

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl. A. No.602/2002 & Crl. M.A. No.2010/2002

Reserved On: May 04, 2011

% Date of Decision: July 08, 2011

R.K.P. Nishad

....Appellant

Through: Mr. K.B. Andley, Sr. Advocate with Mr. M. Shamikh, Advocates for the appellant.

Versus

C.B.I.

.... 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. The Appellant has been convicted by learned Special Judge in a corruption case number 52/94 vide judgment dated 18th July, 2002 and sentenced vide order dated 22nd July, 2002 as under:

"Sentenced to undergo imprisonment for a period of three years R.I. under Section 7 as well as under Section 13(1)(d) of Prevention of Corruption Act and also to pay a fine of ₹1,000/- each for both these offences and in default of payment of fine to undergo imprisonment for a period of three months each.

2. By virtue of present appeal, the Appellant/ convict has assailed the judgment and order of conviction and sentence. The prosecution case as set out in brief is that the Appellant was employed as Producer, Grade-II, in Doordarshan Kendra,

Directorate of Doordarshan. Neeraj Kumar (PW1) had approached him for telecasting his drama "*Dahej*" in Krishi Darshan programme of Doordarshan on TV. The drama was approved by the Department, but the Appellant was allegedly shifting the dates of rehearsal for some reason or the other. Since the Appellant was demanding bribe money for doing favour for telecasting the said drama and the complainant PW1 not being willing to pay, filed a complaint Ex.PW1/A against the Appellant with CBI mentioning these allegations. It was specifically alleged in the complaint that on 21st September 1990 when the complainant met the accused for approval of his drama, the latter told him that his drama would be approved only if he was paid ₹1800/- which the drama team were to get from Doordarshan, and another sum of ₹ 6500/-. It was alleged by the complainant that a sum of ₹1900/- was lying with him and another sum of ₹ 5500/- with Ms. Vimal Bhatnagar known as *Mataji* and in this way ₹7400/- were supposed to be paid to the Appellant on 22nd September 1999 for approval /shooting of the drama and that the Appellant wanted that this money should be paid to him at the residence of *Mataji* (PW5 Mrs. Vimal Bhatnagar). *Mataji* was also one of the artists of the said drama "*Dahej*". As per the complaint, the complainant came to the office of CBI on 21st September 1990 and talked to the Appellant

on phone from there. A meeting was fixed at the residence of PW5 where rehearsal of the drama was to be watched by the Appellant and he was also to be paid the bribe money as demanded. This telephonic conversation between the complainant and the Appellant was recorded by CBI officials and transcript thereof was also prepared. From the office of CBI, the complainant also talked to *Mataji* on telephone and told her to keep the amount of ₹5500/- ready for paying the same to the Appellant as bribe as per the talks with him. This conversation was also recorded by CBI officials and its transcript prepared. CBI Inspector A.G.L Kaul (PW12) verified the reputation of the Appellant and after confirming his reputation to be a corrupt official, decided to lay a trap. A raiding party consisting of PW12, two independent witnesses Ms.Poonam (PW3), Mr.S.D. Roy (PW10), complainant and other officials of CBI was organized. The complainant, as directed, produced 16 currency notes of denomination of ₹100/- each and 6 currency notes of ₹50/- each before Inspector A.G.L. Kaul who noted down the numbers of those notes in the handing over memo (Ex.PW3/C). The usual pre-trap proceedings comprised of treating these currency notes with phenolphthalein powder, giving of demonstration to the complainant and the witnesses as to how this powder will react with the solution of sodium carbonate, giving of directions to the

complainant to give money to the Appellant on a specific demand and advising of the shadow witness Poonam to give a predetermined signal etc. PW3 Poonam was also instructed to remain close to the complainant to hear the conversation and watch the transaction. PW3 Poonam was also carrying a cassette tape recorder in her purse for recording the conversation. As per pre-decided programme, the complainant and PW3 Poonam went to the house of PW5 *Mataji* where other members of the raiding party also arrived and took their positions. The Appellant came to the house of PW5 and on his demand, he was paid ₹7400/- by the complainant which included 22 phenolphthalein power treated currency notes in possession of the complainant and ₹5500/- lying with PW5 *Mataji*. PW3 gave pre-arranged signal to the CBI officials, whereupon they came in and challenged the Appellant. The Appellant became perplexed and confused and on the pointing out of PW3 Poonam, the amount of ₹7400/-, taken as bribe by the Appellant, was recovered from the briefcase of the Appellant. The numbers of treated currency notes Ex.P1 to P22 totaling ₹1900/- tallied with the numbers of already noted down currency notes vide pre-raid memo Ex.PW3/C. Both the hands of the Appellant and the polythene bag from which the notes were recovered were dipped separately in the sodium carbonate solution. The solutions turned pink which confirmed that the

