

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. A. No. 47/2008

Judgment reserved on 7th February, 2011

% Judgment delivered on 11th February, 2011

S.C. GOEL APPELLANT

Through: Mr. S.P. Minocha and
Mr. Gagan Minocha, Advs.

Versus

THE STATE (THROUGH CBI) RESPONDENT

Through: Ms. Sonia Mathur, Adv. for
the CBI.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J.

1. This Appeal is directed against the judgment of Special Judge (CBI) whereby Appellant has been convicted under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short hereinafter referred to as "the Act"); sentenced to undergo rigorous imprisonment of two years with fine of ₹10,000/- under Section 7 of the Act and in default of payment of fine to undergo simple imprisonment for a period of 15 days; rigorous imprisonment of 2½ years with fine of ₹15,000/- under Section 13(2) read with Section 13(1)(d) of the Act and in default of

payment of fine to undergo simple imprisonment of 15 days. Both the sentences have been directed to run concurrently.

2. Briefly stated, facts involved in this case are that complainant Manmohan Bhalla, Sole Proprietor of M/s. Bhalla Constructions had executed certain works of Municipal Corporation of Delhi (MCD), under the supervision of appellant, who was working as Junior Engineer (J.E.) in the said department at the relevant time. Certain bills of the complainant were pending for payment. On 3rd January, 2003, complainant requested appellant to get his pending bills cleared at which appellant demanded bribe of ₹10,000/- from him. On 6th January, 2003, appellant telephoned the complainant and asked him to come with the money at his office in case he wanted to get his pending bills cleared. Since, the complainant was unwilling to pay bribe, he approached the office of Central Bureau of Investigation (CBI) and gave a written complaint in this regard. Inspector A.K. Pandey constituted a trap team comprising of two independent witnesses, namely, Shri. Virender Singh, who was working as Lower Division Clerk (LDC) with DDA and Shri. Mahadeva, an Officer of Corporation Bank, Inspector C.K. Sharma, Sub-Inspector R.C. Sharma and Sub-Inspector Prem Nath. Complainant was asked to contact appellant in order to fix the place of transaction. Accordingly, complainant contacted appellant on his mobile number from his mobile, in the presence of independent witness Mahadeva, wherein appellant confirmed the demand of bribe of

₹10,000/- for expediting the payment of bills. This conversation was recorded on a blank audio cassette in the office of CBI. Since appellant had asked the complainant to come within 10 minutes to deliver the bribe money which was not possible as formalities for laying trap proceedings could not have been completed within such a short period, therefore, complainant was asked to again contact appellant to seek some more time for payment of the bribe money. Accordingly, complainant again contacted Appellant and sought some time for payment of bribe money, at which appellant asked him to come on 7th January, 2003 at 10 AM in his office. Since the demand of bribe was confirmed from this conversation, FIR No. RC DA1-2003-A-0001 was registered by the CBI.

3. Inspector A.K. Pandey (Trap Laying Officer) decided to lay the trap on 7th January, 2003. Members of the trap team assembled at the CBI office on 7th January, 2003 at 7 AM. Complainant produced ₹10,000/- comprising of one currency note of ₹1,000/- denomination, eight currency notes of ₹500/- denomination and fifty currency notes of ₹100/- denomination. All the currency notes were treated with phenolphthalein powder. Complainant and independent witnesses were explained about the importance of treating these currency notes with phenolphthalein powder. This amount of ₹10,000/- was then kept in the left side shirt pocket of the complainant and he was directed to hand over the same on specific demand of the appellant. Shri Virender Singh (shadow witness) was asked to remain with the complainant at the time of

transaction of bribe between the complainant and appellant. He was also directed to give signal by scratching his head with both hands after the transaction was over. All the team members washed their hands with soap and water. Members of trap team were not allowed to keep anything in their possession except their identity card. Pre-trap proceedings were recorded vide a memo signed by all the members of the trap team. Thereafter, all of them left for the spot in CBI vehicle.

