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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. Appeal No.746/2002

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**Reserved On: 25.03.2011
Date of Decision: 23.05.2011**

Mehkar Singh

.... APPELLANT

Through: Mr.R.N. Mittal, Sr. Advocate with
Mr.Manoj Kumar, Advocate

Versus

Central Bureau of Investigation

.... RESPONDENT

Through: Mr.Narender Mann, Special Public
Prosecutor for 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.

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1. This appeal is directed against the Judgment dated 20.09.2001 and Order of Sentence dated 24.09.2001, whereby, the appellant/accused was convicted by learned Special Judge under section 7 and 13(1)(d) of Prevention of Corruption Act, 1988

(hereinafter referred to as 'the Act') and was sentenced to undergo rigorous imprisonment for 4 years with a fine of ₹500/- on each count. In case of default in payment of fine he was to undergo rigorous imprisonment for 3 months each.

2. The prosecution case as set up in the complaint(Ex. PW3/A) against the appellant/ accused in brief is that, Rakesh Kumar, s/o Jugal Kishore, r/o Bapa Nagar, Karol Bagh, New Delhi (PW-3) was accused vide FIR No. 304/93 and 435/94 P.S. Nizammuddin lodged at the instance of his wife. The said cases were pending before Ms.Sunita Gupta, the then MM New Delhi. The appellant/accused ASI Mehkar Singh was posted in PS Nizammuddin and was the Investigation Officer (IO) of FIR No. 304/93, whereas HC Padam Singh was the IO of FIR No.435/94. The complainant got bail in FIR 304/93, but was allegedly put in custody by the accused. He had even filed a contempt petition against accused in that case, but the same was later dismissed by the court after the compromise was arrived at between the complainant and his wife.
3. On 20.10.1996 the complainant had gone to attend the case of FIR 435/93 at Patiala House Court where he met HC Padam Singh and also the accused. He was told by them to meet two days

before 28.10.96, the next date of hearing in the case when they would tell him the weaknesses of case against him so that he could be saved. On 25.10.1996, he went to meet accused at PS Srinivas Puri and not finding him there went to PCR Sarai Rohilla, where he met HC Padam Singh and after some time accused also reached there. Accused demanded ₹500 as bribe for each hearing if he wanted to save himself from the case against him. The complainant was also assured that the accused would get the evidence weakened. The accused asked him to come to Patiala House Courts on 28th October, 1996 and bring ₹500/-. Based on this complaint, FIR (PW8/B) was registered. The necessary arrangements for laying trap were done. Two independent witnesses, namely, S.P. Gulati (PW-4) and Jai ram (PW-7) were arranged to attend the trap party. The complainant arranged ₹500/- in the currency notes of denomination of ₹100/-, the numbers of which were noted down. PW-4 was to act as a shadow witness, whereas PW-7 was to remain nearby to watch the proceedings. Pre-trap proceedings were conducted by (PW-8) the I.O., who was also the Trap Laying Officer (TLO). The currency notes were given phenolphthalein powder treatment. With the help of Inspector B.K. Pradhan and PW4, the demonstration of the manner in which said power will react when brought in contact with the solution of sodium carbonate was

given to the members of the raiding party including the complainant and the independent witnesses. All this was recorded in handing over memo (PW-3/B). The treated notes were given to the complainant with the instruction to handover to the accused on specific demand. The trap party left for Patiala House Courts at about 10am. Both the complainant and the shadow witness PW4 were sent to the court. Other members of the party took positions in the area. At about 10:15am, the complainant contacted the accused whereafter both of them went into court room No. 2 and PW4 followed them. The complainant and the accused were seen moving towards the lawyers chambers. The accused allegedly asked the complainant to give the money which he had asked for. The money was given to the accused, who accepted the same with his right hand. At this, PW4 gave the pre appointed signal to the trap party whereupon the members of the team rushed to the spot. The accused was apprehended by his wrists. The complainant as well as the shadow witness confirmed about accused having received the tainted money from the complainant with his right hand. The tainted Government Currency notes were recovered by PW-7 and he also compared the numbers of notes with the numbers already noted down in the handing over memo and found the same tallying. The washes of both the hands of the accused were

taken separately which turned the solution pink. After the completion of the formalities, the accused was arrested. On completion of investigation the accused was challaned under section 7 and 13(1)(d) read with 13(2) of the Act. The accused denied the charges and pleaded not guilty. At the trial the prosecution examined as many as 9 witnesses. The accused was also examined under Section 313 Cr.P.C, wherein he denied all incriminating evidence. He did not lead any evidence in defense.

