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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. A. No.657/2002 & 681/2002

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KAMLA PRASAD

**Reserved On : 3rd June, 2011
Date of Decision: July 08, 2011**

....Appellant

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

Versus

C.B.I.

.... Respondent

Through: Mr.Narendra Mann, Advocate for the
respondent.

AND

GAMA TIWARI

....Appellant

Through: Mr.Yudhshtar Kahol with Mr. Kunal Kaho
Advocates for the appellant.

Versus

C.B.I.

.... Respondent

Through: Mr.Narendra Mann, Advocate for the
respondent.

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.

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- Both these appeals arise out of a common Judgment dated 19.08.2002 and the Order on Sentence dated 20.08.2002 of learned Special Judge Shri R.K. Gauba in CC No. 65/1994. Both the accused were convicted vide the impugned judgment under Section 120-B IPC and Section 7 and 13(1) (d) r/w Section 13(2) of Prevention of Corruption Act, 1988 (for short 'P.C. Act') and

sentenced to undergo Rigorous Imprisonment ('RI' for short) for four years with a fine of ₹5,000/- each under Section 120-B IPC and under Section 7 and under Section 13(2) of P.C. Act. In case of default in payment of fine, the accused were to undergo further RI for three months on each count. Since the evidence recorded was common and also the cases against both the accused were disposed of by a common judgment, these appeals are being disposed of by this common judgment.

2. The prosecution case as set out briefly is that one Mahesh Kumar (PW-3) had applied for transfer of his telephone connection to his new residence and an order (OB) in this regard was issued by the department in June, 1994. The connection, however, was not installed in spite of his repeated visits to the concerned office of MTNL and requests made to the concerned officers. At the relevant time, accused persons namely Gama Tiwari (hereinafter referred to as 'GT' for short) and Kamla Prasad (hereinafter referred to as 'KP' for short) along with accused Raj Karan (since deceased) were posted in the area as *linemen* and *majdoor* respectively. They were allegedly demanding ₹1,000/- as bribe for doing the needful. It is alleged that in the evening of 17.08.1994, they came to the house of the complainant and made specific demand of ₹1,000/-. As indicated, some of them was to come to his house next day i.e. on 18.08.1994 at about

4.30 pm for doing the needful against the receipt of money. The complainant made a complaint (Ex.PW3/B) to CBI on 18th August, 1994 at 1:00 pm. The FIR was registered and a raid was planned. One public witness Mr. Arun Nayar (wrongly spelt as Anil Nayyar) (PW-1) was joined as a shadow witness and to remain close by to observe the proceedings that was to take place between the complainant and the accused persons at the time of transaction. The requisite formalities of pre-trap proceedings were conducted. The number of currency notes (Ex.P-6 to Ex.P-12) brought by the complainant were noted down in the handing over memo of the pre-trap proceedings. The demonstration of the process as to how chemical used on the trap money was to react was given by the trapping officer Mr. Rajesh Kumar (PW-11). As per the pre-arranged programme, the complainant and shadow witness were present in the drawing room of the house of the complainant, whereas other members of the raiding party took nearby positions. The accused persons arrived at the residence of the complainant, where the trap money was demanded by the accused and was handed over by the complainant to accused KT and GT. On giving the pre-arranged signal by the shadow witness, the members of raiding party arrived and apprehended the accused persons and then they effected recovery of the tainted money from accused GT. The accused were arrested

subsequently and sent for prosecution. In the court, the accused did not plead guilty to the charges framed against them. The prosecution examined 11 witnesses in support of its case. Statements of accused were recorded separately under Section 313 Cr. P.C. wherein both the accused persons denied the prosecution case. Accused GT stated that the complainant had told him that he had a talk with the Inspector and that he (complainant) forcibly tried to put the tainted money in the front pocket of his shirt saying the same to be given to the Inspector and that when he refused to accept the money and resisted, the tainted money fell down on the ground which he instantly picked up in order to hand over the same to the complainant and in the meanwhile CBI officials entered in the drawing room and apprehended him. He stated that Inspector Rajesh Kumar (PW-11) had taken the tainted notes from him and thereafter forced him to count them with his hands. He, however, conceded that he was made to dip his left and right hand fingers in two separate glasses of water and each wash had turned pink, but he claimed that no solution had been prepared and the washes had been taken in plain water. He also admitted recovery of tainted notes (Ex.P-6 to Ex.P-12) as per recovery memo Ex. PW1/E. He also admitted that he along with accused KP was on duty on 18.08.1994 and that he was assigned the duty relating to

installation of the phone. Accused KP while denying that he had demanded bribe money, admitted that he was with accused GT for the purpose of installation of telephone connection. He also admitted recovery of tainted money from accused GT and taking of washes of his hands. His explanation in this regard is different to that of accused GT.