4. At about 9:30 AM trap team reached near the vicinity of the MCD Store, Jahangir Puri and digital SVR tape recorder was handed over to the complainant in 'on' position in order to record the conversation and the same was kept by the complainant inside his shirt. At about 9:40 AM, complainant and shadow witness were asked to go inside the office of appellant and wait for his arrival. At about 10 AM shadow witness came outside and informed that appellant had yet not arrived in his office. He again went inside and at about 10:25 AM shadow witness came out and gave pre-decided signal. At this stage, trap laying officer along with other members of the trap team went inside the office premises. Shadow witness informed the trap laying officer that the appellant had demanded and accepted the bribe in his presence and had kept the same in his left inner pocket of the jacket. Trap laying officer disclosed his identity as also the identity of every team member and challenged the appellant as to whether he had demanded and accepted the bribe of ₹10,000/- from the

complainant at which appellant became perplexed and kept quiet. Thereafter, colourless solution of sodium carbonate was prepared in a glass tumbler and appellant was asked to dip his right hand fingers in the colourless solution. On his doing so, the colourless solution turned pink. This pink solution was then transferred in a glass bottle, which was sealed with the seal of CBI. A piece of paper was pasted on the bottle on which RHW was marked and the same was also signed by both the witnesses. Thereafter, another colourless solution of sodium carbonate was prepared in a different tumbler and appellant was asked to dip his left hand in the said solution and on his doing so, this colourless solution also turned pink. This solution was also transferred in a glass bottle, which was sealed with the seal of CBI. A piece of paper was pasted on the bottle on which LHW was marked and the same was also signed by both the witnesses. Again colourless solution of sodium carbonate was prepared in which inner side pocket of the jacket of appellant was dipped. This colourless solution also turned pink and was transferred in a clean bottle, which was also sealed with the seal of CBI. This bottle was marked as LHJPW. A paper slip was pasted on the bottle which was signed by both the witnesses. Digital tape recorder, which was given to the complainant, was taken back and was played which confirmed the demand and acceptance of bribe by the Appellant. This conversation was transferred into a new TDK audio cassette. Both the witnesses signed on the cassette and also on the sticker pasted on the

cassette. Cassette was also sealed with the seal of CBI. Site plan was prepared.

5. During the investigation, voice samples of appellant and the complainant were taken and sent to CFSL. As per the report of CFSL, these voices matched with the voices as recorded in the earlier conversation of the complainant and the appellant, which confirmed the demand of bribe. Samples of hand and jacket washes were also sent to CFSL for chemical examination. As per the report of CFSL, presence of sodium carbonate and phenolphthalein powder in the solution was noticed. Other documents were also collected during the investigation which showed that work order Nos. 264, 266 and 901 were executed by M/s. Bhalla Constructions under the supervision of appellant. Work done by M/s. Bhalla Constructions was recorded by the appellant in the measurement books. As regards the work order Nos. 264 and 266, final bills had been prepared and sent to Headquarters for release of payment. With regard to the work order No. 901 relating to the improvement of Gali No. 16 in Jahangirpuri for ₹3,78,943.10, 75% work was completed by the end of the December, 2002 and no running bill had been prepared by the appellant, who had supervised the whole work. Sanction for prosecution of the appellant was taken from the Competent Authority. After completion of the investigation, charge-sheet was filed before the Special Judge, CBI, New Delhi.

