

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Criminal Appeal No. 349/02

Judgment reserved on : 12.05.2011

% Judgment delivered on : 08.07.2011

JAGDISH CHANDRA MAKHIJA

.... APPELLANT

Through : Mr. I.U. Khan with Mr. Vikas Arora and Mr. Aman Khan,
Advocates for the appellant along with appellant in
person.

VERSUS

STATE (CBI)

.... RESPONDENT

Through : Mr. Narender Maan, Special Public Prosecutor for the
State/CBI

CORAM:

HON'BLE MR. JUSTICE M.L.MEHTA

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| 1. | Whether reporters of Local papers
be allowed to see the judgment? | YES |
| 2. | To be referred to the 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 05.04.2002 and Order dated 08.04.2002, 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 five years for each offence. He was also ordered to pay a fine of ₹5,000/- on each count. In case of

default of payment of fine, he was to undergo further imprisonment of six months each. Both the sentences were ordered to run concurrently.

2. The prosecution case as unfolded at the trial is that the accused Jagdish Chandra Makhija was working as Assistant Director in Delhi Zone, Enforcement Directorate, office at Lok Nayak Bhawan, New Delhi. He was allegedly handling the case registered under FERA against Rattan Kumar Modi (Complainant) (PW2). A search was carried out at the residence of the complainant on 14.09.1988 by some officers of Directorate of Enforcement who were joined midway in the search by Mr. A.P.Pandey, Deputy Director and the accused (Assistant Director). Allegedly, there was no recovery of incriminating documents/articles from the residence of the complainant who was arrested without assigning any reason or justification by the Enforcement Officers, and thereafter remanded to judicial custody for 14 days to be bailed out by the court on 26.09.1988.
3. The complainant PW2 lodged a complaint with SP CBI on 17.10.1988 (vide Ex. PW2/A). In the complaint, the complainant alleged that on 14.10.1988, the accused contacted him over telephone at his residence and desired to meet him at the junction of Shahjahan Road and Humayun Road, near Modern School at 6:15pm on 15.10.1988 assuring him that he would

settle his case. The complainant went to the pre-appointed place and picked the accused in his car and took him to his residence. The complainant alleged that he could smell that the accused was likely to ask for bribe for settling the case and therefore, he arranged for tape recording the conversation without the notice of the accused. The complainant submitted the duly tape recorded conversation between him and the accused to the SP, CBI, in which the accused had allegedly demanded ₹50,000/-, out of which ₹25,000/- was to be paid on 17.10.88, the date on which the complaint was lodged with CBI. The accused allegedly expressed desire to be picked up by the complainant at 7:00pm from Humayun Road to the residence of the complainant, where he was to receive the first installment of the bribe amount. The accused told the complainant that this bribe amount would include the share of Mr. A P Pandey also, and that rest of the bribe amount is to be paid after the case under FERA against him is closed.

4. On the basis of this complaint, FIR Ex. PW7/B came to be registered against the accused on 17.10.88. The case was entrusted to Mr.B.N.Jha, DSP (PW7) who, on the same day constituted a trap party. Two independent witnesses S.C.Khanna/PW4 and P.K.Bhandari/PW5 were arranged and they were introduced to the complainant, his complaint shown to them and they verified the contents of the same by questioning

the complainant. The complainant PW2 produced 250 GC notes of ₹100/- denomination each (Ex.P1 to Ex.P.250) whose numbers 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, was conducted. The tainted money was handed over to the complainant with the directions to hand it over to the accused on specific demand. A pocket micro cassette recorder was also arranged with two micro cassettes which were checked to ensure that they were blank and duly initialed. The cassette recorder with cassettes was then handed over to complainant for purpose of recording the conversation. Both independent witnesses PW4 and PW5 were directed to remain as close as possible to see the transaction and also to overhear the conversation between the complainant and the accused. The complainant was asked to give signal by calling his wife by name, after the transaction was over.

5. The trap party left the CBI office at 6.10PM and reached the residence of the complainant. The complainant was asked to go to Humanyun Road to bring the accused. The accused repeated the demand of bribe at the house of the complainant which conversation was recorded with the help of the micro cassette

recorder. The money was given to the accused who accepted the same and put ₹10,000/- each in the left and right pocket of his trousers and the balance of ₹5,000/- in the left lower pocket of the safari suit. At this stage, the complainant gave the pre-appointed signal on which the other members of the raiding party entered the room and challenged the accused with having accepted the bribe money.