3. From the admitted or undisputed facts it comes out to be that the accused persons were public servants, being *lineman* and *majdoor* of MTNL at the relevant time. At the relevant time on 18.08.1994, they were on duty along with accused Raj Karan (since deceased). They were to install a telephone connection against OB issued in June, 1994 at the new residence of complainant. They had been issued the needed telephone instrument in July, 1994 against the said OB. It is also admitted that there was considerable delay in installation of telephone connection despite issuance of OB number in June, 1994.
4. I have heard Mr.K.B. Andley, Sr. Advocate for accused KP and Mr. Yudhshtar Kahol, Advocate for accused GT and Sh. Narendar Rana, Senior Counsel for CBI.
5. Both the learned counsel for the accused persons submit that the testimony of the complainant was not reliable inasmuch as the complainant was carrying a grudge against the accused persons since he was agitated due to delay in installation of telephone at

his residence, because of no fault of the accused persons. They submit that there were inconsistencies and discrepancies in the statements of the complainant and PW-1, the shadow witness. They also submit that when the telephone had already been installed, why would the complainant pay bribe money to the accused persons. Relying upon the case of *Som Nath Vs. State, 1991(2) CLR 198* they submit that in such circumstances the testimony of complainant alone was not enough to record conviction. The learned counsel Mr. K.B.Andley submits that there was neither any demand by accused KP nor any bribe money was paid to him or recovered from him. The learned counsel Mr. Yudhshtar Kahol for accused GT submits that whole of the prosecution case was concocted. He submits that after the complainant had visited CBI office on 17.08.1994 at about 5-5:30 pm, why was the complaint not made or FIR registered immediately, but on 18.08.1994 at 1:00 pm. He submits that the complainant never met the accused persons at any point of time much less GT in June, 1994 since the accused was not on duty in the month of June'94 and also during some part of July'94. The learned counsel also submits that there were discrepancies in the statements of PW-3 and PW-1 vis-a-vis their statements made under Section 161 Cr.P.C. In this regard it was pointed out that there was specific discrepancy as regards signal to be given

to the raiding party. In the statement of PW-3 while it was stated to be by way of uttering words "*amma ji chaye lao*", in the statement of PW-1 it was stated to be by way of loud coughing. The learned counsel also disputes the validity of sanction for prosecuting accused persons stating the same to be mechanical and without application of mind.

6. With regard to the contention of the learned counsel that the testimony of the complainant alone was not enough to establish the prosecution case and to record a conviction, it may be stated that it is trite law that in the given facts and circumstances if the testimony of complainant is reliable, conviction can be passed on the sole testimony of the complainant. All depends upon the nature of deposition made by the complainant. It is also settled law that in a case where complainant is interested in the prosecution of a person against whom he has made a complainant, the court may feel safe in accepting the prosecution version on the basis of evidence of the complainant. However, his testimony is to be scrutinized with cautious approach. Reference in this regard can be made to the case of *State of UP Vs. Dr. G.K. Ghose*, AIR 1984 SC 1453 wherein it was observed by the Supreme Court as under:-

“24. ...in the case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court

may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction."

7. In the case of *Som Nath* (supra) the testimony of the complainant was not corroborated by substantive evidence and his statement in the court was different from his earlier statement as made under Section 161 Cr. P.C. during investigation. Both the punch witnesses were declared hostile and did not support the prosecution version. The evidence about demand and acceptance of bribe by the accused was found to be unreliable. In these circumstances, the evidence of the defense was found to be more probable. Under these circumstances, mere recovery of tainted money from the accused divorced from circumstances under which it was paid, was held to be insufficient to sustain the conviction.
8. From the testimony of complainant PW-3 it does appear that he was agitated because of repeated visits to the telephone exchange and having repeatedly made requests to the accused persons and other concerned officers of the department, but of no avail and despite that the matter got delayed for considerable

time for no fault of his. The department had informed him about the issuance of OB number about two months back. It may be that the complainant was carrying a grudge and it was because of that that he filed a complaint against the accused persons with the CBI, but he categorically denied that it was because of annoyance due to non-installation of telephone for such a long time that he has falsely deposed against the accused persons.