6. Charges under Sections 7 and 13(2) read with Section 13(1)(d) of the Act were framed against the appellant who pleaded not guilty and claimed trial. Prosecution examined ten witnesses to prove its story. Complainant Manmohan Bhalla was examined as PW5; shadow witness Virender Singh was examined as PW4; panch witness Mahadeva was examined as PW9; trap laying officer Inspector A.K. Pandey was examined as PW8; Inspector R.K. Rishi, IO in this case, was examined as PW10. Other witnesses are formal in nature in the sense as PW1 Sanjay Kumar Saxena, who had been working as Dy. Commissioner, Civil Lines Zone, MCD, Delhi on 16th July, 2003 had accorded sanction for the prosecution against the appellant and has proved the same as Ex. PW1/A. PW2 Dr. Rajinder Singh has proved his report regarding sample of voice as Ex. PW2/A. PW3 Sh. C.L. Bansal, Scientific Officer, CFSL, New Delhi has proved his report as Ex. PW3/A with regard to the presence of sodium carbonate in the hands wash and jacket wash of the appellant. PW6 Sh. K.P. Singh, who was working as Executive Engineer with the MCD, has proved that certain works were awarded to M/s. Bhalla Constructions vide work order Nos. 264, 266 and 901. These works were executed by M/s. Bhalla Constructions under the supervision of the Appellant. Measurement book and other related documents have been proved by this witness as Ex. PW6/A to PW6/G. PW7 Sh. P.K. Chopra, Assistant Engineer, MCD has also deposed in line with PW6.

7. After the prosecution closed its evidence, statement under Section 313 Cr.P.C. of the appellant was recorded, wherein entire incriminating evidence, which had come on record, was put to him. Appellant admitted that the complainant had executed certain works under his supervision. He admitted that complainant had executed works in respect of work order Nos. 264, 266 and 901. However, he denied that on 3rd January, 2003 he demanded bribe of ₹10,000/- from the complainant for early clearance of his pending bills. He denied having talked to the complainant on 6th January, 2003 on the mobile phone. He denied that he demanded bribe of ₹10,000/- from the complainant and for that he asked him to come to his office on 7th January, 2003 at 10 AM with bribe money. He admitted that on the fateful day he had come to his office in his Maruti car at about 10 AM. However, he denied that on that day complainant contacted him in his office and paid a sum of ₹10,000/- to him on his demand. At the same time, he has admitted that his hand wash was taken but he denied that the same was sealed in his presence. He also denied that his jacket wash was taken in his presence but he admitted that he was made to remove his jacket. He admitted that he was arrested at the spot. He admitted that PW10 had conducted further investigation but he denied that his statement was recorded by him. He admitted that PW10 had recorded his specimen voice, as also the specimen voice of the complainant. He claimed himself to be innocent and stated that he had been falsely implicated in this case. However, no evidence has been led by him in his defense.

8. Learned counsel for the appellant has vehemently contended that complainant Manmohan Bhalla (PW5) and shadow witness PW4 Virender Singh had been declared hostile and cross-examined by the Senior Public Prosecutor, thus, are infirm witnesses. They have not corroborated each other on material points, inasmuch as their testimonies suffer from material contradictions making them unreliable and untrustworthy witnesses. Both PW4 and PW5 have not corroborated each other with regard to demand and acceptance of bribe by the appellant on 7th January, 2003. PW5 Manmohan Bhalla has not supported the prosecution case on material aspects. He has failed to give the date or approximate time of the alleged demand. He stated that he had not given money to the appellant in his hand; instead kept it by the side of a file lying on the table, which is contrary to the prosecution case that the appellant accepted the bribe money in his right hand, counted the same with both his hands and kept it in the left side of his jacket pocket. Suggestion given by the Senior Public Prosecutor to this witness on this point has been denied by him. PW5 Manmohan Bhalla has not even corroborated the prosecution case regarding the recovery of bribe money from the appellant's jacket pocket as he has deposed that he had gone out of the room for some time and had not witnessed the recovery of money from the appellant. He had simply stated that he had seen the money lying on the table. As per the prosecution, PW4 Virender Singh was directed to remain with PW5 Manmohan Bhalla and witness the transaction but this witness, while deposing in the court, has denied this fact.