6. The prosecution case is that on being challenged, the accused got perplexed and both his wrists were caught hold off by CBI officials. Tainted notes were recovered from the pockets of the accused. Washes of both hands of the accused were taken into separate solutions of Sodium Carbonate which turned pink. Washes of pockets of trousers and safari suit were also taken, which also turned the solution of Sodium Carbonate pink. Personal search of the complainant was taken and micro cassette that had been used for recording was taken out and was played in the presence of witnesses and the demand and acceptance of bribe was confirmed.
7. After completion of investigation, charge-sheet was filed in the court of learned Special Judge. The appellant did not plead guilty to the charges framed against him under Section 7 and Section 13 (1) (d) of the Act. The prosecution examined as many as 9 witnesses. After the prosecution evidence, the statement of accused was recorded under Section 313 Cr.P.C.

wherein he admitted that he was working as Assistant Director in the Enforcement Department during the relevant period. He denied the evidence of having demanded bribe from the complainant at any stage. While admitting that on 17th October, 1988, the complainant met him at Humayun Road, he stated that when he was waiting for a bus for Hauz Khas to visit an ailing relative, the complainant offered to drop him at his destination, but instead, he took him to his residence, despite his unwillingness to go there. He denied that he demanded a bribe from the complainant at his residence. He stated that the complainant had thrust money forcibly into his pocket and while he was taking out the same, he was apprehended. He pleaded ignorance about the recovery proceedings stating that he was so terrified that he did not know about the said proceedings. He disputed accuracy of tape recorded conversation as per micro cassettes (Ex. PW2/X1 and PW2/X2) and other cassettes (Ex.PW2/X3 to Ex.PW2/X6) and also the transcripts Ex.PW4/B and Ex.PW4/C. He alleged these cassettes to be false and fabricated and not containing his voice. He also denied about the evidence of search of his office in his presence or seizure of records including the file Ex. PW9/B. He claimed to be innocent and falsely implicated in this case under pressure of CBI. He alleged that the complainant had a grudge against him on account of his arrest and search in a FERA case.

He also alleged that this case was manipulated to take revenge and stall the investigation of FERA case. The accused chose not to lead any evidence in his defense.

8. Learned defense counsel has assailed the impugned judgment and order as bad in law and based on conjectures and surmises. At the outset, he contends that the trial court has failed to appreciate that the sanction order was invalid and it should not have been acted upon in view of the fact that it was recorded in a mechanical manner without proper application of mind. He contends that the complainant had a very strong motive to get the accused involved in some false case, as the complainant was having a grudge against the accused for carrying out the search in his premises and putting him in jail for about 12-13 days and that the prosecution has not adduced any reliable evidence to make out a case against the accused. He contends that the appellant/accused was not the Investigating Officer of the case against the complainant and it was not within the power of the appellant/accused to drop the case against the complainant and that there is no corroboration of statement of complainant that the accused had actually gone to the house of the complainant. He mentions about certain discrepancies in the testimonies of the witnesses and contends that they were not of minor nature, but were very material and relevant for determining the guilt or innocence of

the accused. Referring to tape allegedly recorded by the complainant, he contends that had the tape recorder cassette been functioning at the relevant time, it would have contained the pre-appointed signal "*Manju Yeh Sab Utha Lo*". There is nothing in the cassette to show demand by the accused or anything said after the accused was challenged by the CBI officials. Even the words uttered allegedly by the complainant at the time of passing of bribe "*Ye Pachchis Hazar Rupay Hain*" have not been recorded in the cassette. There is also no evidence to prove the presence of accused at the residence of the complainant. He urges that considering all this, it was not proper for the Id. Trial court to have placed any reliance on the testimony of witnesses.

9. As against this, learned standing counsel for CBI submits that there is no impropriety or illegality in the sanction of prosecution of the appellant granted by the complainant authority. He submits that PW-1 being the Under Secretary was competent and authorized to authenticate the sanction order made by the Minister Incharge on behalf of the President of India. In support of his submission he refers to Government of India (Transaction of Business) Rules, 1961 and Government of India (Allocation of Business) Rules, 1961. The learned standing counsel also submits that though the complainant was involved in a FERA case, the accused did demand bribe money

from him for doing him a favour in the said case. He refers to different portions of the statement of complainant (PW-2) where he has stated specifically about the demand of bribe made by the appellant. He also submits that though PW-4 and PW-5 were declared hostile on certain aspects, but they did corroborate PW-1 and also support the prosecution case on all material aspects of the case.