9. From the testimony of complainant (PW-3) as a whole it may be seen that this witness has fully supported the prosecution case. He stated about issue of intimation vide OB (Ex.PW-3/A) and having met accused persons sometime in June, 1994 and also having met SDO, another officer, regarding installation of the telephone and that accused having demanded ₹1,000/- for doing the needful. He also stated that he had met the accused persons in the area 6 or 7 times (regarding installation of the telephone connection) before filing of the complaint. He also spoke about having met other officials of the telephone exchange namely PW-4 and PW-7. He also stated their misbehaviour towards him. He specifically stated about the accused persons contacting and suggesting him to spend some money for getting the telephone installed. It may be that accused GT was on leave from 05.05.1994 to 05.07.1994 and accused KP was also on leave from 06.06.1994 to 02.07.1994 and the accused persons might

not have made official visit during these days, but this part of the defence was not relevant inasmuch as it was not proved on record that the accused persons were not in the city during those days. In any case, PW-3 had clearly stated that he did not remember whether he met the accused persons in June, 1994 or in July, 1994. The Specific allegation of demand of ₹1,000/- was of 17th August, 1994 and not that of June, 1994 and it was this allegation on which the complaint was made and the FIR was registered. It is an admitted case that during this period both the accused were on duty and were responsible for installation of the telephone connection at the residence of the complainant. While pointing out the cross-examination of the complainant PW-3, it was submitted by the learned counsel that PW-3 denied having conversation with accused GT. It is seen that what was stated by him was not denial of conversation with GT, but, in answer to a question putting detailed conversation, he stated that he did not state in his statement under Section 161 Cr. P.C. about what KP said after the installation of telephone. There was no other discrepancy noted in this regard. Admittedly, the statement of this witness was not recorded by the IO on the day of the trap, but, as per PW-3 it was recorded after 10 days. Nothing could be pointed out for raising any fault in this regard and there is no force in the submission of learned counsel made

in this regard. This witness has stood lengthy cross examination and nothing could be elicited from him. He maintained that a sum of ₹1,000/- was demanded by the accused persons and the same was paid by him and was recovered from accused GT. In consonance of the defence taken by the accused GT in his statement under Section 313 Cr. P.C. , it was suggested to complainant PW-3 that after the completion of the work of installation of telephone, he told the accused persons that he had already talked with Inspector Umesh and thereafter he tried to give ₹1,000/- to accused GT by thrusting it forcibly in his hand and that when GT refused to accept that money, the notes fell down. He denied all the suggestions and maintained these to be incorrect.

10. With regard to the discrepancy regarding signal that was to be given by the shadow witness, it was rightly pointed out by learned counsel that as per handing over memo Ex. PW1/A , the signal that was to be given by the shadow witness PW-1 was a loud cough. Both, PW-1 and PW-11 in their respective statements have corroborated about the signal as mentioned in the handing over memo Ex. PW1/A, but, the complainant PW-3 contradicted that by testifying that PW-1 had given a signal by shouting in Hindi "*amma ji chaye lao*", However, when the complainant was cross examined by the prosecutor, he conceded

that the signal that was to be given was not uttering of the above words, but a loud cough was to be made by the shadow witness. In his cross examination by the learned defense counsel, he reverted by stating that in the pre-raid proceedings the shadow witness was directed to give signal by saying "*amma ji chaye lao*". However, he clarified that since he apprehended that someone may by chance ask for the tea during the proceedings before passing of the money, on his suggestion, at his residence, the signal was decided to be changed to coughing. The statement of complainant about a different signal from the earlier one does not cast any doubt in the prosecution case inasmuch as the testimony of this witness (PW-3) regarding the pre-trap proceedings including the handing over memo Ex.PW1/A finds corroboration from the testimony of PW-1 and PW-11 and also there is no challenge in this regard in the statement of accused persons under Section 313 Cr. P.C.

11. With regard to the submission that the prosecution case was concocted inasmuch as there was delay in recording of FIR, it was stated by the complainant (PW-3) that he visited the office of CBI on 17.08.1994 when the office was about to close and he was advised to come to office on the next day i.e. on 18.08.1994. Accordingly, he visited the CBI office at 10 am on 18.08.1994, and as directed, he handed over his complaint to Inspector

Rajesh who had been introduced to the complainant on previous day. It was there that he wrote his complaint Ex.PW3/B. He stated that it took him about an hour or so to write the complaint. In these circumstances, there does not appear to be any delay in making written complaint or any delay in registration of FIR. After completion of all the formalities of writing of complaint etc., the FIR was registered at 1:00 pm which by no stretch of reasoning can be said to be delayed in doing so.

