he has satisfactorily discharged the onus laid upon him. By preponderance of probability the accused has been able to create doubt in the prosecution case. From the evidence as noticed above, a suspicion arises against the prosecution case, more so, in view of the fact that the complainant might be having a grudge against the accused for challaning him on previous occasions. Even otherwise, in view of all this it is difficult to hold that prosecution has proved its case beyond reasonable doubt. It is also well settled principle of law that

where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail (see ***Dilip v. State of M.P.*** [2009] 1 SCC 450 and ***Gagan Kanejia v. State of Punjab*** [2006] 13 SCC 516).

17. In view of the aforementioned reasons, the impugned judgment and order, are set aside, the appeal is allowed. The accused stands acquitted. His surety bonds are discharged.

MARCH 25, 2011

AK

**M.L.MEHTA
(JUDGE)**