10. There cannot be any dispute with regard to the submission of learned defense counsel that sanction of prosecution is not an automatic formality and that it cannot be accorded in a mechanical manner without application of mind by the sanctioning authority. In the present case though PW-1 B.K. Arora, posted as Under Secretary in the department of defence had stated that he had accorded the sanction to prosecute the accused vide Ex.PW1/A after going through the papers, but, in his cross examination he stated that the sanction Ex. PW1/A was in the name of President of India and that he being the Under Secretary of the department was competent to sign Ex. PW1/A. In answer to a question in the cross examination, he stated that he could not say as to when the file in question was put up before the concerned Minister and how long the file remained with him. He stated that the file was sent to the Minister concerned through a normal procedure. He could not tell as to what papers were received by him and as to whether

any draft sanction was issued or not. On going through the sanction order Ex.PW1/A, it can be seen that this sanction was by the order and in the name of President of India. This sanction Ex. PW1/A mentioned about the details of allegations against the appellant including various documents which came to be perused by the sanctioning authority. After mentioning the details of the allegations and the documents perused, this document reads like this:

"3. And whereas the said acts constitute offence punishable under section 7 and 13(2) r/w Sec. 13(1)(d) of the Prevention of Corruption Act, 1988 (Act 49 of 1988).

4. And whereas the Central Govt. after fully and carefully examining the material before it in regard to the said allegations and circumstances of the case, considers that the said Shri J.C. Makhija should be prosecuted in a court of law for the said offences."

11. The learned prosecutor referred to Government of India (Transaction of Business) Rules, 1961 and the Government of India (Allocation of Business) Rules, 1961 framed under Article 77(3) of Constitution of India to contend that the Finance Minister in the name of President of India is the authority competent and empowered to grant sanction for the prosecution of the appellant, who was the Assistant Director in the Enforcement Department during the relevant time. He particularly referred to Rule 3 of the Government of India (Transaction of Business) Rules, 1961 and Claus 3(3) of

Government of India (Allocation of Business Rules) 1961. These read as under:

The Government of India (Transaction of Business) Rules, 1961 –

Rule 3:-

“Disposal of Business by Ministries – Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all, business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.”

The Government of India (Allocation of Business) Rules, 1961 –

“Clause 3(3). Distribution of Subjects – Where sanction for the prosecution of any person for any offence is required to be accorded –

(1) If he is a government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence.

(2) If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organization in which he was working at the time of commission of the alleged offence; and

(3) In any other case, by the Department which administers the Act under which the alleged offence is committed.”

12. A bare reading of the above provisions would make it clear that business of Government of India will be transacted in respect of Ministries by or under the general or special directions of Minister-in-charge and the sanction for prosecution of government servant could be accorded by the department administratively concerned with the organization in which the employee was working at the time of commission of alleged offence. In this case, the file relating to the grant of sanction was sent to the Minister concerned during the normal procedure. The deposition given by PW-1 to the effect that he had accorded sanction though appears to be, misplaced, but reading his statement as a whole and the sanction, it would be seen that it was accorded by the sanctioning authority after going through the papers which were placed before it and the sanction was accorded in the name of President of India. In fact Ex. PW1/A is the document of authentication of sanction which was accorded by the sanctioning authority. As per the Authentication (Orders and other Instruments) Rules, 1958 framed under Article 77(2) of the Constitution of India, PW-2 being the Under Secretary of the defence department was empowered to issue, sign and authenticate the order of sanction granted by the sanctioning authority i.e. Finance Minister in the name of the President. Section 2 of the aforesaid Rules of 1958 reads as under:

“Orders and other instruments made and executed in the name of the President shall be authenticated – (1) by the signature of the Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India.”