Appellant had handled the tainted money. Later two washes of the hands and one wash of the pocket pant were got analyzed from CFSL vide report Ex.PW6/A. All the three solutions gave positive tests for presence of phenolphthalein in the solution of sodium carbonate thereby further confirming the handling of currency notes by the Appellant. After obtaining sanction under Section 19 of the Act for the prosecution of the Appellant, he was charge-sheeted. In the Court, charges were framed against the Appellant under Section 7 and 13(1)(d) of the Act, to which he pleaded not guilty and claimed trial.

3. The prosecution examined 13 witnesses which included complainant (PW1), panch witnesses Poonam (PW3) and Mr.Roy (PW10) and the raiding officer AGL Kaul (PW12).
4. The statement of accused was recorded under Section 313 Cr.P.C wherein the incriminating evidence was put to him. The Appellant denied the prosecution allegations and pleaded innocence. He denied having demanded and accepted bribe from the complainant. He also filed his written statement stating therein that he was working as a Producer, Grade-II in Doordarshan and knew the complainant Neeraj Kumar(PW1) as he was an actor and organizer of T.V short plays for Krishi Darshan programme and that earlier also his plays were

supervised and approved by the Appellant for telecasting the same on television. He admitted that he was supervising the complainant's play "*Dahej*". He pleaded that the play had already been approved and sanctioned by Doordarshan on 20th September 1990 vide letter Ex.PW7/DA. He also pleaded that the complainant was carrying a grudge against him since he (complainant) had earlier teased one lady artist Kiran and on the matter being reported to him (Appellant), he reprimanded the complainant in presence of PW5 *Mataji*, and other artists. He also alleged that final rehearsal of the play "*Dahej*" was fixed for 22nd September 1990 and on that day, decision was to be taken regarding place, time and date for holding a Bhagwati Jagran. He pleaded that it was for Bhagwati Jagran that the artists had collected some money which was kept with PW5 and the complainant and that they all agreed to keep that money with him and requested him that he should organize the Jagran, to which he had agreed being a religious minded person. He pleaded that on 22nd September 1990 he had gone at the residence of PW5 *Mataji* where he was given the money collected by the artists for Jagran. It was this money which he had kept in the briefcase and was later recovered by the raiding team.

5. Learned Senior Counsel Mr. K.B. Andley contends for the Appellant that when the drama “Dahej” had already been approved on 20th September 1990 by the Department, there was neither any occasion nor any reason for the Appellant to have demanded or the complainant to give any bribe to the Appellant. Learned Senior Counsel submits that both the complainant (PW1) as well as PW5 *Mataji* have admitted that the said payment of ₹7400/- to the Appellant was the money collected for organizing Jagran by him and that there is no evidence against the Appellant with regard to the demand or acceptance of any bribe money from the complainant. Learned Senior Counsel further submits that the complainant was carrying a grudge against the Appellant for the reason that the Appellant had reprimanded him because of his misbehavior with a lady artist Kiran on an earlier occasion and because of the Appellant having changed her role from heroine to that of sister.
6. Learned Prosecutor Mr. Narender Maan submits that the initial statement of complainant (PW1) recorded on 5th February 1998 supports the allegations made in the complaint, but later in his cross examination recorded after three years on 1st March, 2001, he resiled therefrom and came out with the version that the money was given to the Appellant for organizing Bhagwati

Jagran. He submits that PW5 also resiled from her statement (Ex.PW5/A) made during investigation, wherein she had confirmed the demand of bribe by the Appellant from the complainant and that a sum of ₹1900/- was kept with the complainant for giving the same to the Appellant. He submits that both the complainant as well as PW5 Mataji have resiled from their statements because of having been won over by the Appellant during the long period of the incident and their deposition made in the Court. He also submits that though the drama "*Dahej*" had already been approved and confirmed, but the telecasting of the same was subject to approval and rehearsal by the Appellant. He further submits that from the admissible part of evidence of PW1, PW5 and testimony of independent witnesses PW3 Poonam, it stood proved that the Appellant demanded as well as accepted ₹7400/- as bribe for doing favour to complainant for telecasting their serial.