4. At the outset, the learned defence counsel submitted that the accused had arrested the complainant during the existence of anticipatory bail which led to the filing of a contempt petition against the accused by the complainant. He submitted that though the contempt petition was ultimately dismissed by the High Court and complaint against the complainant was also dismissed on account of compromise with his wife in the said case, but the complainant carried out a grudge and animosity against the accused. The facts that complainant was arrested during the subsistence of bail and his having filed contempt and same getting subsequently disposed by High Court, are not in dispute. These facts alone would not be enough to conclude outrightly that the complainant was carrying any grudge or he got planted the present case against the accused. It would be

seen subsequently after discussion of the case in entirety that this reasoning of the learned counsel is not well founded and is misconceived. It was submitted by the learned senior counsel for the accused that the accused has been falsely implicated at the instance of PW9, S.K. Peshin, in conspiracy with the complainant. He submitted that the accused was a parokar in the inquiry relating to death of a person in police lockup against PW9, S.K. Peshin, and it was at his instance that the present case was planted against the accused. With regard to the accused being the parokar in the inquiry against PW9, S.K. Peshin, it may be stated that though it was admitted by the PW8 to be correct that he was aware of such an inquiry, but PW8 denied the suggestion put to him that the present complaint was at the instance of PW9, S.K. Peshin. Interestingly, nothing of this sort was put to PW9, S.K. Peshin in his cross-examination. He was not confronted with any question on this subject relating to inquiry, nor he was put any suggestion. In fact, he was not subjected to any cross-examination by the defence.

5. Learned senior counsel for the defence Mr. R.N. Mittal assailed the impugned Judgment and Order as bad in law and wrong on facts. Learned Counsel submitted that the learned Trial Court failed to appreciate that the complainant was carrying grudge

against accused as he was aggrieved of his arrest, during subsistence of bail by him, and so was not reliable. He submitted that learned Judge also failed to appreciate that the prosecution witnesses do not inspire any confidence as their testimonies are full of doubts. He submitted that the learned Trial Court failed to appreciate the fact that not only because PW7 was a stock witness of CBI having appeared already in 4-5 cases, but both PW4 & PW7 were declared hostile and there were inconsistencies and discrepancies in their statements and other witnesses. The learned counsel further submitted that no public witness was associated when the appellant/accused was apprehended. He also submitted that the complainant PW-3 admitted in his cross-examination that an application was moved by the Investigation Officer of case i.e. FIR No.435/94 in the court of learned MM against the complainant for cancellation of his bail, alleging that the complainant had threatened them to involve in a false case of bribery

6. As against this, Shri Narendra Mann learned counsel for CBI submitted that all the essentials, namely, demand, acceptance of the bribe and recovery of the demanded money have been proved by the testimonies of by PW-3, PW-5, PW-7 and PW-8. It was submitted by the learned counsel that all the witnesses

mentioned herein have specifically stated in their examination in the court that the bribe money was recovered from the right hand fist of the Appellant/accused. There may be some contradictions in their examinations, but these are minor and do not go to the root of the case and minor contradictions are natural and ought to appear where the witnesses are examined after a long period of time. Learned Counsel relied on ***Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat***, AIR 1983 SC 753 and ***State vs. Zakaullah***, 1998 SCC (Cr.) 456.

7. Before proceeding to embark upon the fact whether the learned Special Judge erred in appreciating the evidence of the prosecution, it must be kept in mind that while appreciating the evidence of a witness one may come across certain discrepancies in his deposition. These discrepancies are really of no consequence as long as they don't go into the root of and demolish the veracity of the case. These discrepancies can be due to normal errors of observation, or loss of memory due to lapse of time or due to mental disposition such as shock and horror at the time of the occurrence and the like. It must be remembered that the evidence given by a witness would very much depend upon his power of observation and it is possible that some aspects of an incident may be observed by one