13. Reading of the above provision would make it clear that Under Secretary is empowered to authenticate the orders passed by the competent authority, namely, the Minister-in-charge in the name of the President.
14. The conclusion comes up to be that when an order was passed in terms of Clause 3 (3) of the Government of India (Allocation of Business) Rules by the Minister-in-charge in the name of the President, as per Rule 2 of the Authentication (Orders and other Instruments) Rules, 1958, the Under Secretary is authorized to authenticate the said order.
15. The reliance placed on the judgment of ***Mansukhlal Vithaldas Chauhan Vs. State of Gujarat***, (1997) 7 SCC 622 by the learned defense counsel is misplaced inasmuch as in the said case sanction was given by the authority under the direction of the High Court and therefore, it was held that the sanction was invalid because there was no application of mind by the authority which had accorded sanction mechanically in the obedience of the mandamus issued by the High Court. In a recent case ***State of Madhya Pradesh Vs. Jiyalal***, AIR 2010 SC

1451, the Supreme Court while dealing with the question of validity of sanction of a case under Section 7 & 13 (1) (d) of the P.C. Act held as under:

"7. In the case before us, even if it were to be accepted that there has been an 'error omission or irregularity' in the passing of the sanction order, the learned Single Judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the Respondent. In the absence of such a finding it was not correct for the High Court to set aside the conviction and sentence given by the Special Judge.

8. It was also not justified for the learned Single Judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the Respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution."

16. More recently, this court in the case of ***Darshan Lal v. State (CBI)***, CrI. A No. 73/2001 decided on: 31.07.2009, where a similar ground was taken by the accused has observed as under:

"21. The court is not to go into the technicalities of the sanctioning order. Justice cannot be at the beck and call of technical infirmities. The Court is only bound to see that the sanctioning authority after the careful consideration of the

material that is brought forth it, has passed an order that shows application of mind."

"25. In my considered opinion, it would be incorrect to conclude that simply because the sanctioning order Ex. PW-3/A is a virtual reproduction of the draft sanction letter Ex. DW1/DA, the same would be deemed to have been passed without any application of mind. There is no necessary concomitant corollary between the two."

17. The observations of this court in the case of ***Gurubachan Singh v. State***, 1970 Cr.L.J 674 are worth noting. In that case it was held that the intention of the Legislature in providing for a sanction Under Section 6 of the Act for the offence under the Act is to afford a reasonable safeguard for the public servant in the discharge of his official duties. The section does not intend that a public servant who is guilty of the particular offence mentioned in that Section should escape the consequences of his criminal act by raising the technical plea of invalidity of the sanction. The Section safeguards the innocent but does not shield the guilty person.
18. In view of this even if there was any error/irregularity in the sanction order, there is nothing to suggest failure of justice or prejudice caused to the appellant who in fact in his statement under Section 313 Cr.P.C. also did not deny about the sanction accorded vide Ex. PW1/A. In fact, there was no serious challenge

made by the appellant with regard to sanction before the Special Judge. For all these reasons, I do not see any impropriety or irregularity in the sanction of prosecution of the appellant.

19. The learned defense counsel contended about the veracity of the tape recorded cassette stating that it did not contain any demand made by the accused and also words "*Manju Yeh Sab Utha Lo.*" and the appellant saying "*galti ho gayi hai, maaf kar do*". In this regard reference is made to the statement of investigating officer (PW-8) who stated that he prepared the transcription of the audio recording Ex. PW4/B and PW4/C of the cassettes Ex.PW2/X1 to PW2/X6 in the presence of the complainant and punch witnesses and also deposed about the manner of preparation of transcription in their presence. He categorically denied the suggestion that the cassettes have been tampered with by way of deletion or edition. PW-4 and PW-5 fully corroborate him in this regard.
20. Similar submissions were made by the learned defense counsel before the learned Special Judge who had eloquently dealt with them in following manner:

"89. Learned Sr.PP, on the other hand, pointed out that in the conversation that has been taken note of in deposition recorded on 19.02.2000 from page 21 right up to the page 28 (in the statement of PW-2) there is reference of the accused indicating his desire for payment to be made to him, he initially avoiding mentioning a specific figure, even though PW-2 kept on

insisting that he must mention his price. He also pointed out the conversation forming part of cassette Ex. PW2/X5, in particular the portion noticed on page 1 to 3 in continued deposition of PW2 (recorded on 9.3.2000) showed that after expressing initial reluctance to mention the amount he was expecting, the accused would specifically state that his idea was (in the region of) "50" (thousand). The fact that the said figure of "50" was actually meant to be 50,000/- is clarified in the conversation that followed immediately thereafter, where PW2 would mention the figure to be ₹50,000/-. While raising anxiety if that would also cover (the desire of) "Nanday Sahib", in answer to which the accused replied in affirmative. The learned prosecutor then referred to the conversation forming part of cassette Ex. PW2/X6, as noticed during continued deposition of PW-2 (recorded on 14.3.2000) in particular the portion appearing at page no. 8 of the said statement, wherein PW-2 pointedly asked the accused as to how much money he should arrange on Monday and on finding when the response of the accused was feeble, low and inaudible PW2 himself suggested that he would arrange 50,000/- to which the accused consented by uttering words 'THIK HAI.'