7. It is an undisputed fact that the Appellant was employed in Doordarshan Kendra, New Delhi at the relevant time and being a Producer Grade-II was in-charge and responsible for approving the serials for telecasting the same on Doordarshan. It is also not disputed that the complainant and the Appellant were known to each other as the Appellant had already supervised and

approved the earlier serials of the complainant. The Appellant also admits that as a producer, he had the authority to approve telecasting of the plays at Doordarshan Channel on Television. He admits that he was present at the house of PW5 Mataji on 22nd September 1990 and that a sum of ₹7400/- including ₹1900/- treated with phenolphthalein power were recovered from his briefcase. The defence of the Appellant that he received this money as collection from artists for organizing Bhagwati Jagran, will be dealt with later.

8. It is settled law that for establishing an offence under Section 13(1) (d), it is required to be proved that the accused, as a public servant, obtained for himself or any other person any valuable thing or pecuniary advantage by corrupt or illegal means or that he misused his position in obtaining for himself or any other person any valuable thing or pecuniary advantage. In the case of *Subash Parbat Sonvane v State of Gujarat*, AIR 2003 SC 2169, the Supreme Court held as under:

"7. In Sections 7 and 13(1)(a) and (b) of the Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1) (d) of Section 13 and it has omitted the word 'accepts' and

has emphasized the word 'obtains'. Further, the ingredient of sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under clause (ii), he obtains such thing by abusing his position as public servant; and sub-clause (iii) contemplates that while holding office as the public servant, he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest."

9. After the recovery of tainted money from an accused is proved, a presumption under Section 20 of the Act is available to be drawn against him that he accepted gratification as a motive or reward as mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. The requirement of this Section is only that it must be proved that the accused has accepted or obtained or agreed to accept or attempted to obtain gratification. At the same time it is settled proposition of law that the said presumption is rebuttable and the same could be rebutted by the accused either

from the cross examination of prosecution witnesses or by leading defence evidence. In this regard, reference is made to the case of *C.M. Girish Babu v CBI, Cochin, High Court of Kerala (2009) 3 SCC 779*, wherein it is held:

“21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.”

10. In case of *M.W. Mohiuddin v State of Maharashtra 1995 (2) SCR 864*, the Supreme Court referring to the case of *Ram Krishan and another v State of Delhi (1956) SCR 183* as well as dictionary meaning of the word “obtains” observed as under:

“...whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances of each case. In that case, the Court held that it was proved

that accused made a demand and also got the affirmation from the complainant that he had brought the demanded money and at his instance, the complainant wrapped the money in the handkerchief given by the accused and placed the same in the bag which was brought by the accused and as asked by him, these steps have been taken into consideration in arriving at the conclusion that the accused had in fact “obtained” the pecuniary advantage, namely, that he received the illegal gratification. Therefore, the Court upheld the conviction under Section 13(1)(d).

11. In the case of ***C.K. Damodaran Nair v Govt. of India*** 1997 CrL.L.J. 739, the Supreme Court considered the word “obtain” used in Section 5(1)(d) and held as under:

“12. The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence, prosecution has to prove that the accused “obtained the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b)—and not under Section 5(1)(c), (d) or (e) of the Act, “Obtain” means to secure or gain (something) as the result of request or

effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which as noticed above can be, established by proof of either "acceptance" or "obtainment".

12. In view of above propositions of law, it is recapitulated that the statutory presumption under Section 20 of the Act is available for the offence punishable under Section 7 or Section 11 or Clause (a) and Clause (b) of Section 13(1) and not for Clause (d) of Section 13(1). For offence under Section 13(1)(d), it will be required to be proved that some initiative was taken by a person who receives and in that context demand or request from him will be a pre-requisite.
13. We may now proceed to see as to whether the prosecution is able to establish this pre-requisite of demand or request emanating from the Appellant in accepting the tainted money. For establishing this fact, the prosecution has relied upon the testimony of the complainant (PW1), panch witnesses Poonam (PW3), raiding officer Mr. A.G.L. Kaul (PW12), recovery of tainted money from the Appellant, tape-recorded conversation between

the Complainant and the Appellant and CFSL report Ex.PW6/A. Though PW1 was allowed to be cross examined by the learned Public Prosecutor after cross examination by the learned defence counsel, but reading his testimony as a whole it would be seen that he supported the prosecution case throughout in his examination-in-chief as recorded on 5th February 1998, but later on in his cross examination recorded after a lapse of three years, while again supporting the prosecution case, he resiled to the extent by stating that he and other artists had collected money for organizing the Jagran and that the Appellant had also told the raiding officer that he had accepted the money and kept the same in his briefcase as the same was given to him for organizing Bhagwati Jagran before telecasting the drama “*Dahej*”. He deviated from his earlier statement by stating that the Appellant had merely demanded the money from him and he never used the word “bribe” in his talks with him. He also stated that he felt sorry over the trap of the Appellant on coming to know the truth that the money was collected for giving him for organizing Bhagwati Jagran.