PW4 has deposed that he remained outside the room of the appellant where the alleged transaction took place, inasmuch as, in the site plan also, his position has been shown outside the room. PW4 had neither witnessed the appellant demanding bribe from PW5 Manmohan Bhalla on 7th January, 2003 nor had seen PW5 handing over the bribe money to appellant. PW4 even denied a suggestion in his cross-examination of the prosecutor that he had informed the CBI officer about the demand and acceptance of bribe by the appellant in his presence. PW4 has deposed that after he was informed by PW5 Manmohan Bhalla about the passing of bribe money, he gave the pre-determined signal, pursuant whereof, trap team arrived there and apprehended appellant. However, PW5 has given altogether a different version by saying that he had given the signal to the trap team from a mobile phone given to him by the CBI. In nutshell it is contended that the PW4 and PW5 are wholly untrustworthy and unreliable witnesses. In absence of their testimony, demand and acceptance of bribe money had remained unproved. Reliance has been placed on ***State of H.P. Vs. Sukhvinder Singh 2004 (1) CCC (SC) 297.*** It is further contended that mere demand without proof of acceptance of bribe was not sufficient to establish offence under the Act. Reliance has been placed on ***Banarsi Dass Vs. State of Haryana AIR 2010 SC 1589.*** It is further contended that mere recovery of tainted money from the accused by itself was not sufficient to prove the charge in absence of any evidence of payment of bribe and its voluntary acceptance by the appellant. Reliance has been placed

on ***Suraj Mal Vs. State (Delhi Admn.) 1980 SCC (Cri) 159*** and ***Muluwa Vs. State of Madhya Pradesh (1976) SCC 37.***

9. Per contra, learned counsel for the respondent-CBI has contended that overall testimony of PW4 Virender Singh, PW5 Mamnohan Bhalla, PW8 Inspector A.K. Pandey (Trap Laying Officer) and PW9 Mahadev (panch witness) has to be read. Reliance has been placed on ***Jodhraj Singh Vs. State of Rajasthan 2007 CRL L.J. 2942 (SC)*** and ***Gura Singh Vs. State of Rajasthan 2001 CRL. L.J. 487 (SC) Crl. A. 1184/1998*** to contend that there is no such law that statement of a hostile witness has to be discarded as a whole. PW4 and PW5 had not supported the prosecution story on certain minor points but that itself was not sufficient to discard their testimony as a whole. There is probability of such omissions arising in the statements of these witnesses more so, when they were examined in the court after about two years of the incident. Since, these witnesses had waived on certain points, they were cross-examined by the Senior Public Prosecutor but that by itself would not be sufficient to discard their testimony as a whole. PW5 Mammohan Bhalla has fully supported the prosecution case with regard to demand of bribe of ₹10,000/- by the appellant for facilitating the payment of pending bills. He had stated that after the demand was made by the appellant he had gone to the office of CBI and made a written complaint Ex. PW5/A against the appellant on 6th January, 2003. On the instructions of Trap Laying Officer he talked to the

appellant on mobile phone who asked him to come to Dheerpur within 10 minutes. Since the time was short for laying the trap, at the instance of Insp. A.K. Pandey, PW5 again talked to appellant, who asked him to come on 7th January, 2003 at MCD store, Jahangir Puri. Independent witness PW4 Virender Singh and PW9 Mahadeva were also present there in the CBI office. On 7th January, 2003 members of the trap team assembled at CBI office. He produced currency notes worth ₹10,000/- before the Trap Laying Officer, which were treated with powder after the numbers of currency were noted on the memo Ex. PW4/B. Thereafter, trap team reached the office of the appellant. He went inside the room where appellant was sitting along with two/three persons. He had conversation with the appellant who gesticulated towards a file which was lying on the table. He kept the money by the side of said file. PW4 Virender Singh has supported PW5 Manmohan Singh by saying that on 6th January, 2010 he came to the office of CBI where PW5 was present. It was settled between the contractor (complainant) and Junior Engineer (appellant) that bribe will be paid on 7th January, 2003. Pre trap proceedings were conducted on 7th January, 2003 where numbers of currency notes were noted down on a piece of paper. Currency notes were smeared with powder and handed over to PW5 Manmohan Bhalla with the direction to hand over the same to the appellant on his demand. Trap team reached the office of appellant. He was directed to remain with Manmohan Bhalla. After giving bribe to the appellant Manmohan Bhalla informed this fact to him, at which he gave pre-

determined signal to the trap team. CBI team arrived there and caught hold of the appellant. PW9 recovered currency notes from the jacket pocket of the appellant. Hand washes and jacket pocket wash of the appellant were taken and the solution turned pink. Proceedings were conducted at the spot. Learned counsel for the respondent has further contended that from the overall testimony of PW4 and PW5, demand and acceptance of bribe money is proved.