90. In above facts and circumstances, it cannot be said that the pre complaint audio recordings did not mention the demand, or the amount of bribe desired, or the installment that was to be paid in advance.

91. It is true, as pointed out by Id. defence counsel, that these cassettes indicate blank runs at several places and that at various places, the voice was not fully audible. In my considered view, the blank runs (of hardly a second or two) at various places are only natural. The conversation that was taking place was in normal routine environs. PW-2 would naturally be anxious to put the accused at ease so as to engage him in a lengthy conversation, while entertaining him with eatables or drinks, also so as to make him lower his guard. He could not afford to make undue hurry in efforts to persuade the accused to come out with his price

at the very first meeting. The tape recorded conversation contained in pre-complaint audio cassette corroborates his claim in the complaint that the very desire of the accused to meet him had given rise to doubts that accused was expecting some gratification. The blank runs in the cassettes or inaudibility in some portions, are thus natural in the context of environment in which the recording was made. They do not necessarily mean that the cassettes have been subjected to tampering or had been edited.

92. The defence counsel then directed his attack to the last cassette Ex. PW3/X3, which was used in the trap. The counsel pointed out that the evidence of PW2 indicates that he had started recording the conversation from the moment the accused had been picked by him from near Modern School at Humayun Road, after the trap had been laid at his residence, and that once he with accused had reached the house, PW-2 stole time so as to change the side of the cassette while going into the house from the rear side on the pretext that the main door was to be opened from inside. It is admitted case of the prosecution that side A of cassette Ex. PW3/X3 represents the conversation recorded during journey from Modern School, Humayun Road up to the residence of the PW-2, while side B contained recording of conversation after arrival at the residence of PW2 from the time he was led in.

94. The arguments that has been advanced is that the recording in the two sides of the said audio cassette was not of the same length and, therefore, possibility cannot be ruled out that the cassette had been tampered with by way of editing. I do not understand how this conclusion can be drawn merely from the length of the recording found on two sides of the same cassette. The cassette that was used was micro cassette. PW-2 had been handed over this cassette by the TLO as part of the arrangement for the trap. He apparently would not know the length of conversation that once side could contain. He apparently would not be in a position to anticipate as to how long the

conversation at his residence would take. He was anxious to switch over to a new side of the cassette once he had reached the residence, so that he would not have the need to go elsewhere, mid way the conversation, for changing the side. Since the recording mechanism was concealed in the planter in the drawing room, he could not have even ascertained if the side of the cassette with which he had commenced recording the conversation from near Modern School was complete and could contain no more recording.

95. In above facts and circumstances, the length of conversation that came to be recorded during the journey from Modern School to the residence of PW-2 does not necessarily represent the length of the tape on that side. Since the time of arrival at his residence could not after all have coincided with the length of the tape, that part of the conversation cannot become a yard stick for assumptions that recording on the other side was unduly short as is being argued.

97. In my considered opinion, there is no such deficiency as has been pointed out. The witness has only mentioned that money had been desired. He has not stated that the accused had uttered some words to demand the said payment to be made. Apparently, the gestures that must have accompanied the said desire being expressed could not have come on record of the audio cassette. The submission that the fact that audio recording does not reflect the signal that had been used, nor any utterance on the part of TLO in the nature of the challenging the accused with he having demanded the bribe also should create doubts on the part of authenticity of tape recording, does not impress me.

98. It is true that in normal course, the tape recording should have contained the said signal being uttered, but since all the witnesses to the trap are consistent in their statements that the said signal had been given, and since the TLO has corroborated the statement of PW2 even to

the extent that he had seen the accused pocketing the bribe money, it appears the recording was brought to an end, simultaneously with the signal being given and TLO proceeding to another the scene. In these circumstances, the non recording of the signal or what was said thereafter, amongst others by the TLO, is of no consequence.

99. In my considered view, the evidence of tape recorded conversation deserves to be accepted. The voices of the speakers have been duly identified. There is no reason to doubt the accuracy of the tape recorded statements. There is no material to infer possibility of any tampering with or eraser of any part of the tape recorded conversation. After the pre complaint cassettes had been handed over and they had been heard, they were duly sealed and kept in official cassette. The cassette that was used in the trap was also similarly handled. The voices recorded are clearly audible and not lost or disturbed by other sounds or disturbances at all material places."