12. Though, the testimony of complainant (PW-3) alone was enough to substantiate the prosecution case, but the same is fully corroborated from the testimony of PW-1, PW-4, PW-7 and PW-11 on all material aspects of the prosecution case. It stands proved on record that in pursuance of a demand of bribe money, ₹1,000/- was given by the complainant to accused persons, which was accepted by accused GT and the same was immediately thereafter recovered from his possession. The washes of his hands were taken which were analyzed by CFSL which confirmed the presence of phenolphthalein powder in each of the two washes. There was no protest of the accused persons in this regard. The report Ex. PW5/A indicated that the hands of the accused GT had come in contact with the trap money. This fact was not disputed by accused GT in his defense. The defense

taken by the accused GT that the money was for the Inspector and that he resisted, but it was forcibly thrust upon him and in the process money fell down and he picked up instantly, is an afterthought and without any appealing reason. In the testimony of prosecution witnesses, nothing material could be elicited by the defense to create any doubt about their reliability. The prosecution witnesses have fully supported the prosecution case and I do not find any infirmity in the analysis of the evidence of these witnesses by the learned Special Judge.

13. With regard to sanction of prosecution, it is noted that PW-2 Shri N.K. Safaya has proved his Sanction Order as Ex. PW2/A. He testified that he had granted the sanction for prosecution after considering the material sent with the request and after being briefed by the officials of the Vigilance Cell. The testimony of the sanctioning authority has not been assailed by the defense. Thus, I do not see any reason to doubt the reliability of the sanction for prosecution of the accused persons.
14. From the above discussion, it stands established that the prosecution has proved its case beyond any doubt regarding demand and acceptance of bribe by both the accused persons. The fact that the money was accepted by GT and was recovered from him, would not in any case, lighten the role of accused KP. The acceptance of money by GT was for himself and for and on

behalf of his co-accused KP. In the case of *Brahma Nand v. The State of NCT of Delhi*, 176 (2011) DLT 192 this court held as under:

“Section 7 and Section 13(1) (d) of P.C. Act make it clear that even if money is accepted by a person on behalf of other, he commits offences under Section 7 and 13(1) (d) of P.C. Act. Words used by the statute in Section 7 of P.C. Act are “acceptance from any person for himself or for any other person any gratification”. Similarly, words used by the statute in Section 13(1) (d) are “if he obtains by corrupt or illegal means for himself or for any other person any valuable thing or pecuniary advantage”. A reading of Section 13 & 7 of the P.C. Act makes it clear that if a person has knowledge that money being accepted by him was bribe money for someone else, the offence is complete.”

15. In the light of the above, the role of accused KP in the entire episode is equally significant. Both he and his co-accused GT demanded bribe for doing a favourable work in the discharge of their official function and in pursuance thereto his co-accused GT in his presence accepted the bribe money which was immediately recovered from GT in his presence. The conduct of the accused persons was very relevant. When apprehended, accused GT got stunned and it was within 2-3 minutes thereafter that he accepted his guilt, whereas accused KP remained silent. If KP was not a party, in the normal circumstances, he would have protested and opposed his apprehension along with GT.

His conduct in the circumstances would also clearly demonstrate his guilt and involvement in the whole episode.

16. In view of the above discussions, it stands proved that there was demand of bribe money made by both the accused persons from the complainant for doing favour of installation of telephone and that in their position as a public servants they did obtain bribe of Rs.1,000/- from the complainant and further that the said bribe money was recovered from the accused GT immediately after apprehension at the residence of the complainant. Thus, a presumption also arose against the accused persons under Section 20 of the Act that the money which was accepted by them was towards the bribe money which had been demanded for doing favour. I do not find any infirmity in the findings of conviction recorded by the learned Special Judge under Section 7 and 13(1) (d) r/w Section 13(2) of Prevention of Corruption Act, 1988. The impugned judgment is maintained.
17. With regard to the quantum of sentence, the learned counsel for both the accused pray for lenient view stating that the accused are poor persons and have suffered hardships during all this period of proceedings of about 18 years. Keeping in view the nature and gravity of the offences committed by the appellants, I am of the view that interest of justice would be met by imposing the minimum prescribed sentences. Thus, while maintaining the

conviction as imposed by the learned Special Judge, the impugned order on sentence dated 20.08.2002 is modified to the extent that both the accused are sentenced to undergo RI of six months and one year respectively under Section 7 and 13(1) (d) r/w Section 13(2) of the P.C. Act and under Section 120-B IPC. The rest of the impugned order on sentence remains maintained. The substantive sentences shall run concurrently. The period of imprisonment, if any, already undergone by the appellants, shall be set off. The appellants shall surrender and shall be taken into custody to undergo the remaining sentence.

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

JULY 08, 2011
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