10. It is further contended that PW9 Mahadeva has fully supported the prosecution case. Recovery of tainted money from the jacket pocket of the appellant has been duly proved from the statements of PW4, PW8 and PW9. In his statement under Section 313 Cr.P.C., appellant has admitted that his hand washes were taken and he was made to remove his jacket. This itself goes to show that trap, in fact, was laid. As per these witnesses, tainted money was recovered from the appellant. Thus, a presumption arises under Section 20 of the Act that the gratification was accepted by the appellant from the complainant as motive or reward for doing an official act. Appellant has failed to render any explanation as to how he came in possession of the tainted money. Reliance has been placed on ***Madhukar Bhaskarrao Joshi Vs. State of Maharashtra (2000) 9 SCC 571***, ***T. Shankar Prasad Vs. State of A.P. (2004) 3 SCC 753*** and ***M. Narsinga Rao Vs. State of A.P. (2001) 1 SCC 691***. It is further contended that PW8 Inspector A.K. Pandey has fully corroborated the prosecution case

and his testimony alone can be acted upon without corroboration from any other witness. Reliance has also been placed on ***State of U.P. Vs. Zakaullah (1998) 1 SCC 557.***

11. I have considered the rival contentions of both the parties and carefully perused the testimonies of PW4 Virender Singh, PW5 Manmohan Bhalla, PW8 Insp. A.K. Pandey and PW9 Mahadeva. A perusal of testimony of PW4 and PW5 shows that they have not completely turned hostile. They have not supported the prosecution case on certain issues, therefore, were declared hostile and cross examined by the Senior Public Prosecutor. This by itself would not be sufficient to discard their testimony as a whole. Such portion of their testimonies which supports the prosecution case on the point of demand, acceptance and recovery of bribe money, can be accepted. Their overall disposition has to be considered. In Jodhraj Singh's case (supra), Supreme Court held that only because a witness, for one reason or the other, has, to some extent, resiled from his earlier statement by itself may not be sufficient to discard the prosecution case in its entirety. Even in such a situation courts are not powerless. Keeping in view the material available on record, it is permissible for a court of law to rely upon a part of the testimony of the witness who has been declared hostile. In Gura Singh's case (supra), Supreme Court has held that it is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. In ***Bhagwan Singh v. State***

of Haryana 1976 Cril LJ 203, Supreme Court held that merely because the Court gave permission to the Public Prosecutor to cross-examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon the testimony of such witness. In **Rabindra Kumar Dey v. State of Orissa 1977 Cri LJ 173**, Supreme Court held that by giving permission to cross-examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile. Merely on this ground his whole testimony cannot be excluded from consideration. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the Court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the court can rely upon the part of testimony of such witness if that part of the deposition is found to be creditworthy.

12. In the backdrop of above legal position, the testimony of PW4 and PW5 cannot be discredited as a whole. That part of their version which supports the prosecution regarding demand and acceptance of bribe can still be relied upon. A perusal of statement of PW5 clearly shows that appellant had demanded ₹10,000/- from