21. It was lastly submitted by learned defence counsel that in any case it was Section 7 which was attracted and not Section 13 (1) (d) of the Act, and so the appellant deserves acquittal of the offence under Section 13 (1) (d) of the Act. In view of the discussion as above, it stands proved that there was sufficient evidence on record that the appellant demanded ₹50,000/- and obtained for himself, being a public servant, ₹25,000/- from the complainant for doing him a favour in the FERA case pending against him. That being so, the ingredients of Section 13(1)(d) of the Act are also attracted, as rightly held by the learned Special Judge.

22. On perusal of material on record and also the impugned judgment it comes out to be an admitted case that the office and residence of the complainant was raided by the department of Enforcement and that he remained in judicial custody from 14th September to 26th September and that the accused was also one of the officers supervising the said FERA case against the complainant. It is also admitted by the complainant that because of raid and his arrest in the FERA case he was annoyed with FERA department. However, he had denied that because of the said arrest he got the accused falsely implicated in this case. It will be essential to scrutinize his testimony a little later in the background of the fact of his carrying a grudge against the accused. It is also an admitted case that the accused was present at Humayun Road bus stop and accompanied the complainant in his car to his residence and that subsequently at the complainant's residence he was apprehended with the tainted money. The defense of the accused as taken that he was standing at the bus stop for going to Hauz Khas to see his ailing relative, that the complainant offered to drop him at his destination but instead, he took him to his residence, despite his unwillingness to go there and that he forcibly thrust money into his pocket, will also be dealt with a little later. However, it is noted that no evidence has been led by the accused in support of his defense that he was to visit some ailing relative at Hauz Khas on 17th August, 1988.

23. The learned Special Judge has scrutinized the entire evidence of the complainant with great caution and has recorded that his testimony finds corroboration from the testimony of PW-4, PW-5 and PW-7 on all material aspects of the prosecution case. To see as to whether the learned Special Judge has appropriately analyzed evidence of the prosecution, I have chosen to re-appreciate the testimony of PW-2/complainant in the background of facts of his being involved in a raid case at the hands of accused and other officers of the department. It will be seen that complainant (PW-2) stated that the appellant himself gave a telephone call in connection with said FERA case. Though he had stated at one place that he did not remember the date on which the appellant contacted him for the first time, but, he stated that initial contact was made on telephone at his residence at about 3-4 pm. He did not meet the appellant personally on the said date, but met him after three days of the said telephone call. He further clarified by stating that by the third day of telephone call he meant after the gap of one day of the date of telephone call. He clarified that telephone call was received on 14th August 1988 and he met the appellant on 16th August, 1988. He went on to state that aforesaid meeting took place near Modern School, Humayun Road at about 7 pm and that he remained with the appellant for about two hours. During this period they went to his residence in his car. He had conversation with the appellant while travelling in

the car as well as at his residence. He stated that on the receipt of telephone call, he got a feeling that the appellant was expecting something from him and therefore, on 16th August, 1988, before meeting the appellant, he had made arrangement for recording of conversation. It was on 16th August, 1988 when he brought the appellant to his house, that he made actual demand of bribe of ₹50,000/-, out of which ₹25,000/- was to be paid on the following day i.e. 17th October, 1988 and it was to be collected by the accused himself sometime at about 7 pm from his residence, for which the accused was to be picked up from near Modern School, Humayun Road and the balance amount of ₹25,000/- was to be paid after the closure of FERA case. A general suggestion was put to him that audio cassettes Ex. PW2/X1 and Ex. PW2/X5 are fabricated documents and do not contain the voice of the appellant, which he denied categorically. He maintained that the audio recording contained the voice of the appellant. He identified the voices as his own voice and that of the appellant.

24. PW-2 further deposed that since he did not want to pay bribe, he lodged a complaint (Ex. PW2/A) under his signatures at about 10.30 am on 17.10.1988 and also gave tape recorded conversation to CBI. On receipt of complaint, FIR Ex. PW7/B was registered and preparation was made for trap by Trap Laying Officer (TLO) PW-7. Suggestions were put to him in his cross

examination that the appellant did not demand any bribe from him or that with a view to falsely implicate him, he had created a story of demand of ₹50,000/- and the payment of first installment on 17.10.88 and the second installment on the closure of the case. These suggestions were also denied categorically. He also deposed about the pre-trap proceeding done by TLO in the association of two eye witnesses PW-4 S.C. Khana and PW-5 V.K. Bansal, his producing ₹25,000/- for the trap and noting down the numbers of those currency notes in the memo Ex.PW2/B.