witness while they may not be witnessed by another though both are present at the scene of occurrence [vide **Boya Ganganna and Anr. v. The State of Andhra Pradesh** AIR 1976 SC 1541]. In the case of **Bharwarda Bhoginbhai Hirjibhai** (*supra*), it was held by the Supreme Court that much importance cannot be given to minor discrepancies which did not go to the root of the matter and shake the basic version of the witnesses, therefore cannot be annexed with undue importance. It has been held time and again by catena of judgments of Apex Court that discrepancies do not necessarily demolish the testimony. The proof of guilt can be sustained despite some infirmities [**Narottam Singh v. State**, 1978 CrL.L. J. 1612 (SC)]. In the case of **Ramni v. State**, 1999 (6) SC 247, it was held that all the discrepancies are not capable of affecting the credibility of the witnesses and similarly all the inconsistent statements are not sufficient to impair the credit of a witness. I would like to advert to the discrepancies pointed out by the learned defence counsel a little later.

8. The learned counsel submitted that the complainant is an interested person because of his carrying grudge and was not reliable unless his testimony finds corroboration. In this regard, reliance was placed on the cases **Pyare Lal v. State**, 149 (2008)

DLT 425; **Jaswant Singh** v. **State of Punjab**, AIR 1973 SC 707 and **Sunil Kumar Sharma** v. **State**, 139 (2007) DLT 407. In the case of **Pyare Lal** (*supra*), appellant was the investigating officer in the case registered against the complainant. The court found that complainant wanted the appellant to hush up the case against him and his family members and on his refusal to oblige him, slapped false corruption case against the accused. This was the case based on its own facts and circumstances which led the court to record such a finding. In both the cases **Jaswant Singh** (*supra*) and **Sunil Kumar Sharma** (*supra*), it was held that in a bribery cases where complainant is an interested witness, his evidence must be considered with great caution. I am conscious of this fact that the testimony of such a witness would require scrutiny with great caution. While noting so, it is also relevant to note that the mere fact that complainant was facing prosecution and was arrested at one point of time despite bail by the accused, would itself may not be enough to throw away the prosecution case or to discard the testimony of the complainant. It is also not that in every case the court would see independent corroboration of such a witness. It would all depend upon the facts and circumstances of each case and the nature of deposition made by such a complainant.

9. With regard to the testimony of complainant the Apex Court in the case of **State of UP v. Dr. G.K. Ghosh**, AIR 1984 SC 1453 observed 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.”

10. In the case of **Rajender Kumar Sood v. State of Punjab** 1983 CrL. LJ 1338 the Division Bench of Punjab and Haryana High Court while dealing with the proposition whether testimony of complainant required independent corroboration observed as under:-

“We are of the opinion that there is no question of the Court insisting upon any such independent corroboration of the complainant in regard to the circumstances of the kind. When a given complainant first visits a public servant for doing or not doing some task for him he does not go to him as a trap witness. He goes there in a natural way for a given task. To require a witness to take a witness with him at that stage would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe.”

11. In the case of **State vs. Zakaullah** (*supra*), it was held by the Supreme Court that evidence of the bribe giver cannot be rejected merely because he is aggrieved by the conduct of the accused. It was further held that nobody over-heard the demand made by the accused for bribe or the amount was found in the left pocket of the accused and not in the right pocket, are flippant grounds which should never have merited consideration.
12. The learned senior counsel, Mr.Mittal, took me through some of the facts in support of his submission that there was no allegation of demand of any money by the accused from the complainant in the meeting which allegedly took place on 22nd October, 1996. In this regard, he submitted that in fact there was no occasion or reason for the accused to have demanded any money from the complainant inasmuch that the case in which the complainant appeared before the court on 22nd October, 1996 was FIR No.435/94 in which accused was not the Investigating Officer. Since he was not the IO in the said case, he was not required to appear in the case before the Metropolitan Magistrate, Sunita Gupta, on this date. He submitted that in fact the accused had gone to Tis Hazari Courts on 22nd October, 1996 and from there he came back to the Police Station and so there was no question of his meeting with the

complainant in the Patiala House Court on 22.10.1996 at 11.30 AM.