him for facilitating release of payments of his pending bills. Since he was not willing to pay the bribe he approached the CBI and made a written complaint Ex. PW5/A. Independent witnesses PW4 Virender Singh and PW9 Mahadeva were called in the CBI office. On the instructions of trap team complainant talked to the appellant on his mobile phone wherein complainant was asked to meet the appellant at Dheer Pur. Since time was short, on the asking of Trap Laying Officer, complainant sought some more time from appellant who asked the complainant to come at MCD store, Jahangir Puri on 7th January, 2003. On 7th January, 2003 in the morning complainant, PW4 Virender Singh besides other CBI officials assembled in the office of CBI. Complainant produced currency notes worth ₹10,000/- to Trap Laying Officer. These currency notes were treated with phenolphthalein powder. The importance of phenolphthalein powder's reaction was explained to the members of the trap team. Thereafter, powder treated currency notes were handed over to the complainant with the direction to hand over the same to the appellant on his specific demand. Pre trap proceedings were recorded where numbers of currency notes were recorded. Thereafter, trap team reached at the spot. PW4 was asked to accompany PW5. Complainant PW5 went inside the room of appellant while PW4 stood at the door of the room. Site plan corroborates this fact. Complainant had some conversation with the appellant and he signaled him about money, at which appellant gesticulated towards a file lying on the table, whereupon, complainant put the money by the side of said file.

Signal was given at which trap team arrived there. Statements of PW4, PW8 and PW9 show that Trap Laying Officer challenged the appellant that he had accepted the bribe, at which he became perplexed. PW9 Mahadeva took out currency notes from the jacket pocket of the appellant. Hand washes of his both hands were taken in sodium carbonate solution which turned pink. Wash of jacket pocket of the appellant was also taken which also turned pink. As per CFSL report presence of the phenolphthalein powder was noticed in the hand washes and jacket washes. Numbers of currency notes recovered from the appellant were tallied with the memo prepared in the office of the CBI which tallied. Statements of PW4, PW5, PW8 and PW9 are in line with each other on material points to prove the above facts. Merely because PW5 has deposed that he had given signal to the trap laying officer; whereas as per the prosecution the signal was given by PW4, by itself would not be sufficient to disbelieve the whole trap proceeding. While deposing in the court, PW4 has reiterated that he had given signal to the Trap Laying Officer and this fact has even been corroborated by PW9 Mahadeva. Similar is the testimony of PW8. These three witnesses have corroborated each other on the point of giving signal by PW4. In view of this, merely because PW5 has come out with a different version would not be sufficient to disbelieve whole prosecution case. Similarly, merely because PW5 has stated that he had gone out of the room for some time while the recovery was effected would also not be sufficient to discredit the statements of PW4, PW8 and PW9 on this point. Demand and acceptance of

bribe money is also proved from the statement of PW5 and there is no reason to disbelieve this part of his statement. In my view, in this case demand and acceptance of bribe has been proved from the statement of PW5 and no corroboration on this point is required from the tape recorded conversations, therefore, I do not find it necessary to delve upon the arguments of counsel for the appellant regarding its reliability, creditworthiness and admissibility.

13. If the matter is viewed from another angle then also the guilt of appellant is established. From the testimony of PW4, PW8 and PW9 prosecution has proved beyond reasonable doubt that the tainted money was recovered from the jacket pocket of the appellant. PW5 has categorically deposed that he had kept this money on the table of the appellant in his office at his instance. Hand washes of appellant were taken in the sodium carbonate solution. Wash of the pocket of jacket of the appellant was also taken in sodium carbonate solution. All these solutions turned pink which shows that appellant had dealt with the tainted money. In view of recovery of tainted money from the appellant a presumption can safely be drawn under Section 20 of the Act that the same was received by the appellant as illegal gratification for extending favour to PW5.

14. At this stage relevant it would be to refer to section 20 of the Act which reads as under:-

“(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) xxxxxxxxxxxxxxxxx

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.”