25. He further said that when as per pre-arranged programme he went to fetch the appellant from the pre-appointed place at Humayun Road, he carried a tape recorder loaded with one blank audio cassette in his pocket. He stated that at his residence also he had kept one audio recorder concealed in a planter in a room where he had talks with the appellant. During the intervening period of his opening door from the backside, he switched on the micro recorder, took out the audio cassette from the recorder and changed the side of the cassette. He said that he had conversation with the appellant for about two and a half hours and all the other members of the raiding party were at their pre-arranged positions. He had kept tainted money in his brief-case lying in the other room. When the accused desired that the money should be paid to him, he went to the adjoining room and brought the briefcase and handed over ₹25,000/- to him. Before

proceeding further with the testimony of PW-2 it may be noted that the learned defense counsel had submitted that this witness did not state about the demand of bribe money and that 'desire' cannot amount to 'demand' and so there was no demand made by the appellant on that day at the residence of the complainant. In this regard, it may be noted that the complainant immediately thereafter had stated that by the word 'desire' he meant that the appellant made the demand of bribe money. Proceeding further, the complainant stated that the appellant kept ₹10,000/- each in the left and right pocket of his pant and ₹5,000/- in the left pocket of his safarisuit. At that stage, he gave pre-arranged signal by calling his wife "*Manju Yeh Sab Utha Lo.*" He stated that accused accepted the tainted currency notes with his hands and immediately after his giving signal, the raiding team led by PW-7 entered the room and challenged and apprehended the appellant. PW-4 Mr. S.C. Khanna checked his pockets and found the tainted notes. The numbers of those notes were tallied with the numbers already noted. Both the hands and left pocket of safari suit of the appellant were separately dipped into chemical solutions in different glasses which turned red. He testified that the currency notes Ex P1 to P250 as the same which were given to the appellant as tainted money and recovered from him.

26. The complainant stood lengthy cross examination conducted by the learned defense counsel. He maintained that the appellant

himself contacted him on telephone in connection with FERA case by making a telephone call on 14.08.88 and that he had met him at Humayun Road on 16th August, 1988 and that thereafter they came to his residence where the appellant actually made a demand of ₹50,000/- from him to be paid in two installments of ₹25,000/- each. In his lengthy cross-examination nothing could be elicited to doubt his testimony. He has fully supported the prosecution case. The mere fact that he was annoyed with the FERA department was itself not enough to discard his testimony. In this regard, reference can be made to the case of **State of UP vs. G.K.Ghose**, AIR 1984 SC 1453 and **Rajender Kumar Sood Vs. State of Punjab**, 1983 Cr.L.J. 1338. On the other hand keeping in view the entire facts and circumstances, particularly, the facts of accused accompanying complainant in his car and going to his residence and later on found in possession of the tainted money, point towards guilt of the accused who was the concerned officer responsible for the raid and arrest of the complainant in the FERA case. It was all the more reason for the accused to take advantage of the fact situation to ask for bribe money for doing favour to the complainant.

27. Though the testimony of the complainant PW-2 itself is enough to bring home the guilt of accused, but it is seen that his testimony finds corroboration on all material aspects from the testimonies of eye witnesses PW-4 and PW-5 and also TLO PW-7.

28. Though, PW-4 and PW-5 were declared hostile on certain aspects, their evidence cannot be discarded as such. Reference can be made to *Syed Akbar v State of Karnataka AIR 1979 SC 1848* in this regard. On reading their testimonies as a whole it is seen that they have corroborated PW-2 and supported the prosecution case. Both PW-4 and PW-5 did confirm that they had been requested by the CBI for the aforesaid raid and reached the CBI office on 17th October, 1988. They confirmed that they were introduced to the complainant and the complaint was shown to them and the complainant had told the facts pertaining to the case. Both corroborated PW-2 and also PW-7 by deposing that complainant had produced currency notes worth ₹25,000/- (Ex.P1 to P250) in the denominations of ₹100/- each. They affirmed that the numbers of the notes were noted down and the notes were treated with chemical powder. They testified that demonstration was arranged to show the reaction of chemical powder with which the currency notes were treated. Both PW-4 and PW-5 have also corroborated the statement of PW-2 with regard to his testimony regarding identifying currency notes and his playing micro cassette and preparation of its copy, preparation of wash bottles (Ex.P253 to P257), preparation of recovery memo (Ex.PW2/C) etc.
29. PW-4 also corroborated the statements of PW-2 and PW-7 testifying that two blank cassettes were brought and played before them and these cassettes did not contain any recording