14. In his examination-in-chief PW1 deposed that he knew the Appellant as he had been meeting him in connection with telecast of his plays on television. He approached the Appellant

for telecasting his play "*Dahej*". Although the Appellant watched 3-4 rehearsals initially, but then he started putting him under pressure and finally told him that he will have to pay him an amount of two cheques of ₹900/- each which would be received by him and PW5 from Doordarshan and another sum of ₹6500/-. He stated that the Appellant told him that till the payment is made, shooting of the play cannot be done and that he will arrange the telecasting of play only when he is paid the aforesaid money. He stated that there are no telecasting charges and in fact the money is paid to the artists for performing such programmes. He went on to depose that he was to get a cheque of ₹900/- from Doordarshan and the Appellant wanted to take that amount plus ₹ 6500/- i.e. ₹7400/- from him and cheque amount of ₹900/- from PW5 which she was also to get from Doordarshan. This was all in conformity with the complaint made by him with CBI vide Ex.PW1/A. He further deposed that he went to CBI office on 21st September 1990 and lodged a complaint Ex.PW1/A against the Appellant regarding his demand of bribe for telecasting the play "*Dahej*". He has further deposed with regard to association of two public witnesses, his making telephone calls to the Appellant at the office of CBI and the Appellant asking him to bring money on 22nd September 1990 at about 1-2 pm, his asking PW5 Mataji to keep ₹5500/- ready and the recording of the

said conversation. He also deposed about making of transcription of the conversation with the Appellant and PW5 Mataji as Ex.PW1/B and the other one as Ex.PW1/C. The cassette Ex.PW1/F in which the conversations between the complainant and the accused and between complainant and Mataji (PW-5) were recorded was played in the court also during the examination-in-chief of PW1 and then he proved the transcript Ex.PW1/B. He then deposed about association of panch witnesses i.e. PW3 Ms. Poonam and PW10 Mr.Roy and his handing over 16 currency notes of ₹100/- each and 6 currency notes of ₹50/- each to CBI officials, the treatment of phenolphthalein powder on the currency notes and noting down their numbers in handing over memo Ex.PW3/C. He deposed about the demonstration by Mr. S.P. Peshin by getting the fingers of PW3 Poonam dipped in the solution, the same turning pink, he being instructed to hand over the treated currency notes to the Appellant on specific demand and PW3 Ms. Poonam being directed to act as a shadow witness by giving signal by scratching her head with her hand. He also deposed about arrival of raiding party at the residence of PW5 and also arrival of Appellant there at about 2 pm. He specifically stated about the Appellant having asked for the money after the rehearsal and the amount of ₹7400/- being given to him, including ₹1900/-,

currency notes treated with phenolphthalein powder and the remaining amount of ₹5500/- taken from PW5 Mataji. In his cross examination, there is no challenge to this incriminating part of his evidence. Major part of his cross examination centered around the questions relating to collection of money for Bhagwati Jagran as noted above. This defence of the Appellant shall be dealt with little later.

15. Now coming back to the cross examination of PW1, the complainant, it is noted that he admitted that earlier also, he had come in contact with the Appellant and that he was conversant with the procedure as to how the telecast of the drama was to be approved by Doordarshan. He admitted that this drama "*Dahej*" had been approved on or before 20th September, 1990 for telecasting on television and he had signed the documents in token of acknowledgment that the drama has been approved and he had also executed a pre-receipt of ₹ 900/-. Since he took the plea that money was to be given to the Appellant for organizing Bhagwati Jagran which is inconsistent with his complaint and previous statement, the learned Public Prosecutor chose to cross examine him, wherein significantly he admitted that he had not told to CBI in his statement recorded earlier that

the money was given to the Appellant for organizing Bhagwati Jagran.