15. Appellant has failed to explain as to how this tainted money came in his possession that is, in the pocket of his jacket as also the fact that how his hands turned pink on being dipped in the sodium carbonate solution. In view of Section 20 of the Act onus was on the appellant to render an explanation on this aspect. It is not the case of the appellant that PW5 had forcibly stuffed the money in his jacket despite his opposition in order to falsely implicate him. Neither any such plea had been taken nor has any evidence been led by him in this regard. Once it is proved that the currency was recovered from the possession of the appellant, as per statutory presumption required by Section 20 of the Act, Court is bound to presume that the appellant had accepted this money

as a motive or reward for doing an official act in favour of PW5 (Manmohan Bhalla), whose bills were pending for payment. In M. Narsinga Rao's case (supra), Supreme Court held that it is obligatory for the Court to draw the statutory presumption under Section 20 of the Act and, therefore, if it is proved that the accused had accepted or agreed to accept any gratification, the Court must presume that the money was accepted as a motive or reward for doing or bearing to do any official act. Of course, this presumption under Section 20 of the Act is a rebuttable presumption. However, in this case, appellant has not made any attempt to rebut this presumption. He has not claimed that currency notes were accepted by him not as a motive or reward but in some other connection. Banarsi Dass's case (supra) does not advance the case of the appellant any further being in the context of different facts. In the said case complainant had completely turned hostile. She disowned her signatures on her statement recorded by the police. She even denied her signatures on the memo signed by her stating that she had signed them without reading. She stated that she had kept the money on the table after some altercation with the accused. In these facts court held that the prosecution had failed to establish that the appellant had accepted the money voluntarily as an illegal gratification.

16. Learned counsel has next contended that appellant had made a substantive reduction on the bills raised by the firm of the complainant Manmohan Bhalla. Deduction of ₹42,946.50 was

made in bill no. 264. Similarly, deduction of ₹1,29,384.60 was made in the bill no. 266. Thus, complainant had falsely implicated the appellant as he was nursing a grudge against him. There was no reason for the appellant to accept the bribe since running bills had already been prepared by the appellant after making necessary entries in the measurement book and sent to the Accounts Section. Bills were even approved by Executive Engineer. No other bill was pending. In nutshell, it is contended that appellant had been falsely implicated by the appellant. I do not find any force in this contention of learned counsel for the appellant in view of the overwhelming evidence in the shape of the statements of PW4, PW5, PW8 and PW9 showing his culpability. PW4 and PW9 are independent witnesses working in a Government/Public Sector Organization. There is no reason as to why they would have joined PW5 in falsely implicating the appellant; more so, when they are not related to each other. That apart, I find that no such defence was set up during the trial nor any evidence in this regard was led by the appellant. Complainant had been working as a Contractor with Municipal Corporation of Delhi and had executed several works apart from the above two works. In such a scenario, it cannot be reasonably expected that he would falsely implicate the appellant as that would have been detrimental to his business interests. The arguments of learned counsel in this regard are rejected.

17. For the foregoing reasons, I have no hesitation in holding that the appellant had demanded and accepted from the complainant a sum of ₹10,000/- towards illegal gratification. He has thus, committed an offence under Section 7 of the Act. Appellant is also guilty of offence under Section 13(1)(d) of the Act since he obtained a pecuniary advantage in the form of cash amounting to ₹10,000/- for himself by corrupt and illegal means and abusing his position as a public servant. He, therefore, is liable to be punished under Section 13(2) read with Section 13(1)(d) of the Act. Trial court was right in convicting him under the aforesaid provisions. Accordingly, conviction of the appellant is maintained.

18. Learned counsel for the appellant has next contended that appellant has three children who are solely dependent upon him. Thirteen year old son of the appellant is mentally retarded. His two daughters are of marriageable age. There is no other male member in his family to look after them. Accordingly, it is prayed that appellant be dealt with leniently while awarding the sentence. Keeping in mind the above facts, sentence of the appellant is reduced to one year each for both the above offences. Both the sentences shall run concurrently. So far as sentence of fine is concerned, same is maintained. Needles to add that appellant shall be entitled to the benefit of Section 428 Cr.P.C.

19. Appeal is disposed of in the above terms. Personal bond of the appellant is cancelled and surety bond is discharged.

Appellant shall surrender before the Trial Court forthwith. A copy of this order be sent to the Trial Court with the direction that if appellant fails to surrender before it appropriate steps be taken to take him into custody and send him to jail to serve the remaining sentence.

A.K. PATHAK, J.

FEBRUARY 11, 2011
rb/ga