13. Learned counsel relied upon the decision of **Banarasi Dass v. State**, 2010 CrLJ 2419; **Gopal Krishan v. State**, 18 (1980) DLT 11 (SN) in support of his submissions that the mere recovery of bribe money from the accused was not sufficient to prove offence and that no presumption of guilt should be raised under the Act in the absence of proof of demand and acceptance of money by the accused as a motive or reward. There is no dispute with regard to the proposition of law as laid down in these judgments that mere recovery of money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantial evidence in the case is not reliable. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **M. Narsinga Rao v. State of A.P.**, 2001 (1) SCC 691, which has been followed in catena of judgments. However, in the present case, it would be seen that there is ample evidence on record to corroborate the statement of the complainant on the essentials of demand, acceptance and recovery.

14. It is a fact that the accused was not the I.O. of the case FIR 435/94 and so was not required to be present in the Patiala House Courts on 22.10.1996. However, it stands proved from the statement of PW-5, Additional S.H.O., Srinivas Puri, that the accused went out of the Police Station to attend the date of hearing at Tis Hazari along with SI Bansidhar. It is also proved from the statements of PW3 and PW6 that PW3 complainant attended the hearing of case FIR 435/94 at Patiala House court on 22.10.1996 and this case was adjourned to 28.10.1996. PW3 also said that he had met the accused and HC Padam Singh on this date in the Patiala House Courts and was asked by them to meet two days before the next date of hearing, i.e., 28.10.1996. As per DD (Ex.PW5/B) the accused and SI Bansidhar left the police station at about 8.15 AM for Tis Hazari Courts and Patiala House Courts respectively. DD (PW5/C) shows the return of accused back to the police station at 3.31 PM. The fact that he was not to appear in the Patiala House Courts on 22.10.1996 but was to go to Tis Hazari Courts would not be sufficient enough to record that he in fact did not go to Patiala House Court on that date. Notice can be taken of the fact that Patiala House Court is on the way to Tis Hazari Courts and while going to Tis Hazari Courts one can easily stop at Patiala House Court for onward move to Tis Hazari. SI Bansidhar and the record of the case of

Tis Hazari court where the accused was supposed to appear on 22nd October, 1996, could have thrown some light, but, however, the accused did not choose to make any effort to lead evidence in this regard.

15. Learned defence counsel also submitted that the visit of the PW3 complainant to PCR Sarai Rohilla was doubtful inasmuch firstly because there was no occasion for him to visit PCR Sarai Rohilla and secondly, it was not possible to reach Sarai Rohilla from Police Station Srinivas Puri. In this regard, PW3 stated that on 25.10.1996, he had gone to PS Srinivas Puri to meet the accused, but as he did not find him there, he within 15 minutes reached PCR Sarai Rohilla. The learned Special Judge recorded in this regard that the complainant seems to be making general statement about time taken in the journey which involved the distance of about 20 kilometers. It appears that the complainant made such a casual statement and tried to exaggerate in this regard. But, that may not be enough to conclude that he did not visit PCR Sarai Rohilla. The complainant was very categorical in his visit to PCR Sarai Rohilla. While observing that one may not reach in 15 minutes from PS Srinivas Puri to PCR Sarai Rohilla as claimed by complainant, it can also be observed that during

noon period the traffic is comparatively less and such distance could be covered by two wheeler in about 20-30 minutes.

16. At PCR Sarai Rohilla, complainant remained for about 1½ hours and met the accused and HC Padam Singh. If it was not so, why would he introduce this as a story. He stated that the money was demanded in the presence of HC Padam Singh. In such fact situation, some light could have been thrown on this subject by HC Padam Singh, who has not been chosen to be examined by the accused, though, at one point of time, he so desired to examine him as a witness. In fact, this part of statement of the complainant that the conversation with Mehkar Singh took place in presence of HC Padam Singh has not been assailed. The complainant categorically stated and maintained that the accused demanded ₹500 for each date of hearing to ensure that the evidence gets weakened.

17. The testimony of PW3 on demand by the accused become reliable when we analyse the entire evidence including the conduct of the accused to be discussed hereafter. PW3 categorically stated and maintained that on 25.10.1996 at PS Sarai Rohilla, Mehkar Singh during conversation told him that he will tell about the loopholes and for that he would have to pay

₹500/- for each date of hearing and that he would also ensure that the evidence in the court gets weakened. Thereafter, he directed him to meet him in Patiala House Courts on 28.10.1996 so that he can introduce him to the witnesses. He also directed him to bring the money of ₹500/-. On 28.10.1996, when he reached the court of Ms.Sunita Gupta, MM, the accused Mehkar Singh came there. The testimony of the witness in this regard is worth noting and is reproduced as under:-

“When we reached at the door of the court of Smt.Sunita Gupta, M.M. accused Mehkar Singh came there, and following conversation took place between us:-

Mehkar Singh:- HA BHAIR RAKESH, PAISE LAYA HAIN.
Myself:- HA JI JO AAPNE BATAYE THE UTNE PAISE LAYA HU.