and that these were signed by him and PW-5. He also stated that one of these cassettes was loaded into an audio cassette recorder and given to the complainant for recording the conversation with the appellant and that the second cassette was also given to the complainant. He also corroborated the statement of PW-2 and PW-7 by stating that he and PW-5 had been directed to watch the transaction of passing of money and hear the conversation between the appellant and the complainant and further that the complainant was asked to give signal to CBI team in the event of completion of transaction by calling his wife to remove the tea cups etc. He also testified that handing over memo Ex.PW2/B was prepared there and signed by him. PW-4 also confirmed that it was he who had searched and recovered the tainted money from the pockets of the pant and safari suit as mentioned by the complainant PW-2. PW-4 also confirmed that the cassettes were played before the members of the trap party in the pre-trap proceedings. It is noted that a suggestion was put to him that the complainant had thrust the bribe money in the pockets of the appellant and that the appellant threw the same after taking out the same from his pockets. He denied the suggestion as incorrect.

30. PW-5 also confirmed that audio cassette recorder with the loaded cassette was given to the complainant for recording conversation while he and PW-4 had been asked to hear and watch the

transaction. He also confirmed the statements of PW-2 and PW-7 that the signal that was to be given by the complainant was "*Manju Yeh Sab Utha Lo.*" He also corroborated other witnesses' statements regarding pre-trap proceedings recorded in handing over memo Ex. PW2/B which also bore his signatures.

31. This witness corroborated the statement of complainant/PW-2 substantially by stating that the appellant and the complainant were involved in a conversation for about 50 minutes. Though initially he had stated that he could not overhear the conversation, but then deposed that he overheard the complainant pleading with the appellant that after the transaction, the appellant should ensure that he was not harassed and it was after this that the complainant had gone to the adjoining room and brought the briefcase to the drawing room. He also confirmed complainant giving signal by using the words mentioned above. A suggestion was also given to PW-5 that when he entered the drawing room he had seen the complainant trying to put the money in the pockets of the appellant. This was also categorically denied by him. Similar suggestion was also given to PW-7 that the complainant forcibly put the money in the pocket of the appellant who was apprehended while taking out and trying to throw the same. This witness also denied the suggestion to be incorrect.
32. In view of above there is sufficient evidence against the Appellant warranting conviction under Section 7 and 13(1)(d) of the Act. The

prosecution has proved its case beyond reasonable doubt. A presumption also arose against the accused/appellant under Section 20 of the Act that the money was accepted as a motive or reward under Section 7. This presumption has not been rebutted by the Appellant/accused by any cogent or reliable means. I do not find any infirmity in the findings of conviction under Section 7 and 13(1)(d) of the Act recorded by the learned Special Judge. The appeal is dismissed and the impugned judgment is hereby sustained.

33. With regard to quantum of sentence, the learned defence counsel prays for lenient view stating the incident to be above 22 years old and the accused being aged over 75 years. Though the Supreme Court in the case of *State of A.P. Vs. V. Vasudeva Rao*, (2004) 9 SCC 319, categorically held that the protracted trial is no ground to mitigate the gravity of offence, but, keeping in view the fact that occurrence had taken place 14 years back, the minimum sentence of one year as prescribed was imposed. Keeping in view the entire factual background as discussed hereinbefore and age of the appellant, I am of the view that ends of justice would be met by sentencing the appellant to Rigorous Imprisonment (RI) for a period of one year for each offence i.e. under Section 7 and 13(1)(d) of the Act. Thus, while maintaining the conviction of the appellant under Section 7 and 13(1) (d) of the Act as recorded by the Special Judge, the order on sentence is modified in the sense

that one year RI is awarded for each offence under Section 7 and 13(1) (d) read with Section 13(2) of the Act. The rest of the order on sentence shall remain maintained. Both the substantive sentences shall run concurrently. The period of imprisonment, if any, undergone would be set off. The accused shall surrender and be taken into custody to undergo imprisonment as awarded. The appeal is disposed of accordingly.

M.L.MEHTA
(JUDGE)

JULY 08, 2011
'awanish'