16. Also significantly, the Complainant also admitted that he did not mention in his complaint that the money was demanded for Bhagwati Jagran. It was specifically suggested to him by learned prosecutor that the money was given to appellant for getting approval of his drama "*Dahej*" and not for organizing Bhagwati Jagran. That being so, the deviation made by complainant is apparently for some extraneous reasons. Though, denied that on being challenged, the Appellant told that he did not know anything and became perplexed. He was confronted with his statement Ex.PW1/Y recorded by CBI after the raid, wherein it was found to be so recorded. In his cross examination by the learned defence counsel, he had also stated that he had given an affidavit to CBI stating misunderstanding in lodging a complaint against the Appellant. However, in his cross examination by learned public prosecutor, though he denied that he stated to the Deputy S.P Mr. J.C. Surari that the affidavit was given by him to CBI at the instance of the Appellant, but when confronted with his statement Ex.PW1/Z, it was found to be so recorded there. It was specifically put to him that he had been won over by the Appellant and was deposing falsely to help him.

17. Since PW5 *Mataji* also did not support the case, she was declared hostile and was cross examined by learned Public Prosecutor. It is to be noted that though the Appellant had himself admitted recovery of ₹7400/- from complainant, but PW5 denied that the recovery was effected from the briefcase of the Appellant. She also denied that on comparison the number of currency notes of ₹1900/- tallied with the numbers already noted in handing over memo PW1/C. Then she admitted that the recovery memo Ex.PW3/E bears her signatures and that the currency notes Ex.P1 to P22 are the same which were recovered from the Appellant. It was also put to her that she has been won over by the Appellant and she wanted to help him.
18. PW3 Ms. Poonam confirmed the allegations made in the complaint and also examination-in-chief of PW1. She specifically stated that the complainant had reported that the Appellant was demanding bribe from him and the money was to be given at the house of PW5. She also deposed about her carrying micro cassette recorder and recording of conversation between complainant and the Appellant. She proved the handing over memo Ex.PW1/C containing pre-trap proceedings. She specifically stated that the Appellant asked the complainant if he

had brought the money and how much it was, to which the complainant replied in affirmative stating, Yes, *Laya Hoon* ₹1900/- and that ₹5500/- was kept and available with Mataji. She stated that on the Appellant's demand, the complainant first gave him ₹1900/- which he counted with his both hands and simultaneously PW5 Mataji also gave ₹5500/-. The said amount of ₹5500/- was kept in a polythene bag. The Appellant opened the same and then put ₹1900/- inside the said bag and then kept the polythene bag in the upper pocket of his briefcase. She further stated that the Appellant had also demanded ₹2,000/- from her. She maintained in her cross examination what she stated in her examination-in-chief. Nothing could be elicited in her cross-examination to doubt her testimony. It is to be noted that the tape-recorded cassette was played in the Court by learned Special Judge and she identified the conversation that took place between her and the Appellant from the transcript Ex.PW1/X which was prepared at the spot on 22nd September 1990. In her cross examination also she denied that the Appellant did not demand ₹2000/- from her or that she was deposing falsely on that count.

19. Though PW1 diverted from his previous statement to some extent as noted above and PW5 also turned hostile, the

acceptance and recovery of tainted money has been admitted by Appellant. The defence of the Appellant that the said money was for the purpose of organizing a Jagran, is highly improbable and an afterthought and admittedly it was not stated by the complainant initially either in his complaint or in his examination-in-chief. It was only after lapse of three years of his examination-in-chief when he was cross examined that he came out with this plea apparently after having been won over by the Appellant.

20. In the fact situation, it appears to be probable also since the Appellant was producer of plays and the authority of approving the same vested with him. Neither complainant nor PW5 could have taken any risk of their career in future in not supporting the Appellant to come out of the initial complaint. After discussion in detail the evidence and arguments in this regard, the learned Special Judge recorded as under:

"It is undisputed fact that the accused was the authority concerned for the telecast of plays on TV and so he could very well be expected to put hurdles in the way of the complainant in spite of his dram having been approved. If a person in authority tells someone, like the accused in this case told to the complainant, that a particular thing would not be done unless bribe is paid then the persons in need, like the complainant in this case, will have the

options of either paying the bribe or to report the matter to seniors of the persons demanding illegal gratification or to the police. In this case the complainant chose to report the matter to CBI and that action he must have decided to take only after having felt frustrated because of the possibility of his play not being telecast in spite of its having been approved for telecast. There is nothing improbable in accused making a demand of money for the telecast of complainant's play in spite of it having been approved by him and his seniors because that was only a paper approval and without accused's actual green signal complainant's play would not have been telecast automatically."