Thereafter accused went into the court room and signaled me to accompany him. He took me to the seat of the naib court, where police files are kept.

We both sat on the bench and accused read the police file of my case sometime. SP Gulati also came inside the court and sat at a distance of 4-5 paces from us. Shri BK Pradhan also came into the court and sat at some distance. After reading the file for sometime, accused said “CHAL AA BAHAR CHALE”. Thereafter, we both came out of the court room. SP Gulati also followed us at some distance. While walking accused said “MAIN TUMHE CASE KI KHAMIYO KE BARE MEIN BATAOONGA, JO PAISE LAYA HAIN, MUJHE DE”. On this I took out aforesaid treated GC notes of Rs.500/- from my pocket and passed on to the accused. Accused accepted said money in his right hand.”

18. PW4 S.P. Gulati though turned hostile, also deposed to the effect that though he could not hear the conversation which took place with the accused in front of the court room, but he heard the accused asking complainant if he had brought the money and the complainant confirming that he had brought ₹500/- as desired. He corroborated the complainant that the accused took him in the court room where the accused took the police file from Naib Court and started reading it. He also testified that he (PW4) had also gone into the court room and sat at a distance of 4-5 feet and after sometime accused asked the complainant to come out and further that he followed the complainant and the accused. He said that while walking accused asked for the money and thereupon the complainant took out the tainted money and gave to him, who accepted the same in his right hand and at this stage he gave pre-determined signal whereupon CBI officials came and apprehended the accused. He further stated that when the accused was confronted by Inspector Ved Prakash, the accused threw the tainted money on the floor which was later recovered by PW-7 Jai Ram from the fist of the accused. He also stated that he along with PW7 Jai Ram compared the

tainted money with the numbers of notes already noted in the handing over memo and found the numbers tallying.

19. Both PW-4 and PW-7 were also cross-examined by the learned prosecutor. They both have supported the case of the prosecution in entirety and have identified the accused present in the court. They are also witnesses to the handing over memo (Ex.PW3/B) detailing pre-raid proceedings. PW8 also corroborated the witnesses of recovery stating that he also followed the complainant, accused and others and noticed that the complainant took out the tainted money from the pocket of his shirt and gave to accused Mehkar Singh who accepted the same in his right fist. He also stated that he challenged the accused after he had taken the bribe money from the complainant to which the accused kept mum and thereafter he directed PW7 Jai Ram to recover the money from his right fist and that after counting, the numbers of the tainted money were compared with the numbers mentioned in the handing over memo. This witness denied the suggestion that the accused neither demanded nor accepted the money nor did he see the accused taking money from the complainant. When the accused was apprehended, he remained mum and became nervous. The conduct of the accused is also one of the relevant

and admissible piece of evidence, the aid of which is available in corroboration of the testimony of a witness. In fact remaining mum or getting perplexed or throwing the money when caught are significant factors pointing towards the guilt of the accused. In the normal circumstances, no one behaves in such a manner. In the case of **Rao Shiv Bahadur v. State of Vindhya Pradesh**, AIR 1954 SC 322 and **State of Madras v. A. Vidyanatha 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.

20. In the present case, there is ample evidence on record to prove the factum of demand, acceptance and recovery of the bribe money from the accused. In fact PW3, PW4, PW7 and PW8 have corroborated each other with regard to the pre-raid and post-raid proceedings and they have stood lengthy cross-examinations by

the defence. Nothing could be elicited in their cross-examinations to doubt their testimonies. They have deposed on the lines of the prosecution case as narrated in the handing over memo PW3/B.