21. There appears to be no reason for them to have given the money to the Appellant for organizing a Jagran which was neither the job nor the specialization of Appellant. He was a government servant and was not supposed to be involved in organizing Jagrans for others. The defence taken by the Appellant is also inconsistent inasmuch as on the one hand he stated that the complainant was carrying grudge against him and on the other hand the complainant gave him money for organizing Jagran. It seems that all this has been manipulated by the Appellant either by extending some direct or indirect influence or threats to the complainant and PW5 or on account of some extraneous

reasons. Assuming that the artists had collected some money for organizing a Jagran, there is nothing to show that the money accepted by the Appellant was meant for organizing a Jagran. Nothing has been brought on record by him to show that there was any prior understanding between him and Complainant or PW5 Mataji or other artists regarding organization of Jagran. There is also nothing to show that the Appellant had ever in the past organized any such Jagran for telecast of dramas. It is also to be noted that PW11 is also an artist and was present at the time of the trap. She deposed about the presence of the Appellant in the house of PW5 on 22nd September 1990. In her cross examination, she stated that she did not contribute any money for organizing a Jagran and that she did not know if any money was collected for Jagran. This would show that no money was collected for organizing a Jagran. Assuming for the sake of argument that the money was collected from artists for the purpose of organizing the Jagran, but that money was passed on to the Appellant as bribe money for getting favour of telecasting the play "*Dahej*".

22. With regard to the defence plea that the complainant was annoyed with him because of his having reprimanded him on an earlier occasion for having teased one artist Kiran, it may be

noted that PW5 Mataji, who turned hostile for the reasons as noted above, did admit about this fact in her cross-examination. But, the fact of the matter is that since she had turned hostile, therefore, no credence can be given to this part of her statement. It is more so, because this was nowhere put to the complainant in his cross-examination either by way of suggestion or otherwise. Even no evidence much less of Kiran has been adduced by the appellant to substantiate this defence. In any case, this fact alone was not enough to discredit the prosecution case, which otherwise stands established for the reasons as discussed above.

23. The accused when apprehended with the bribe money became perplexed and confused. This could not be assumed to be normal behavior of a person, if he was not guilty. The conduct itself was one of the determinative factors pointing towards the guilt of the accused. In this regard reference can be made to the case of *Rao Shiv Bahadur v. State of Vindhya Pradesh*, AIR 1954 SC 322 and *State of Madras v. A. Vidyannatha Iyer*, AIR 1958 SC 61, the Apex Court relied on the evidence relating to the conduct of the accused when confronted by the police officials with the allegation that he had received bribe. In the case of Rao Shiv Bahadur (supra) the evidence relating to conduct on which

reliance was placed was to the effect that the accused was confused and could not furnish any explanation when questioned by the officer. Likewise, in the case of Vidyanatha (supra) also evidence to the effect that the accused was seen trembling and that he silently produced the notes was acted upon for recording conviction.

24. From the above discussion, it stands concluded that the Appellant was rightly held guilty of offence under Section 7 as well as under Section 13(1)(d) of PC Act and was convicted thereunder by the learned Special Judge. There is no infirmity and illegality in the impugned judgment.
25. With regard to quantum of sentence, learned defence counsel prayed for a lenient view stating the case to be above 20 years old and the Appellant having undergone lot of hardships during trial. The Courts are daily confronted with such arguments invariably in all cases. In this regard, the Supreme Court in the case of *State of A.P. v V. Vasudeva Rao*, (2004) 9 SCC 319, the Supreme Court observed thus:

"In the present case, how could the mere fact that this was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions

under the Act and it is not a specialty of this particular case. It is a defect inherent in implementation of the system that longevity of the cases tried under the Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated for reducing the minimum sentence mandated by Parliament the legislative exercise would stand defeated.” (para 31)

26. Keeping in view the entire factual matrix, as discussed above, while maintaining the conviction of the Appellant under Section 7 and 13(1)(d) read with Section 13(2) of the Act, I am of the view that ends of justice would be met in sentencing the Appellant to two years rigorous imprisonment. Thus, to that extent, the impugned order of sentence dated 22nd July, 2002 of the learned Special Judge is modified in that, the Appellant shall undergo rigorous imprisonment for a period of two years each under Section 7 as well as under Section 13(1)(d) read with Section 13(2) of the Act.
27. With this modification in the impugned order of sentence, the rest remain maintained. The substantive sentences awarded shall run concurrently. The period of custody, if any, already undergone by the Appellant, shall be set off. The Appellant shall

surrender and be taken into custody to undergo the awarded imprisonment. Appeal disposed of accordingly.

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

JULY 08, 2011
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