21. Having gone through the testimony of PW3 cautiously, I could not see anything coming on the record to substantiate the plea of the accused that it was because of any grievance of the complainant that the present complaint was made by him against the accused. Here it is also noted that a plea was also taken by the learned counsel that an application was also filed by HC Hukum Singh, IO in FIR No.435/94 before the MM against the complainant alleging threats to involve them in a false case. In this regard also, nothing could be brought on record to substantiate this plea. During the course of arguments, when it was put to the learned defence counsel as to the time of making of such an application to see as to whether it was before or after the trap, the learned defence counsel expressed ignorance and stated that in any case the timing of such an application would have no relevance. I am afraid, the timing of making such an application before the MM was all the more relevant and it appears that the application came to be filed by HC Hukum Singh after the trap of the accused. If it was before, the same could

have been so conveniently brought on record by the accused. The same having not been done, the logical inference would be that it was got filed after the trap to create defence of the trap and recovery from accused.

22. Now coming back to the discrepancies as pointed out by the learned counsel that PW3 stated that money was passed on to the accused at a distance of about 20-25 yards and PW4 Mr.S.P. Gulati heard the conversation and saw the whole incident, whereas Mr.Gulati stated that he could not hear the conversation. In his cross-examination, he also stated that the accused threw the money on the floor. It is true that there is some variance in the testimony of PW4 as pointed out by learned counsel, but it is noted that this witnesses immediately after his so stating, stated that PW7 Jai Ram recovered money from the right fist of the accused and that they both [he and Jai Ram (PW7)] compared the numbers of the tainted money with the numbers noted on the handing over memo and found the same to be correct. So this would hardly be discrepancy of any value.

23. It was next pointed out by the learned counsel that as per PW4, accused was arrested in the verandah of the court at his signal, whereas PW8 (TLO) stated about the apprehension of the

accused at the distance of 75 yards from the court room and PW3 stated about 25 yards. In this regard, he also submitted that as per the site plan from the position of some members of the raiding party team they could not have seen and heard anything between the complainant and the accused except PW4. I have considered the submissions in this regard very seriously and do not find any of these to be amounting to a glaring discrepancy or infirmity. This was natural course of observation of different persons of different situations in different ways and particularly when they depose in the court after lapse of long period of three to five years.

24. It was submitted by the learned counsel that PW7 being a stock witness of CBI and also hostile was not reliable. I have noted above that the testimony of PW7 is trustworthy and reliable though he was not able to identify the accused and was allowed to be cross-examined by the prosecution. He, however, in his further statement identified the accused as appearing to be the same person who was arrested at the spot for taking bribe. May be that he had appeared as a witness in 4/5 other cases investigated by the CBI, but that alone would not be enough to discard him. It is not clear as to in how many years he appeared

in 4/5 earlier cases. Having cautiously scrutinized his evidence, I do not see any reason to discard him on this ground alone.

25. It was lastly submitted by the learned counsel that no independent witness was joined by CBI whereas there were several available in the office of the accused and also in the hall where the appellant was allegedly caught receiving the money. Learned counsel in this regard relied upon the judgments of **Som Parkash v. State of Punjab**, 1992 Crl. L.J. 490; **Ved Prakash v. State of H.P.**, II (1998) CCR 317; **G.V. Nanjundiah v. State (Delhi Administration)**, 1988 Crl.L.J. 152; **Gulam Mahmood A. Malek v. The State of Gujarat**, AIR 1982 SC 1558 and **Satbir Singh v. State of Haryana**, 2000 (1) C.C. Cases HC 195.

26. There is no dispute with regard to the proposition regarding desirability of association of independent witnesses by the police so as to lend more credence and authenticity to the case, but there is also no dispute that non-association of the independent witnesses *per se* for any reason whatsoever was in itself not enough to discard the prosecution witnesses or throw away the case as a whole. In the present case, CBI associated two independent witnesses on the written requisition made in this

regard. Since the prosecution/CBI already had two independent witnesses, who had been informed and apprised about the technicalities involved in the procedure during the trap proceedings, it was not necessary for the IO to have joined other public witnesses at the time of apprehension.

27. In the case of **Som Prakash** (*supra*), there was no independent witnesses associated and so that case was entirely distinguishable from the present case. Similarly, the case of **Ved Prakash** (*supra*) is also distinguishable. In that case the independent witness who was associated was the one who was brought by the complainant and was already in contact with him and therefore, was not regarded as independent. In the case of **Gulam Mahmood A. Malek** (*supra*), the testimony of the complainant was not reliable inasmuch as he himself was an accused in four cases and though the independent witness was available, none was joined. The case of **G.V. Nanjudiah** (*supra*) was also on its peculiar facts where the testimony of the complainant contractor was also found to be not trustworthy and there was no evidence establishing the factum of acceptance of bribe. Similarly, in the case of **Satbir Singh** (*supra*) also there was no proof of initial demand of illegal gratification beyond reasonable shadow of doubt and there was no other evidence to

corroborate the statement of the complainant, that the failure to join the independent witnesses was held to be an infirmity in the prosecution case.

28. Learned counsel also challenged the validity of the sanction of the prosecution of the accused stating that there was no valid sanction by the competent authority. In this regard, it is seen that the sanction for the prosecution of the accused was accorded by PW2, Dharmender Kumar, DCP, vide order Ex.PW2/A. He affirmed on oath that he had perused the relevant documents including the statement of witnesses etc. before according the sanction. Though he did not remember some of the details of the prosecution file, but he denied that the sanction was accorded mechanically without going through the record. The mere fact that he did not remember some of the details could not create any doubt. The sanction order speaks for itself and shows that the requisite material had been gone into before according sanction. There is no reason to disagree with the finding of the learned Special Judge in this regard.

29. Section 20 of the Act provides that where at the trial it is proved that an accused has accepted or obtained or agreed to accept or attempted to obtain any gratification (other than legal

remuneration), it shall be presumed unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain such 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. It may be proved by direct evidence as in the present case it has been proved from the direct evidence of testimonies of PW-3 and PW-4 that the gratification was accepted as a motive or reward for helping the complainant in the criminal case pending against him and other co-accused persons. In the case of **Madhukar Bhaskarrao Joshi v. State of Maharashtra** (2000) 8 SCC p. 571, the Apex Court held as under:-

“12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw

the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

30. In the case of ***C.M. Girish Babu v. CBI, Cochin, High Court of Kerala*** (2009) 3 SCC 779, it was held as under:-

"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."

31. Though, the burden of proof on the accused to rebut the presumption under Section 20 is not akin to that of the burden placed on the prosecution to prove the case beyond reasonable doubt, but the same, in any case, was required to be discharged at least by preponderance of probability. The accused did not lead any evidence in defence and also could not elicit anything from the cross-examination of prosecution witnesses and thus could not rebut the presumption of guilt under Section 7 against him. Insofar as Section 13(1)(d) is concerned, it stand proved

that accused demanded and accepted bribe money for doing of favour in the exercise of his official function.

32. From the above discussion, the case of the prosecution stands proved beyond any reasonable doubt. Nothing could be pointed out by the defence to interfere or find fault with the impugned judgment or the order of the Special Judge. I have noted at different places in the preceding discussion that in certain areas some light on the subject as discussed would have been thrown by leading some evidence by the accused, but nothing of the sort was even tried to be done by him. This would lead to draw an inference that there was nothing in store in defence of the accused to cause any dent in the prosecution case. There was no denial of the fact that the corruption by the public servants and particularly the law enforcers like the accused is an alarming menace to the society and which is spreading its tentacles in all walks of life. With regard to the quantum of sentence, nothing specific was pointed out by the learned defence counsel except for praying for leniency in view of the protracted pendency of the case. This was no ground to mitigate the gravity of the offence as per the catena of judgments of the Hon'ble Supreme Court and reference here can be made only to the case of **State of A.P. v. V. Vasudeva Rao**, (2004) 9 SCC 319.

33. In the given factual matrix, I am not persuaded to impose the minimum sentence as prayed by the learned defence counsel. In the overall circumstances, while maintaining the conviction as awarded by the learned Special Judge, I am of the view that ends of justice would be met by sentencing the accused to two years of rigorous imprisonment on each count. Consequently, the order of sentence stands modified in the sense that the accused shall stand sentenced for two years rigorous imprisonment each under Section 7 and also under Section 13(2). The rest of the order shall remain unchanged. Both sentences shall run concurrently. The period of imprisonment already undergone shall be set off. The accused shall be taken into custody to undergo the imprisonment as awarded. The appeal stands dismissed.

MAY 23, 2011
'Dev'

M.L.MEHTA
(JUDGE)